

Digital Speech & Private Platforms: Should Private Platforms Be Constitutional Actors?

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Abstract- The study explore the whether the private digital platforms can be considered the constitutional actors in the regulation of digital speech. It seek to measure the degree to which platforms have a degree of regulatory control that is similar to state actors and also to gauge the constitutional implications of subjecting them to constitutional duties. The study uses qualitative, doctrinal and analytical methodology as all the secondary sources are used including the constitutional clauses, judicial rulings, scholarly books and articles, as well as the policy documents. The results show that the rule-making, adjudicatory and enforcement functions of the privatized platforms are achieved by content moderation, and de-platforming, which make a strong influence on democratic discourse. Although constitutionalizing has the potential to improve transparency and accountability, as well as due process, it may pose doctrinal tension, compliance costs, and platform autonomy conflicts. The study finds that the gradualist approach of regulation is more balanced than complete constitutional change.

Keywords: *Digital Speech, Private Platforms, Constitutional Actors, State Action Doctrine, Digital Constitutionalism, Content Moderation, Freedom of Expression, Platform Accountability*

I. INTRODUCTION

The fast-growing development of online communication has fundamentally altered the character of the discussion in the public, that there are some pressing constitutional issues concerning the position of the private in democratic societies (Micklitz, et al.,2021). The social media sites like the Metaplatform (Facebook and Instagram), X (previously twitter), and Youtube have become a leading political discussion, activism, news, and cultural exchange platform. These digital spaces, as opposed to the traditional public squares that are parks, streets, and town halls are privately owned and operate according to corporate policies and not the constitutions (Boulianne, et al.,2025).

The main point of contention on this issue is the doctrine of state action. Freedom of expression is safeguarded by constitutional protections, like the First Amendment to the United States Constitution (in the first amendment of the Indian Constitution, Article 19(1)(a)) or equivalent provisions of other constitutions, but traditionally only against government encroachment, not against actions by non-governmental parties. It is a long held belief of courts that governments are bound by constitutional guarantees and not corporations (Stone, 2011). A platform deleting political content, banning a social figure, or censoring certain opinions may have the real-world effect of censorship by the government. However, within the legal framework, these acts are presented as the practice of the right of the property and contracts (Lane, et al., 2021).

The rationale supporting the legitimacy of considering the private platforms as a constitutional actor is based on the theory of the public functions. The advocates believe that platforms have become the contemporary public square because they are hosting political campaigns, government announcements, and civic debate (Suzor, et al., 2018). *Packingham v. North Carolina* (2017) The United States Supreme Court acknowledged social media as the new type of the public square, but it did not even declare platforms state actors. Researchers argue that constitutional standards should be used to discourage arbitrary or discriminative censorship when access to such an important space of democratic participation is given by a corporation (Soldatov, 2017).

In India, this has led to a broader interpretation of fundamental rights by courts particularly in cases where the influence of the power held by the individuals is important to the life of the people. Horizontal application of rights has also been discussed by the Indian Supreme Court in the context of cases in which the private educational institutions and media entities were involved

(Chowdhury, 2011). On the same note, in Europe, the European Court of Human Rights has acknowledged that states bear positive obligations towards effective enjoyment of free expression even in the privacy. The regulatory animal of the Digital Services Act (DSA) of the European Union is an indicator of a trend of attributing directly to big online platforms the kind of public-law-like obligations of transparency, accountability, and due process, without necessarily stating that they qualify as constitutional actors (Bendiek, 2021).

The other important dimension is the economic power and network effects concentration. There are few technology firms that control the communication throughout the world and therefore it is not easy to leave or make a meaningful option. When a person is blocked on a big platform, the ban can practically prevent such a person from participating in the mainstream online talk (Afuah, 2013). Contrary to the governments, platforms are not directly responsible to the citizens who may vote them. Constitutionalization requests are, then, based on the fear of unaccountable privacy of governance of the communication that is public (Gillespie, et al., 2020).

Meanwhile, online content and platforms are used in the whole world, without national constitutional borders. The application of domestic constitutional duties on multinational companies can cause law and jurisdiction clashes. Inconsistency in standards faces a possibility of not being met by platforms considered constitutional actors in one jurisdiction and not in another (Pillai, 2025). This complication implies that regulatory solutions, as opposed to complete constitutional change, might prove more useful when it comes to the issue of digital speech. The Oversight Board of Meta, in particular, is a form of quasi-judicial review of content decisions, which is indicative of a shift to institutional accountability, without a constitutional basis (Mazur, & Grambličková, 2023). Finally, the issue of whether or not the private platforms ought to be constitutional actors brings up more philosophical strains between liberal constitutionalism and the market governance (Teubner, 2012). When the constitutional values are supposed to protect the democratic participation and human dignity, it can be argued with some strong foundation that they will have to adapt to new types of concentrated private power (Nishihara, 2001).

