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CENSORSHIP V. FREE SPEECH: A COMPARATIVE STUDY OF CONSTITUTIONAL BALANCING IN INDIA, THE USA, AND THE UK

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ABSTRACT

Freedom of Speech and Expression is one of the pillars of democratic society still it clashes with the state's authority to impose censorship. This paper deals with a comparative study of India, the United States, and the United Kingdom to examine how constitutional frameworks address this tension. While the First Amendment in the U.S. provides near-absolute protection, India's Article 19(2) permits reasonable restrictions, and The U.K. balances free speech under parliamentary sovereignty and the Human Rights Act as incorporated under Article 10 of ECHR. By analyzing constitutional provisions, landmark judgments, and statutory mechanisms, the paper highlights different approaches to prior restraint, hate speech, defamation, and digital regulation. The study finds that the U.S. model emphasis liberty, whereas India and U.K. prioritize social harmony and proportionality. The paper concludes that digital era has some challenges such as misinformation, online hate, and platform liability which necessitate a hybrid framework combining liberty with procedural safeguards to ensure democratic integrity.

KEYWORDS: Freedom of speech and expression, Censorship, Prior restraint, Article 19(1)(a), Article 19(2), First Amendment, Article 10 ECHR, Proportionality, intermediary liability.

1. INTRODUCTION

The debate between free speech and censorship has long shaped the contours of constitutional democracies, serving as one of the most contested and enduring themes in constitutional law. Freedom of speech and expression is not merely a personal liberty but also a cornerstone of democratic governance, enabling individuals to question authority, engage in cultural discourse, and contribute to the marketplace of ideas. At the same time, censorship operates as a state mechanism aimed at preserving security, public order, morality, and social harmony.

The friction between the two lies not in the acknowledgment that restrictions are necessary, but in determining their extent, legitimacy, and constitutional validity.

Different jurisdictions adopt distinct methods to resolve this tension. India, through Article 19(1)(a) of its Constitution, guarantees freedom of speech but subjects it to “reasonable restrictions” under Article 19(2). The United States, by contrast, adopts a near-absolute protection of free expression under the First Amendment, where restrictions are permissible only under the strictest scrutiny and in the narrowest circumstances. The United Kingdom, without a written constitution, balances rights under the Human Rights Act, 1998, adopting a proportionality-based approach consistent with the European Convention on Human Rights. These doctrinal differences underscore the diverse constitutional philosophies and historical contexts that influence the balancing of liberty and control.

The advent of social media, the proliferation of hate speech, fake news, and the rise of digital surveillance have tested these classical frameworks, pushing courts and legislatures to revisit traditional doctrines in light of technological disruptions. A comparative study of these models is therefore crucial to understanding how democracies reconcile the protection of liberty with the necessity of regulation in the digital era. This paper adopts a doctrinal and comparative methodology to evaluate constitutional provisions, statutory frameworks, and landmark judicial pronouncements that shape the balance between censorship and free speech in India, the USA, and the UK. Special emphasis is placed on emerging digital-era challenges such as online hate speech, intermediary liability, and governmental takedown powers, highlighting the need for a recalibrated framework capable of safeguarding fundamental freedoms while addressing contemporary threats.

2. RESEARCH BACKGROUND

2.1. RESEARCH PROBLEM

Despite the universal recognition of free speech as fundamental right, its practical implementation varies across jurisdictions. In India, broad legal provisions and undefined restrictions sometimes allows excessive censorship, while in the USA, almost absolute protection can clash with societal interests like public order or national security. The UK’s constitution is relying on proportionality and European human rights standards which faces challenges in defining the limits of permissible restrictions. The digital era with social media, algorithmic content moderation and cross-border communication has further complicated the

balance between free speech and censorship.¹ This research seeks to examine how India, the USA, and the UK constitutionally manage the tension between liberty and state-imposed censorship in both traditional and digital contexts.

2.2. NOVELTY

This study offers a unique three-way comparative perspective on constitutional balance of free speech and censorship which might be explored in existing literature. The existing work focus on individual jurisdiction or bilateral comparisons but this research integrates India, the USA, and the UK in order to highlight doctrinal, procedural, and digital-era challenges. It emphasises emerging issues such as online content moderation, intermediary liability, and the impact of algorithmic censorship. By combining doctrinal analysis, case law review and comparative evaluation, the paper provides actionable insights for policymakers, judges, and legislators. The novelty lies in proposing a hybrid framework that reconciles the principles of liberty, proportionality and social responsibility in modern democratic societies.

