

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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# **FREEDOM OF EXPRESSION VS CENSORSHIP: BALANCING HATE SPEECH, SOCIAL MEDIA, AND DISSENT**

AUTHORED BY - NIDHI SINGH<sup>1</sup>

## **Abstract**

Freedom of expression stands as one of the most cherished pillars of democratic societies, enabling individuals to voice opinions, challenge authority, and foster social progress. Yet, in the digital era, this very freedom faces unprecedented strain as governments, corporations, and online communities grapple with the need to curb hate speech, misinformation, and extremist content. The proliferation of social media has amplified both the power and peril of speech—providing marginalized voices with platforms for resistance and dissent, while simultaneously enabling harassment, radicalization, and disinformation at a global scale. The line between legitimate regulation and censorship has thus become increasingly blurred, raising critical questions about who decides what constitutes harmful speech and how such decisions impact democratic participation.

This paper explores the complex interplay between freedom of expression and censorship in the age of digital communication, with a focus on hate speech, social media regulation, and the protection of dissent. It critically examines legal and ethical frameworks that seek to balance individual rights with collective security, analyzing how various jurisdictions—particularly India and other democratic nations—navigate this tension. Drawing on landmark judicial pronouncements, international human rights instruments, and contemporary policy debates, the study argues that absolute freedom or total control are both unsustainable extremes. Instead, it calls for a calibrated approach rooted in proportionality, transparency, and accountability, where regulation safeguards individuals from harm without silencing legitimate criticism or dissent.

Ultimately, the paper contends that the health of a democracy lies not in the absence of offensive speech but in its capacity to manage it with fairness and foresight. It advocates for

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stronger digital literacy, independent oversight of online platforms, and participatory policymaking to ensure that free expression thrives even amidst regulatory interventions. In doing so, the paper underscores the urgent need to redefine freedom in the digital age—not as a license to harm, but as a shared responsibility to uphold truth, dignity, and democratic discourse.

**Keywords:** Freedom of Expression, Censorship, Hate Speech, Social Media, Dissent.

## Introduction

Freedom of expression has long been regarded as the cornerstone of democratic societies. It represents not merely the liberty to speak but the right to think, question, challenge, and dissent. In India, this freedom occupies a foundational place under **Article 19(1)(a)** of the Constitution, which guarantees to every citizen the right to freedom of speech and expression.<sup>2</sup> However, this right is not absolute: **Article 19(2)** empowers the State to impose reasonable restrictions on the grounds of sovereignty, public order, decency, morality, and relations with foreign states.<sup>3</sup> The tension between liberty and limitation forms the fulcrum of India's constitutional philosophy.

In the digital age, this balance faces unprecedented challenges. Social media has amplified voices but also magnified hate speech, misinformation, and polarisation.<sup>4</sup> The same platforms that once promised global democratisation of discourse now serve as battlegrounds of ideological extremism, surveillance, and state censorship. The debate on what constitutes “reasonable restriction” has thus moved beyond traditional print and broadcast media into the fluid, algorithmic realm of cyberspace.

This paper examines the evolving relationship between freedom of expression, censorship, and hate speech within both Indian and comparative international frameworks. It argues that while the protection of expression remains central to democracy, unchecked hate speech and misinformation undermine the very pluralism that sustains it. The paper explores jurisprudential, constitutional, and ethical dimensions of this balance, analysing the roles of the judiciary, technology companies, and civil society in defining and defending the contours of free speech.

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<sup>2</sup> *Constitution of India* art 19(1) (a).

<sup>3</sup> *ibid* art 19(2).

<sup>4</sup> Pratik Sinha, ‘Free Speech in the Age of Misinformation’ (2021) *Economic and Political Weekly* 56(44) 12.

In particular, the Indian experience shaped by colonial legacies, post-independence constitutionalism, and global digital trends offers a unique laboratory for studying the dialectic between expression and regulation. From *Romesh Thappar v. State of Madras*<sup>5</sup> to *Shreya Singhal v. Union of India*,<sup>6</sup> Indian courts have consistently sought to mediate between liberty and order, innovation and restraint, dissent and decorum. As this paper demonstrates, the legitimacy of censorship depends not merely on legal permissibility but also on moral proportionality and procedural fairness.