The aim of the study is to examine the scope to which the private digital platforms assert regulatory control over the digital speech, which is comparable to state actors, and the implications of the constitutional and legal impact of imposing constitutional duties on them. The study is relevant to the current literature because it provides a specialized analytical study of the state action doctrine across digital governance and seals the gap between the digital constitutionalism theory and practical constitutional adjudication. It pushes discourse by evaluating critically the fact that constitutionalization or moderated control systems are more consistent with freedom of expression, accountability, and platform autonomy in the digital age.

The study is divided into seven sections. Section 1 comprises the introduction of the document. A literature review is also comprised under section 2 of the study. The objectives are covered in Section 3. A research methodology is examined in Section 4. The results are discussed in Section 5. The discussion has been provided in detail in section 6. Section 7 contains conclusions. References have finally been included.

II. LITERATURE REVIEW

Garg, M. S. (2026) discussed the conflict between national security, societal peace and tranquillity, and technological innovation, on the other and individual freedoms, dissent, and market of ideas. The article claims that current legal systems tend to be insufficient to facilitate the problem of algorithmic governance and widespread surveillance, as they require subtle legal criteria based on proportionality, transparency, and responsibility. It ends with an affirmation that adaptive constitutional jurisprudence and rights-based regulatory frameworks are necessary to help guarantee that the digital age does not strip technological advancements of their fundamental value of freedom of speech.

Araujo, L. H. D. (2025) explored the Freedom of Speech in the context of Digital Constitutionalism is the second of a series of articles on the topic of democratic control and enforcement of fundamental rights in the internet environment. In this context, the study develops the idea that self-regulation is not enough to adequately guarantee freedom of expression in a responsible manner in the digital environment. It is in this intersection that the

concept of Digital Constitutionalism can be seen as a way of bringing democratic and constitutional control to the environment of public and private digital powers.

Advocate, T. H., & Advocate, S. A. (2025) examined the history of constitutional interpretation in the digital rights age, and how judges and jurists have tried to fit the old paradigm into a new reality. The study analyzes comparative views of United States, European Union and developing democracies, and points out the existing conflict between state security, technology development and safeguarding of basic rights. The study also establishes the global tendencies, interpretations, and legal arguments that aim at striking a balance between constitutional guarantees and digital changes, and finally providing guidelines towards a rights-based digital constitutionalism.

de Almeida Leite, E. M., & Ramos Leite, M. A. (2025) examined the problem of digital transformation and the dissemination of misinformation as a threat to the conventional legal system. It is methodologically a doctrinal and jurisprudential comparative approach which integrates normative legal analysis with the analysis of landmark judicial decisions as a way of comparing transatlantic legal responses. The study ends with a conclusion about the possible regulatory directions on the issue of cross-border digital regulation and accentuates the immediate necessity of the global agreement to deal with misinformation, unfair competition, and platforms responsibility in the online sphere.

Puukko, O. (2023) studied various and political meanings of digital rights empirically through the perspective of various actors. This study summarises the results of discourse theoretical study of 12 semi-structured interviews with civil society actors on the issue of transnational digital governance. It is shown in the analysis that the notion of digital rights may be considered as floating signifier on the one hand, which is partially fixed to human rights. The research hypothesizes that the definitions of norms, rights and principles pertaining to the Internet and other digital technologies not only restrict but also generate power and this gives a new insight into digital constitutionalism.

Ragnarsson, K. H. (2022) examined how the Internet speech and freedom of expression were tackled in three constitutional amendments initiated in the

post-2008 financial crisis in Iceland, Ireland and Norway. The novel or emerging issues within Internet speech and especially the strength of Internet platforms were overlooked by constitutional reformers in all cases when positive features of Internet speech were accepted and or provided in the constitution. The strength of the power of the Internet platforms, as well as the Internet speech in general, is not addressed, and the international nature of Internet speech, which is much larger than the territorial competence of constitutional law, creates numerous complexities.

Kohl, U. (2022) argued the binary opposition of how hate speech is handled in the US and Europe mask non-binary obsessions that represent various primary anxieties not on the same 'scale'. The study further suggests that the German Network Enforcement Law of 2017 can provide a platform between the American and European speech cultures. The process of enforcing public standards by creating a private mechanism may rightly be considered to possess a rare talent at both kindling the main European anxiety concerning the lack of effective speech regulation in the public sphere and the main American anxiety concerning the existence of a policy of censorship.