2.3. RESEARCH OBJECTIVES

- a. To analyse constitutional and statutory provisions governing free speech and censorship in India, the USA and the UK.
- b. To examine landmark judicial decisions shaping the scope and limits of free expression.
- c. To compare doctrinal approaches such as ‘reasonable restrictions’, ‘strict scrutiny’, and ‘proportionality’.
- d. To explore challenges posed by digital media, social platforms, and intermediary liability.
- e. To identify procedural safeguards against arbitrary censorship in the three jurisdictions.
- f. To evaluate the effectiveness of prior restraint, hate speech, defamation, and obscenity regulations.

2.4. RESEARCH QUESTIONS

- a. How do India, the USA, and the UK constitutionally define and protect freedom of speech?

¹ Fenwick, H., & Phillipson, G., *Media Freedom and Online Regulation: Comparative Approaches*, Oxford University Press (2021).

- b. What legal and judicial mechanisms regulate censorship in each jurisdiction?
- c. How do doctrinal tests like ‘reasonable restrictions,’ ‘strict scrutiny,’ and ‘proportionality’ operate in practice?
- d. What challenges arise in regulating digital content, social media, and intermediary platforms?
- e. How effective are procedural safeguards in preventing arbitrary restrictions on speech?
- f. What lessons can India, the USA, and the UK draw from each other to improve the balance between liberty and state control?

2.5. RESEARCH GAP

While substantial literature exists on free speech in India, the USA, and the UK individually, few studies conduct a tri-jurisdictional comparative analysis. The existing research focus on theoretical perspectives or individual case law that too without integrating digital-era challenges such as social media regulation and algorithmic censorship. There is also limited examination of procedural safeguards, enforcement mechanisms, and practical implications of censorship in each jurisdiction. This gap restricts understanding of how constitutional principles translate into practice in a globally connected digital environment. The present study addresses this void by combining doctrinal analysis, comparative evaluation, and policy-oriented recommendations.

2.6. RESEARCH HYPOTHESIS

H1: Jurisdictions with clear legal tests and procedural safeguards effectively balance free speech and censorship.

H2: The USA’s near-absolute protection, India’s reasonable restrictions, and the UK’S proportionality approach yield different practical outcomes.

H3: Digital-era challenges necessitate hybrid frameworks combining liberty with accountability.

H4: A hybrid constitutional model can guide democratic states in protecting free speech while allowing legitimate regulation.

2.7. RESEARCH METHODOLOGY

This study adopts a qualitative, doctrinal-comparative methodology. Primary sources will be constitutional texts, statutes and landmark judgments of respective jurisdiction of these three

countries. Secondary sources comprise scholarly articles, reports by NGOs and many more. The research involves doctrinal analysis to interpret legal provisions, comparative evaluation to identify similarities and differences in order to suggest policy improvements. Analytical tools include comparative tables, flowcharts in order to visualize constitutional balancing.

2.8. LITERATURE REVIEW

Scholarly debates and judicial pronouncements across jurisdictions have significantly contributed to shaping the contours of free speech and censorship. In the Indian context, H.M. Seervai's *Constitutional Law of India* provides a deep analysis of Articles 19(1)(a) and 19(2), explaining how the framers sought to strike a balance between liberty and regulation. Early judicial interventions such as *Romesh Thappar v. State of Madras* (1950) marked the Supreme Court's strong stance against pre-censorship of a journal, establishing freedom of speech as the foundation of democracy. This trajectory was further consolidated in *Shreya Singhal v. Union of India* (2015), where the Court struck down Section 66A of the IT Act for being vague and chilling online expression.

In the United States, free speech scholarship has been enriched by Alexander Meiklejohn's democratic theory of free expression, which situates speech as essential to self-governance, and Thomas Emerson's influential "expression-action" distinction, which clarified the scope of the First Amendment. Landmark cases such as *New York Times v. United States* (1971), the Pentagon Papers case, reaffirmed the doctrine against prior restraint, while *Brandenburg v. Ohio* (1969) introduced the "imminent lawless action" test, setting high thresholds for restrictions on incitement.

The UK and European jurisprudence have developed along distinct yet overlapping lines. Eric Barendt's seminal work *Freedom of Speech* (2005) emphasises proportionality as the guiding test, drawing from European Convention principles. Judicially, the European Court of Human Rights in *Handyside v. UK* (1976) established the "margin of appreciation," allowing states discretion in restricting offensive speech, while *R v. Shayler* (2002) balanced the protection of national security with individual expression.