### **Constitutional Foundations of Free Speech in India**

The Indian constitutional vision of free expression is deeply rooted in the postcolonial aspiration to build a participatory democracy. The framers of the Constitution viewed speech as not merely an individual right but a collective instrument for public deliberation. During the Constituent Assembly debates, K.M. Munshi emphasised that freedom of speech and expression is “the foundation of all democratic organisations” and essential for the discovery of truth and social progress.<sup>7</sup>

#### **A. Article 19 and the Idea of Reasonable Restriction**

Article 19(1)(a) of the Constitution guarantees every citizen the right to freedom of speech and expression, while Article 19(2) permits the State to impose “reasonable restrictions” in the interests of sovereignty, security, public order, decency, morality, and contempt of court.<sup>8</sup> This dual structure liberty qualified by limitation reveals an intentional constitutional balance between expressive freedom and social responsibility.

In *Romesh Thappar v State of Madras*, the Supreme Court first interpreted Article 19(1)(a) as a cornerstone of democracy, holding that restrictions on circulation of ideas directly threaten liberty.<sup>9</sup> Similarly, in *Brij Bhushan v State of Delhi*, the Court struck down pre-censorship on newspapers, declaring that prior restraint is antithetical to constitutional democracy.<sup>10</sup> Yet, post the First Amendment in 1951, the grounds under Article 19(2) were expanded to include public order and incitement to offence reflecting early anxieties about maintaining unity in a newly independent and diverse nation.<sup>11</sup>

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<sup>5</sup> *Romesh Thappar v State of Madras* AIR 1950 SC 124.

<sup>6</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>7</sup> *Constituent Assembly Debates*, Vol. VII (4 December 1948) 780.

<sup>8</sup> *Constitution of India* art 19(1)(a), art 19(2).

<sup>9</sup> *Romesh Thappar v State of Madras* AIR 1950 SC 124.

<sup>10</sup> *Brij Bhushan v State of Delhi* AIR 1950 SC 129.

<sup>11</sup> The Constitution (First Amendment) Act 1951.

The “reasonableness” of restrictions has been central to judicial interpretation. The Court has maintained that any limitation on speech must be narrowly tailored, proportionate, and justifiable in a democratic society.<sup>12</sup> However, “reasonableness” remains a flexible concept its elasticity often allows both judicial protection and governmental control, depending on the political climate and subject matter.

### **B. The Democratic Rationale for Free Expression**

Freedom of expression serves three interconnected democratic functions. First, it enables **self-fulfilment**, recognising the intrinsic human need to communicate and express individuality.<sup>13</sup> Second, it ensures **participation in governance**, as informed citizens are the lifeblood of representative democracy. Third, it acts as a **check on power**, fostering accountability through criticism and dissent. The Indian Supreme Court has consistently linked expression with democratic vitality. In *Indian Express Newspapers v Union of India*, the Court observed that “freedom of the press is the heart of social and political intercourse” and that the press performs a public duty to “advance public interest by publishing facts and opinions.”<sup>14</sup> The jurisprudence of free speech in India, while influenced by American and British constitutional traditions, is distinct in its communitarian ethos. Unlike the absolute model of the United States, Indian constitutionalism embeds speech within the social fabric of responsibility. This approach resonates with the principle that liberty without restraint risks degenerating into licence, and that democratic freedom must coexist with respect for order, dignity, and pluralism.<sup>15</sup>

### **C. From the Street to Cyberspace: Constitutional Adaptation**

As India transitioned into a digital society, the constitutional meaning of free speech expanded from physical spaces to the virtual realm. The judiciary began to interpret the right to expression in light of technological realities. In *Shreya Singhal v Union of India*, the Supreme Court struck down Section 66A of the Information Technology Act, 2000, holding that vague and overbroad provisions could not survive constitutional scrutiny.<sup>16</sup> The judgment reaffirmed that restrictions on online expression must meet the same constitutional tests as those applicable to offline speech.

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<sup>12</sup> *State of Madras v V.G. Row* AIR 1952 SC 196.

<sup>13</sup> C. Edwin Baker, *Human Liberty and Freedom of Speech* (OUP 1989).

<sup>14</sup> *Indian Express Newspapers (Bombay) Pvt Ltd v Union of India* (1985) 1 SCC 641.

<sup>15</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1999) 247.