The analysed literature widely addresses the topic of digital constitutionalism, the responsibility of platforms, hate speech regulation, algorithm governance, and comparative frameworks of free speech. Nonetheless, there is a research gap of the limited doctrinal analysis of whether or not the lean digital platforms must be officially acknowledged as constitutional actors under the state action doctrine. Regulatory reforms are the most common area of study, and hybrid models of governance, or security versus liberty, are not analyzed systematically with respect to the constitutional implications of applying horizontal obligations to platforms. It is also lacking in terms of exploring the functional regulatory power of reconcilable platforms and how this power exists in terms of its formal legal status in modern constitutional jurisprudence.

III. RESEARCH OBJECTIVES

- To analyze the extent to which private digital platforms exercise regulatory control over digital speech comparable to state actors.
- To evaluate the potential constitutional and legal consequences of imposing constitutional obligations on private digital platforms.

IV. RESEARCH METHODOLOGY

The study uses a qualitative, doctrinal, and analytical research design to establish how far the private digital platforms can regulate the digital speech the same way the state actors do and to assess the constitutional and legal implications of enforcing constitutional responsibilities on them. The study uses a doctrinal approach that examines the provisions of the Constitution and statutory and judicial rules, academic articles and reports, and comparative jurisprudence in the applicable jurisdictions. The secondary sources are considered as the only sources of data that are collected such as books, peer-reviewed journals, case law, government documents, and reputable legal databases. The main research tool to arrange, analyze, and present the collected data is the MS Word.

V. RESULTS

Hypothesis 1: Private digital platforms exercise regulatory control over digital speech comparable to that of state actors.

The study indicates that private online platforms have a wide range of regulatory control over digital speech, which is more similar to the role of state actors. By formulating and implementing community guidelines, terms of service agreements and content moderation policies, these platforms create binding regulations that regulate the expression of the user. They can do much more than act as mere content hosts, dictating what speech can be posted, which content is promoted under an algorithmic guidance of content curation, and what content is limited, flagged, monetized, or even removed (Flew, et al.,2019). Sanctions that people face include account suspension, shadow banning, deplatforming, and content takedown, all of which act as enforcement mechanisms that have an impressive impact on people regarding their capacity to engage in digital discourse. Since these platforms are major areas of political discourse, interpersonal relationships, and information exchange, the regulation choice the platforms make has a direct effect on the democratic process and the formation of the opinion (Risius, & Blasiak, 2024).

Nevertheless, the results do also present some important differences that make the comparison of the two, i.e. the private platforms and the state actors, more difficult. In contrast to the governments, the power of the privately operated

platforms is based on the contractual relations with the users and is not based on the constitutional imperatives, the corporate interests, the shareholder obligations, market pressures, and reputation issues (Van Dijck, 2020). Although the user can find the impact of the platform regulation similar to the way the state sets restrictions, especially when it comes to denying the user access to the digital locations, this type of authority is based on the principles of the private law instead of the public one. This disjunction has significant implications of protection of rights, due process and democratic legitimacy, which implies a further investigation of whether the current law doctrines are sufficient to deal with the changing character of the governance of digital speech (Nooren, et al.,2018).

Hypothesis 2: Imposing constitutional obligations on private digital platforms significantly impacts freedom of expression and platform autonomy.

The study explores the larger consequences of subjecting private platforms to the constitutional norms and especially the freedom of expression and due process. Conventionally, legal obligations of the constitution are vertical, i.e. between the state and people, whereas the principles of the private law, i.e. contract, property and corporate independence, are applicable to the functioning of the private platforms. Among the significant impacts of the constitutional ones would be the freedom of expression. Knowingly or otherwise, platforms are taking a wide range of discretion in regulating content by the terms of service (Stone, 2011). Constitutionalization would constrain such discretion, as viewpoint neutrality, procedural fairness, and proportionate restraint, like those applied to state action. This can provide increased protection to users against unwarranted deletion or deplatforming, which will increase online free-speech rights. But it can also cause conflict with the constitutional rights of the platforms themselves, including freedom of trade, editorial discretion and property rights which could entail complicated judicial balancing exercises (Greer, 2003).