In contemporary debates, Jack Balkin (2018) introduced the concept of "information fiduciaries," proposing accountability mechanisms for online intermediaries, which has become central in discussions on platform liability. Modern scholarship and policy discourse

also grapple with challenges such as algorithmic censorship, regulation of hate speech, and the containment of fake news, highlighting the urgent need to recalibrate traditional doctrines in the digital age.

3. FREE SPEECH V. CENSORSHIP

3.1. CONSTITUTIONAL FOUNDATIONS OF FREE SPEECH AND CENSORSHIP

Free expression is rooted in distinct constitutional traditions in India, the United States and the United Kingdom. The Indian Constitution's Article 19(1)(a) protects free speech but Article 19(2) places clear restrictions on it which makes it conditional from the start. As observed in *Romesh Thappar v. State of Madras (1950)*,² the Supreme Court held that “freedom of speech and expression lays at the foundation of all democratic organisations,” but restrictions must be specific, reasonable, and proportionate. In contrast, courts have carved out limited exceptions for national security, obscenity, and incitement under the U.S. First Amendment, which offers nearly absolute protection as the Supreme Court in *Bridges v. California (1941)* declaring that “any abridgment of freedom of speech or press is viewed with the utmost suspicion and must be justified with compelling interest. The UK lacks a codified constitution due to which it is governed by common law and the Human Rights Act of 1998, which includes Article 10 of the ECHR and allows restrictions only when they are necessary in a democratic society. In *Handyside v. UK (1976)*,³ the European Court recognized that freedom of expression “applies not only to information or ideas that are favourably received but also to those that offend, shock, or disturb,” establishing the principle of proportionality in restrictions. These foundational differences underscore how each system balances individual liberty with societal needs.

3.2. DOCTRINAL APPROACHES TO RESTRICTION

The jurisprudential approach to restricting free speech varies according to constitutional philosophy. In India, the doctrine of “reasonable restrictions” under Article 19(2) has been expansively interpreted, yet must meet the twin tests of necessity and proportionality. In *State of Madras v. V.G. Row (1952)*, the Supreme Court clarified that restrictions must correspond to “the nature of the right infringed and the magnitude of the evil sought to be prevented,” establishing an early proportionality framework. The U.S. approach, grounded in the First Amendment, employs strict scrutiny, requiring that any law restricting speech serves a

² *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

³ *Handyside v. United Kingdom*, 1 EHRR 737 (1976).

compelling governmental interest and is narrowly tailored. The landmark *Brandenburg v. Ohio* (1969)⁴ case introduced the “imminent lawless action” test that confining state interference to speech likely to provoke immediate illegal activity. The UK applies proportionality and the “margin of appreciation” doctrine which articulated in *Sunday Times v. UK* (1979),⁵ where the Court emphasized that restrictions must be justified by a “pressing social need” and be proportionate to the aim pursued. Collectively, these doctrines demonstrate that while India and the UK permit more flexible restrictions based on societal needs, the U.S. prioritizes individual liberty, restricting the state’s capacity to interfere.

4. CONTRIBUTIONS AND CONSTITUTIONAL FRAMEWORK

4.1. THEORETICAL CONTRIBUTIONS AND SCHOLARLY PERSPECTIVES

Academic scholarship provides essential frameworks for understanding constitutional approaches to free speech and censorship. In India, H.M. Seervai (*Constitutional Law of India*, 1996) emphasizes that Article 19(2) must be interpreted narrowly, asserting that “reasonable restrictions cannot be vague or arbitrary and must be proportional to the objective sought.” P.K. Tripathi highlights that judicial vigilance is crucial to prevent state overreach. In the U.S., Alexander Meiklejohn advanced the concept of democratic self-governance, arguing that free expression is central to participatory decision-making, while Thomas Emerson distinguished between expression and action, emphasizing that only speech with imminent harmful consequences may be curtailed. In the UK, Eric Barendt (*Freedom of Speech*, 2005) underscores the balancing of rights against societal interests under the proportionality principle. Contemporary digital scholarship i.e., Jack Balkin (2018) addresses challenges posed by online platforms, algorithmic moderation, and intermediary liability, highlighting the inadequacy of traditional frameworks in regulating digital speech.⁶ By Integrating these perspectives, it illuminates both doctrinal coherence and emerging gaps in managing speech in modern democracies.