<sup>16</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

However, the State's impulse to control the digital sphere persists. Recent developments—such as the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021** reignite debates about surveillance, content moderation, and state overreach.<sup>17</sup> These developments demand a reinterpretation of constitutional principles for an era where speech transcends geography and algorithms mediate expression. Ultimately, the Indian constitutional framework reflects an evolving dialogue between liberty and restraint. While the judiciary has served as a bulwark against arbitrary censorship, the rapid transformation of media ecosystems calls for renewed vigilance to preserve the spirit of Article 19 in a digitised democracy.

## **Hate Speech: Legal Definitions, Social Realities, and Jurisprudential Dilemmas**

Hate speech occupies a particularly complex position within the constitutional landscape. While freedom of expression protects the right to voice dissent, criticism, and unpopular opinions, speech that targets groups based on religion, caste, ethnicity, gender, or other identities carries the potential for tangible harm. In India's plural society, the stakes are especially high: historical experiences of communal violence, caste-based discrimination, and social marginalisation underscore the need for nuanced regulation.<sup>18</sup>

### **A. Understanding Hate Speech**

Hate speech is not a monolithic legal category. It spans a continuum from offensive remarks, stereotyping, and inflammatory statements to organised campaigns of incitement and dehumanisation.<sup>19</sup> Social scientists emphasise that the harm of hate speech is both **individual** (psychological trauma, fear, intimidation) and **collective** (eroding social cohesion, normalising discrimination, and precipitating violence).<sup>20</sup> In India, these risks are amplified by the interwoven nature of religion, caste, and regional identities, which make certain groups structurally vulnerable to abuse.<sup>21</sup>

The distinction between offensive speech and criminal hate speech is central to jurisprudence. Mere criticism or expression of unpopular views does not qualify as hate speech, whereas

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<sup>17</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E).

<sup>18</sup> Satish Deshpande, 'Hate Speech in India: Social Realities and Legal Challenges' (2019) *Economic and Political Weekly* 54(12) 22.

<sup>19</sup> Bonnie N. Kais, *Hate Speech: Concepts, Definitions, and Theories* (Routledge 2018) 34.

<sup>20</sup> Ibid 45.

<sup>21</sup> Shashi Tharoor, *The Great Indian Novel* (Penguin 2000) 210.

speech that intentionally incites violence or public disorder may fall within the permissible restrictions under Article 19(2).<sup>22</sup> Courts have consistently underscored that abstract offence, mere hurt feelings, or disagreement with a belief system does not justify state intervention.<sup>23</sup>

## B. Indian Statutory Frameworks

India does not have a single statute labelled “hate speech.” Instead, multiple provisions of the **BNS 2023**<sup>24</sup> and allied laws collectively address speech that threatens social harmony:

1. **Section 196 BNS** criminalises promoting enmity between groups based on religion, race, caste, or community, with intent to disrupt public harmony.
2. **Section 299 BNS** penalises deliberate and malicious acts intended to outrage religious feelings.
3. **Section 177 BNS** addresses statements that incite disaffection, fear, or public mischief.

Other legal tools—such as defamation laws, contempt of court, and certain provisions of the Information Technology Act, 2000 are also applied in the digital context. While these provisions aim to prevent societal harm, their breadth and vagueness can create **chilling effects**, discouraging legitimate expression and critical commentary.

## C. Key Judicial Approaches

The Supreme Court has repeatedly emphasised a **harm-centric and proportional approach**. In *Shreya Singhal v Union of India*,<sup>25</sup> the Court struck down Section 66A of the IT Act as unconstitutional, noting that vague definitions of “offensive” or “annoying” speech could criminalise dissent and arbitrarily curtail free expression. Similarly, in *S. Rangarajan v P. Jagjivan Ram*,<sup>26</sup> the Court held that films and artistic expression could only be restricted if there was a clear, proximate danger to public order; mere outrage or discomfort was insufficient.<sup>27</sup>

Recent orders by various High Courts, such as the Telangana High Court, reiterate that not every provocative or controversial social media post warrants FIRs or criminal investigation. The judiciary has stressed that hate speech enforcement must be evidence-driven, focusing on actual incitement rather than perceived offense.<sup>28</sup>

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<sup>22</sup> Constitution of India art 19(2).

<sup>23</sup> *S. Rangarajan v P. Jagjivan Ram* (1989) 2 SCC 574.

<sup>24</sup> *Bhartiya Nyaya Sanhita, 2023s 196, 299, 177*

<sup>25</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>26</sup> *S. Rangarajan v P. Jagjivan Ram*,

<sup>27</sup> Telangana High Court, *Guidelines on Social Media FIRs* (2023) [unreported].