The platforms may need to have transparent content moderation policies and mechanisms of notice and hearing before takedown as well as mechanisms of remedies in case of rights being violated. This would put the courts at a risk of having more litigation on decisions involving content, which would question the judicial control on the process of algorithmic moderation and automatic enforcement systems

(Leerssen, 2023). Additionally, the expansion of constitutional obligations may obscure the line between the government and the business realm, re-establishing the doctrine of state action and extending constitutional jurisprudence to the rules of corporate governance. It might also discourage innovation and high compliance cost especially to small platforms. Hence, the meaning of this goal is that although the imposition of constitutional duties can increase user rights and democratic responsibility, it can also generate doctrinal, practical, and regulatory difficulties that will need a balance between constitutional principles and individual liberty in the digital era (Bobek, et al.,2023).

VI. DISCUSSION

The study results strongly lie in the direction of the first hypothesis that the regulatory control of the digital speech of the publics is carried out by the means of private digital platforms in a way that is functionally similar to the operation of the state actors. Within modern digital ecosystems, platforms have developed a rule-making role in the form of community policies, terms of service, and algorithmic governance frameworks, which are highly similar to regulatory models that were historically applied by states. Platform governance has become a complex norm-making and norm-enforcing system (Van Dijck, J. 2020), which determines the borders of the acceptable expression in the online world. Besides, the establishment of social media as a contemporary public square in *Packingham v. North Carolina* highlights the importance of these platforms in the democratic participation although the Court had not gone as far as to declare them state actors (Calvert, C. 2022). On the same note, (Howard, J. W., & Kira, B. 2024) also point out the fact that content moderation practices, in their role, serve as a form of quasi-legal adjudication, defining which voices are heard and which voices are suppressed. The findings indicate that deplatforming, shadow banning, and demonetization as a set of sanctions play a crucial role in influencing the access of individuals to the mass discourse as it reflects the coercion applied with the help of the state-imposed restrictions. In addition, (Castells, M. 2011) highlights the importance of the network effects that help to concentrate the communicative power in limited dominant firms and, as a result, strengthen their regulatory power.

The results show that the enforcement of constitutional duties on the individual digital platforms would have severe legal, and doctrinal effects, not only protecting users but also limiting the freedom of the platforms. Conventionally, constitutional rights are applied vertically; safeguarding citizens against the intrusion by the state, but applying them horizontally to platforms would restructure platforms as quasi-public constitutional agents. (Widlak, A., et al.,2020) argues that there is a growing need to have proportionality, transparency and accountability criteria of digital governance in order to avoid the loss of fundamental speech freedoms. Similarly, (de Farias Dantas, E.,et al.,2025) supports digital constitutionalism as one of the means to instill democratic control in the system of platform governance. In addition, Neuvonen, R. (2022) shows that hybrid regulatory forms, in which the imposition of public standards by private means is introduced, could provide a transatlantic solution between the tradition of absolute free speech and the possibility of effective regulation of hate speech. According to (Ezrachi, A. 2018), the global scope and the concentration of digital power in the hands of individual entities that may undermine the effectiveness of direct constitutional transplantation into foreign jurisdiction is not always taken into account in constitutional reform efforts.

VII. CONCLUSION

Finally, the study proves that privatized digital platforms have become strong adjudicators, rule-makers, and regulators of online speech with rule-making, adjudicatory and enforcement capacities that are in fact functionally similar to those of state actors, but which is not subject to conventional constitutional review. Although their governance policies, including the content moderation policies, algorithmic amplification, and sanction policies, such as the deplatforming, have a considerable influence on democratic participation and the discourse, the power of the companies is based not on constitutional requirements but on private contractual relations. To that end, the study recommends that instead of wholesale making of private platforms constitutional actors, a tailored regulating framework, including accountability, proportionality, and procedural protection, can provide a more balanced approach to the trade-off between democratic values, freedom of speech, and

the existence of concentrated private power in the digital age.

The study has significant constitutional implications and implications on the regulation of the digital realm because it shows the importance of reconsidering the traditional state action doctrine in the context of the regulatory role of a private digital platform over a public discourse, as well as alludes to the possibility that rights-driven regulatory approaches can strike a better balance between accountability, freedom of speech, and platform discretion than full constitutionalization. Nevertheless, its methodology based on the doctrinal and qualitative approach based on the use of secondary sources alone, lack of empirical research, and the dynamic nature of digital technologies and legal comparisons can be viewed as the limitations of the research that can influence the sustainability of conclusions. Future research has the potential to broaden with empirical research and interdisciplinary methods, greater comparative constitutionalism and an analysis of mixed regulation and global harmonization to better deal with cross-border issues and the increased concentration of communicative power in digital platforms.

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