4.2. CONSTITUTIONAL FRAMEWORK IN THE THREE JURISDICTIONS

4.2.1. INDIA

India’s constitutional approach to free speech is grounded in Article 19(1)(a) of the Constitution, which guarantees to every citizen “the right to freedom of speech and

⁴ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

⁵ *Sunday Times v. United Kingdom*, 2 EHRR 245 (1979).

⁶ Balkin, J. M., “Information Fiduciaries and Platform Responsibility,” *Yale Law Journal*, Vol. 128, No. 7, pp. 2218–2253 (2018).

expression.” However, this right is not absolute; Article 19(2) permits the State to impose “reasonable restrictions” in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offence.

This qualified guarantee reflects the framers’ conscious departure from the American absolutist model. In the Constituent Assembly Debates, B. R. Ambedkar emphasized that unregulated speech could imperil communal harmony and national security in a newly independent nation marked by partition and social volatility. The result is a balancing clause that embeds proportionality into the constitutional text itself.

Early judicial interpretation, however, leaned heavily in favor of free speech. In *Romesh Thappar v. State of Madras (1950)*⁷ and *Brij Bhushan v. State of Delhi (1950)*,⁸ the Supreme Court struck down pre-censorship orders on the ground that “public order” was not an enumerated restriction at that time. These cases prompted the First Constitutional Amendment (1951), which expanded Article 19(2) to include “public order” and “incitement to an offence,” thus broadening the scope of permissible state control.

The doctrine of “reasonableness” has since evolved through judicial exposition. In *K.A. Abbas v. Union of India (1970)*,⁹ the Court upheld film censorship, holding that prior restraint could be justified if reasonable and guided by procedural safeguards. The decision recognized that moving pictures, due to their mass influence, could justifiably be subjected to greater control than the written word. Later, in *S. Rangarajan v. P. Jagjivan Ram (1989)*,¹⁰ the Court reaffirmed that censorship must be based on clear and proximate danger to public order, not mere anticipation of disorder.

In the digital age, *Shreya Singhal v. Union of India (2015)*¹¹ became a watershed decision. The Court struck down Section 66A of the Information Technology Act, 2000, which criminalized “offensive” online speech, holding that the expressions “grossly offensive” and “menacing” were vague and overbroad, leading to chilling effects on legitimate expression.

⁷ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

⁸ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

⁹ *K.A. Abbas v. Union of India*, AIR 1971 SC 481.

¹⁰ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

¹¹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

Importantly, the Court revived the American “clear and present danger” and “imminent lawless action” standards to test the validity of restrictions.

Contemporary Indian jurisprudence also integrates the proportionality doctrine, as seen in *Modern Dental College v. State of Madhya Pradesh (2016)*¹² and *Puttaswamy v. Union of India (2017)*,¹³ which affirmed that any restriction on fundamental rights must satisfy a four-part proportionality test: legitimate aim, rational connection, necessity, and balance between rights and restrictions. Although not always applied consistently in speech cases, this doctrine indicates India’s gradual move towards structured rights adjudication.

Thus, India’s model represents a contextual equilibrium, a flexible constitutional framework that permits reasonable censorship while mandating judicial scrutiny to prevent abuse. The key challenge remains in ensuring that “reasonableness” does not devolve into executive discretion or moral paternalism.

4.2.2. THE UNITED STATES

The First Amendment to the U.S. Constitution unequivocally declares:

“Congress shall make no law..... abridging the freedom of speech, or of the press.”

This textual absolutism has translated into one of the strongest constitutional shields for speech in the world. American courts, wary of government intrusion into public discourse, have developed a series of judicial tests that define the narrow limits of permissible restriction.

The early decision in *Schenck v. United States (1919)*¹⁴ introduced the “clear and present danger” test, permitting restriction only when speech poses an imminent threat to public safety. Justice Holmes’ formulation: “The most stringent protection of free speech would not protect a man falsely shouting fire in a theatre”, set the stage for doctrinal evolution. Subsequently, in *Brandenburg v. Ohio (1969)*,¹⁵ the Supreme Court refined this to the “imminent lawless action” test, holding that advocacy of violence is protected unless it is directed to inciting imminent unlawful conduct and is likely to produce such action.

¹² *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

¹⁴ *Schenck v. United States*, 249 U.S. 47 (1919).