<sup>28</sup> *Erbakan v Turkey* App No 59405/00 (ECtHR, 6 July 2006).

#### **D. International and Comparative Perspectives**

Comparative jurisprudence offers instructive frameworks. The **European Court of Human Rights (ECHR)** mandates that restrictions on hate speech must be **necessary in a democratic society**, pursuing a legitimate aim such as protecting the rights of others or public order.<sup>29</sup> The **Rabat Plan of Action** (UN Human Rights) similarly advocates a harm-focused threshold for criminalising hate speech, insisting on **intent, severity, and likelihood of harm** before imposing penalties.<sup>30</sup> These frameworks underscore that broad or arbitrary criminalisation risks undermining the very democratic values that free speech seeks to advance.

#### **E. Social Media: Amplification and Risk**

Digital platforms complicate the regulatory landscape. Social media accelerates the reach and virality of hate speech, often outpacing law enforcement and moderation mechanisms. Simultaneously, these platforms provide crucial avenues for marginalised voices and civic activism.<sup>31</sup> The challenge lies in **distinguishing harmful content from legitimate dissent**, particularly in contexts where automated moderation and corporate policy intersect with state interests.

Consequently, Indian law and policy must adopt a **calibrated, context-sensitive approach**: narrow statutory definitions, transparent enforcement procedures, and proportionality must guide both state and platform interventions. Regulatory frameworks that emphasise procedural fairness, independent review, and evidence-based thresholds are more likely to safeguard minority rights while preserving robust democratic discourse.<sup>32</sup>

### **Social Media, Intermediaries, and Regulation**

The rise of social media has transformed the landscape of freedom of expression in India. Platforms such as Facebook, Twitter (now X), Instagram, and WhatsApp have become central to public discourse, political mobilisation, and citizen journalism.<sup>33</sup> These platforms simultaneously empower marginalized communities to voice dissent and amplify the reach of extremist content. The tension between open communication and regulation underscores the

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<sup>29</sup>UN Human Rights Council, *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence* (2013).

<sup>30</sup> Pratik Sinha, 'Social Media and Digital Amplification of Hate' (2020) *Economic and Political Weekly* 55(37) 15.

<sup>31</sup> Ibid.

<sup>32</sup> Pratik Sinha, 'Social Media and Digital Amplification of Hate' (2020) *Economic and Political Weekly* 55(37) 15.

<sup>33</sup> Information Technology Act 2000 s 79.

contemporary challenge of balancing free speech with the prevention of harm.

### A. The Role of Intermediaries

Social media platforms are intermediaries, not the originators of content. Under **Section 79 of the Information Technology Act, 2000**, intermediaries enjoy a “safe harbour” protection provided they observe due diligence and respond to content removal notices.<sup>34</sup> This statutory shield creates a legal obligation for platforms to act responsibly while protecting them from undue liability. However, the interplay between state directives and corporate policies often blurs accountability lines.<sup>35</sup>

Recent amendments to the **IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021** require intermediaries to remove flagged content within strict timelines, appoint grievance officers, and trace the originators of unlawful content.<sup>36</sup> Critics argue that these obligations place enormous surveillance power in the hands of both the State and private corporations, risking over-censorship. Proponents, however, contend that these measures are necessary to curb the rapid spread of hate speech, misinformation, and content that threatens public order.<sup>37</sup>

### B. Chilling Effects and the Question of Autonomy

Excessive or ambiguous regulation of intermediaries can result in “chilling effects,” where users self-censor for fear of prosecution. In India, this risk is particularly acute given the vagueness of terms such as “offensive,” “menacing,” or “defamatory” in Section 66A (now struck down) and similar provisions. Although the *Shreya Singhal* judgment restored freedom online, recurrent interim orders and advisories on social media usage continue to create uncertainty.<sup>38</sup>

The autonomy of social media users is intertwined with the technical architecture of platforms. Algorithms prioritise engagement, often amplifying sensationalist or polarising content.<sup>39</sup> Even without legal compulsion, these algorithmic biases can facilitate the spread of hate speech or disinformation, making regulation both legally and technologically challenging.

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<sup>34</sup> Ibid s 79(2).

<sup>35</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E).

<sup>36</sup> Ravi Sundaram, ‘Digital Governance and Free Speech in India’ (2022) *Indian Journal of Law and Technology* 18(1) 42.

<sup>37</sup> Anupam Chander, *The Electronic Silk Road* (Yale University Press 2013) 88.

<sup>38</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>39</sup> Tarleton Gillespie, *Custodians of the Internet* (Yale University Press 2018) 124.

### C. Comparative Perspectives on Platform Regulation

Globally, countries have adopted diverse approaches to intermediary regulation. In the European Union, the **Digital Services Act (DSA)** mandates swift action against illegal content, risk assessments, and transparency in content moderation.<sup>40</sup> The United States, by contrast, relies heavily on **Section 230 of the Communications Decency Act**, which offers broad immunity to platforms for third-party content while allowing them to moderate as they see fit.<sup>41</sup> India's regulatory framework is evolving within this spectrum, attempting to strike a balance between corporate responsibility, state oversight, and individual freedom. The central challenge is to prevent both under-enforcement—allowing harmful speech to proliferate—and over-enforcement—stifling legitimate dissent or creative expression.

### D. Judicial Oversight and Policy Recommendations

Courts have emphasised the need for proportionality and evidence-based enforcement. The Supreme Court has repeatedly cautioned against blanket orders or preemptive censorship, insisting that content moderation must respect the principles of **necessity, proportionality, and procedural fairness**.<sup>42</sup>

Policy recommendations include:

1. **Clarity in definitions** — distinguishing hate speech from offensive but lawful criticism.
2. **Independent oversight mechanisms** — to review state or platform content removal requests.
3. **User empowerment** — transparency reports, appeal processes, and awareness initiatives.
4. **Technology-neutral standards** — ensuring that new platforms or algorithms do not evade accountability.

By embedding constitutional values into digital governance, India can create a framework that protects expression while mitigating harm, acknowledging that social media is both a tool for democracy and a site of risk.

<sup>40</sup> Digital Services Act, Regulation (EU) 2022/2065.

<sup>41</sup> Communications Decency Act 1996, 47 USC §230.

<sup>42</sup> *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

## **Dissent, Protest, and Democracy**

Dissent is the lifeblood of any democratic society. It allows citizens to question authority, challenge dominant narratives, and advocate for reform. In India, the constitutional guarantee of free speech under Article 19(1)(a) is closely tied to the protection of dissent, which is essential for pluralism, accountability, and the evolution of public policy.<sup>43</sup> Yet, the exercise of this freedom has often encountered tensions with state power, societal sensitivities, and the imperatives of public order.

### **A. Historical Context of Dissent in India**

India has a rich tradition of dissent, from anti-colonial struggles to contemporary social movements. During the independence movement, freedom of expression was not only a political tool but also a moral claim against authoritarian control.<sup>44</sup> Post-independence, the Indian state has repeatedly grappled with the challenge of balancing dissent with social stability. The Emergency period (1975–77) starkly illustrated the fragility of civil liberties when executive authority curtails free expression.<sup>45</sup> The legacy of these historical experiences continues to inform contemporary jurisprudence and public debate.

### **B. Legal Protections and Limitations**

The Indian Constitution protects the right to dissent through Article 19(1)(a), read in conjunction with the principle of proportionality under Article 19(2).<sup>46</sup> However, dissent is not absolute; speech that incites violence, threatens public order, or amounts to sedition can be restricted. The Supreme Court in *Kedar Nath Singh v State of Bihar* held that sedition laws should only apply to speech inciting imminent violence or public disorder, emphasising that criticism of government policies or officials, however sharp, cannot be criminalised.<sup>47</sup>

Similarly, in *Romesh Thappar v State of Madras*, the Court recognised the right to circulate ideas, including dissenting views, as central to democracy.<sup>48</sup> More recently, judicial scrutiny of digital expression such as social media posts critical of government action has underscored the necessity of balancing individual liberty with societal interests.<sup>49</sup>

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<sup>43</sup> *Constitution of India* art 19(1)(a).

<sup>44</sup> Bipin Chandra, *India's Struggle for Independence* (Penguin 1988) 101.

<sup>45</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1999) 312.

<sup>46</sup> *Constitution of India* art 19(2).

<sup>47</sup> *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955.

<sup>48</sup> *Romesh Thappar v State of Madras* AIR 1950 SC 124.

<sup>49</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

### C. Contemporary Dissent in the Digital Age

The proliferation of social media has transformed how dissent is expressed and contested. Movements such as the 2020–21 farmers’ protests or campaigns advocating environmental justice leveraged online platforms to mobilise support, coordinate actions, and amplify voices traditionally marginalised in mainstream media.<sup>50</sup> While digital dissent expands democratic participation, it also raises questions about misinformation, online harassment, and the potential for communal or political polarisation.

Courts have increasingly recognised these complexities. In *Anuradha Bhasin v Union of India*, the Supreme Court emphasised that restrictions on digital expression, such as internet shutdowns, must comply with the principles of necessity and proportionality.<sup>51</sup> The ruling underscores that the digital medium is now an essential public sphere for dissent, and restrictions must be carefully justified to avoid undermining democratic discourse.

### D. Comparative Perspectives on Protecting Dissent

Internationally, protection of dissent is recognised as a fundamental human right. The **International Covenant on Civil and Political Rights (ICCPR)** mandates that restrictions on expression must be “provided by law and necessary for respect of the rights or reputations of others, or for the protection of national security, public order, or public health or morals.”<sup>52</sup> European jurisprudence, such as the **ECHR**, similarly stresses that democracy thrives on open criticism, debate, and dissent, even when such speech is offensive or unpopular.<sup>53</sup>

These comparative perspectives reinforce the principle that dissent is not a threat to democracy but an essential feature of it. The Indian experience, particularly in the digital age, illustrates the ongoing negotiation between constitutional freedoms, public order, and social responsibility.

### E. Balancing Dissent and Regulation

Protecting dissent while curbing harmful speech requires a multi-layered approach:

- 1. Judicial safeguards** — Ensuring restrictions are narrowly defined, evidence-based, and proportionate.

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<sup>50</sup> Ravi Sundaram, ‘Digital Protests and Social Movements in India’ (2021) *Economic and Political Weekly* 56(22) 18.

<sup>51</sup> *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

<sup>52</sup> International Covenant on Civil and Political Rights (opened for signature 16 Dec 1966, entered into force 23 Mar 1976) art 19.

<sup>53</sup> *Handyside v United Kingdom* App No 5493/72 (ECtHR, 7 Dec 1976).

2. **Administrative restraint** — Limiting arbitrary enforcement of sedition, hate speech, or defamation laws.
3. **Platform accountability** — Transparency in content moderation and fair appeal mechanisms.
4. **Public education** — Promoting media literacy, critical thinking, and responsible online participation.

A robust democracy depends on a society that tolerates disagreement, accommodates dissent, and treats criticism not as a threat but as an opportunity for reform.<sup>54</sup>

### **Enforcement Challenges and Chilling Effects**

The regulation of speech, particularly in the context of hate speech and digital expression, presents significant **enforcement challenges** in India. While the Constitution allows for reasonable restrictions under Article 19(2), translating abstract legal principles into practical regulation is fraught with difficulties.<sup>55</sup> These challenges are compounded by the growth of social media, the complexity of intermediary liability, and the socio-political diversity of the country.

#### **A. Ambiguities in Legal Frameworks**

India's legal provisions concerning hate speech, sedition, and digital offences are often criticised for **vague terminology**. Sections 66A (now struck down), 177, 196, and 299 BNS contain broad language such as “offensive,” “menacing,” or “public mischief,” which can be interpreted variably across jurisdictions.<sup>56</sup> Such ambiguity leaves significant discretion to law enforcement, resulting in inconsistent application and potential misuse.<sup>57</sup>

The **Supreme Court**, in *Shreya Singhal v Union of India*, struck down Section 66A, noting that the vague language allowed criminalisation of legitimate political criticism and public debate.<sup>58</sup> Despite this judgment, newer provisions and guidelines—particularly under the IT Rules 2021—continue to give the state and intermediaries considerable power to remove content, sometimes without clear definitions or procedural safeguards.<sup>59</sup>

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<sup>54</sup> Pratik Sinha, ‘Democracy, Dissent, and Digital Speech in India’ (2022) *Indian Journal of Law and Technology* 18(2) 55

<sup>55</sup> *Constitution of India* art 19(2).

<sup>56</sup> *Bhartiya Nyaya Sanhita 2023* ss 66A (repealed), 177, 196, 299.

<sup>57</sup> Pratik Sinha, ‘Legal Ambiguities and the Chilling Effect in India’ (2021) *Economic and Political Weekly* 56(45) 19.

<sup>58</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>59</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, GSR 139(E).

## B. The Chilling Effect on Free Expression

One of the most significant consequences of overbroad enforcement is the **chilling effect**. When citizens fear prosecution or arbitrary takedowns, they may self-censor, avoiding discussion of controversial but important issues.<sup>60</sup> This phenomenon undermines the very purpose of free speech in a democracy, limiting the marketplace of ideas and restricting dissenting voices.

Empirical studies in India suggest that journalists, activists, and ordinary users increasingly refrain from publishing content that could potentially trigger police complaints or social media action.<sup>61</sup> The chilling effect is especially pronounced among minority communities, students, and political activists, who may already face structural vulnerabilities.<sup>62</sup>

## C. Practical Challenges in Digital Enforcement

Digital enforcement introduces additional layers of complexity. Algorithms, automated content moderation, and rapid virality of online content make it difficult to apply traditional legal standards.<sup>63</sup> Intermediaries often rely on automated systems to flag content, which can result in over-removal, misclassification, or biased moderation.<sup>64</sup> Conversely, under-enforcement allows harmful content to persist, sometimes leading to offline violence or communal unrest.<sup>65</sup> The tension between **speed and fairness** is a recurring challenge: swift action is necessary to prevent harm, but hasty removals risk suppressing legitimate expression. Indian courts have repeatedly emphasised the need for **evidence-based enforcement**, insisting that complaints must demonstrate actual or imminent harm rather than abstract offence.<sup>66</sup>

## D. Comparative Lessons from Global Jurisdictions

International experiences provide guidance for mitigating enforcement challenges. In the European Union, the **Digital Services Act (DSA)** encourages transparent notice-and-action procedures and independent oversight boards to ensure fairness in content removal.<sup>67</sup> Germany's **Network Enforcement Act (NetzDG)** mandates rapid removal of illegal content

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<sup>60</sup> Anupam Chander, *The Electronic Silk Road* (Yale University Press 2013) 88.

<sup>61</sup> Ravi Sundaram, 'Digital Speech and Self-Censorship' (2022) *Indian Journal of Law and Technology* 18(3) 31.

<sup>62</sup> Satish Deshpande, 'Hate Speech, Chilling Effects, and Marginalised Communities' (2019) *Economic and Political Weekly* 54(12) 25.

<sup>63</sup> Tarleton Gillespie, *Custodians of the Internet* (Yale University Press 2018) 124.

<sup>64</sup> *Ibid* 130–132.

<sup>65</sup> *Ibid* 140.

<sup>66</sup> *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

<sup>67</sup> Digital Services Act, Regulation (EU) 2022/2065.

while safeguarding user rights to appeal.<sup>68</sup> These frameworks illustrate how regulation can be structured to balance efficiency with protection of free expression.

In contrast, countries that rely on vague or overbroad laws, such as some Southeast Asian jurisdictions, demonstrate the risks of arbitrary enforcement—frequent takedowns and prosecutions often target critics, journalists, and minority groups, exacerbating chilling effects.<sup>69</sup>

## E. Recommendations for India

To address enforcement challenges while minimising chilling effects, the following measures are essential:

1. **Clarify statutory definitions** — Narrowly define “hate speech,” “offensive content,” and related terms.
2. **Independent oversight mechanisms** — Establish review boards for content removal requests from both the state and platforms.
3. **Procedural safeguards** — Ensure notice, opportunity to respond, and transparent appeal processes.
4. **Data and accountability** — Require platforms and law enforcement to publish periodic transparency reports.
5. **Public awareness** — Educate citizens on rights, responsibilities, and complaint procedures online.

By adopting these measures, India can foster a regulatory environment that protects vulnerable communities, mitigates social harm, and preserves the democratic right to free expression.

## Conclusion and Way Forward

Balancing freedom of expression with the regulation of hate speech, social media, and dissent is one of the defining challenges of contemporary Indian democracy. The preceding analysis underscores the **complex interplay of constitutional guarantees, statutory provisions, judicial interpretation, technological realities, and societal dynamics** that shape the contours of free speech in India.<sup>70</sup>

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<sup>68</sup> Netzwerkdurchsetzungsgesetz [NetzDG] 2017 (Germany).

<sup>69</sup> Human Rights Watch, *Asia: Freedom of Expression Under Threat* (2020).

<sup>70</sup> Ravi Sundaram, ‘Balancing Free Expression and Regulation in India’ (2022) *Indian Journal of Law and Technology* 18(4) 70.

## A. Key Insights

The Indian constitutional framework, particularly Article 19(1) (a) and its reasonable restrictions under Article 19(2), reflects a careful attempt to **balance liberty and responsibility**.<sup>71</sup> Judicial interventions—from *Romesh Thappar* and *Kedar Nath Singh* to *Shreya Singhal* and *Anuradha Bhasin*—have consistently reinforced that free expression is essential to democratic governance while recognising the need to prevent tangible harm.<sup>72</sup>

Hate speech, while socially and morally pernicious, must be addressed **with precision, proportionality, and context-sensitivity**. Overbroad laws and vague terminology risk chilling legitimate dissent and undermining democratic debate, whereas under-regulation allows socially destabilising content to proliferate.<sup>73</sup> Social media and digital intermediaries amplify these challenges, necessitating innovative policy interventions, technological accountability, and judicial oversight.

Comparative analysis shows that countries such as the EU, US, Germany, and the UK offer complementary lessons. Clear definitions, harm-focused thresholds, independent oversight, transparency mechanisms, and procedural safeguards are universally recognised as effective instruments for balancing expression with protection against abuse.<sup>74</sup> India's policies and legal frameworks can benefit from these lessons while adapting to the nation's unique socio-political and cultural context.

## B. Policy and Governance Recommendations

The way forward requires a **multi-dimensional strategy**:

- 1. Legal Reform** — Consolidate and clarify provisions on hate speech, sedition, and online offences; ensure proportionality, necessity, and procedural safeguards.
- 2. Technological Accountability** — Mandate algorithmic transparency, periodic reporting, and fair appeal mechanisms for content moderation.
- 3. Institutional Oversight** — Establish independent regulatory or review bodies to adjudicate disputes and ensure accountability of both state and corporate actors.<sup>75</sup>

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<sup>71</sup> Constitution of India arts 19(1)(a), 19(2).

<sup>72</sup> *Romesh Thappar v State of Madras* AIR 1950 SC 124; *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955; *Shreya Singhal v Union of India* (2015) 5 SCC 1; *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

<sup>73</sup> Satish Deshpande, 'Hate Speech, Chilling Effects, and Marginalised Communities' (2019) *Economic and Political Weekly* 54(12) 25.

<sup>74</sup> Digital Services Act, Regulation (EU) 2022/2065; Communications Decency Act 1996, 47 USC §230; *Netzwerkdurchsetzungsgesetz [NetzDG] 2017* (Germany); Public Order Act 1986 (UK) ss 29–32.

<sup>75</sup> Ravi Sundaram, 'Institutional Oversight in Digital Governance' (2021) *Economic and Political Weekly* 56(39) 21.

4. **Public Education** — Promote media literacy, critical thinking, and awareness of digital rights to empower citizens and mitigate the spread of harmful content.<sup>76</sup>
5. **Ethical Governance** — Integrate ethical considerations into policymaking, respecting human dignity, minority rights, and pluralistic democratic norms.<sup>77</sup>

### C. Embracing the Digital Era Responsibly

India's democracy increasingly operates in a **digital public sphere**, where discourse is rapid, borderless, and often volatile. Policy and governance must adapt to these realities without compromising constitutional principles. Approaches that combine **law, technology, institutional oversight, and citizen engagement** can foster a resilient public sphere—one that protects vulnerable groups, encourages dissent, and ensures that online platforms strengthen rather than undermine democracy.

Freedom of expression is not merely a legal entitlement; it is a **democratic ethos**. It thrives when citizens are empowered to voice opinions, question authority, and participate in collective decision-making. Conversely, it is vulnerable when overreach, ambiguity, or arbitrary enforcement constrains legitimate discourse.<sup>78</sup> India's ongoing challenge is to reconcile these imperatives—honouring the rights of individuals while protecting society from harm.

Ultimately, achieving this balance is not a one-time legal or policy exercise but a **continuous democratic endeavour**. By learning from international experience, grounding policies in evidence and ethics, and fostering a culture of civic responsibility, India can ensure that free expression remains a **vibrant, inclusive, and transformative force** in the 21st century.

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<sup>76</sup> Satish Deshpande, 'Media Literacy and Democratic Participation' (2020) *Economic and Political Weekly* 55(14) 15.

<sup>77</sup> Ravi Sundaram (n 1) 73–74.

<sup>78</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1999) 310–312.