¹⁵ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

Similarly, in *New York Times v. United States (1971)*¹⁶ (the “Pentagon Papers Case”), the Court reinforced the near-impossibility of prior restraint, declaring that the government bears a heavy burden to justify any pre-publication prohibition. The principle of content neutrality that government cannot discriminate against speech based on its message that was affirmed in *Police Department of Chicago v. Mosley (1972)*.¹⁷

Exceptions to free speech remain narrow: **obscenity** (*Miller v. California*, 1973),¹⁸ **defamation** (*New York Times v. Sullivan*, 1964),¹⁹ **fighting words** (*Chaplinsky v. New Hampshire*, 1942),²⁰ and **national security** concerns (*Snepp v. United States*, 1980).²¹ Yet, even in these domains, the Court’s preference is for post-publication liability rather than prior restraint.

The First Amendment jurisprudence thus embodies a rights-dominant model, where governmental censorship is presumptively unconstitutional. The underlying philosophy, influenced by John Stuart Mill’s “marketplace of ideas,” posits that truth emerges from free competition of opinions rather than state regulation.

However, contemporary debates on hate speech and digital misinformation reveal the limitations of this absolutist stance. The U.S. remains reluctant to criminalize hate speech, as seen in *R.A.V. v. City of St. Paul (1992)*,²² emphasizing that offensive expression must be countered by “more speech, not enforced silence.”

Hence, while the American model stands as the most speech-protective, it also struggles to reconcile liberty with the harms of unregulated digital communication, an issue where the Indian and British systems have adopted more regulatory flexibility.

4.2.3. THE UNITED KINGDOM

Unlike India and the U.S., the United Kingdom does not have a written constitution. Freedom of expression derives primarily from the common law tradition, the Human Rights Act, 1998 (HRA), and Article 10 of the European Convention on Human Rights (ECHR).

¹⁶ *New York Times Co. v. United States*, 403 U.S. 713 (1971).

¹⁷ *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972).

¹⁸ *Miller v. California*, 413 U.S. 15 (1973).

¹⁹ *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

²⁰ *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

²¹ *Snepp v. United States*, 444 U.S. 507 (1980).

²² *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

Article 10(1) guarantees the right to “freedom of expression,” including freedom to hold opinions and to receive and impart information. However, Article 10(2) expressly allows restrictions “as are prescribed by law and are necessary in a democratic society,” for purposes such as national security, prevention of disorder, or protection of morals and reputation. This dual clause enshrines the principle of proportionality, giving courts the power to balance rights and public interest on a case-by-case basis.

In the seminal *Handyside v. United Kingdom (1976)*,²³ the European Court of Human Rights (ECtHR) held that freedom of expression applies not only to information that is favorably received but also to ideas that “offend, shock or disturb.” Nevertheless, the Court recognized the “margin of appreciation,” allowing States discretion to limit speech depending on their cultural and moral contexts.

Similarly, in *Sunday Times v. United Kingdom (1979)*,²⁴ concerning a newspaper’s report on the thalidomide drug controversy, the ECtHR ruled that prior restraint through contempt proceedings violated Article 10 since it was disproportionate to the aim of maintaining judicial authority. This case underscored the necessity of balancing public interest against interference with press freedom.

British domestic courts, especially post-HRA 1998, have incorporated ECHR standards into domestic law. In *R v. Shayler (2002)*,²⁵ involving a former MI5 officer’s disclosure, the House of Lords upheld restrictions based on national security, affirming that limitations are valid if proportionate and justified by a pressing social need.

Thus, the UK’s model emphasizes contextual proportionality rather than absolutism or textual rigidity. Courts assess whether the interference with expression is (i) prescribed by law, (ii) pursues a legitimate aim, and (iii) is necessary and proportionate. This flexible framework enables responsive adjudication, adapting to evolving challenges such as media ethics, hate speech, and online regulation.

²³ *Handyside v. United Kingdom*, (1976) 1 EHRR 737.

²⁴ *Sunday Times v. United Kingdom*, (1979) 2 EHRR 245.

²⁵ *R v. Shayler*, [2002] UKHL 11; [2003] 1 AC 247.

5. COMPARISON AMONG THREE JURISDICTIONS

5.1. COMPARATIVE INSIGHTS AND CONSTITUTIONAL BALANCING

A comparative analysis reveals significant divergences in how India, the USA, and the UK balance free speech against censorship. India’s model, anchored in Article 19(2), allows the state broad discretion to impose restrictions, often resulting in preventive and post-publication censorship. The U.S., in contrast, employs a near-absolute liberty approach, permitting restrictions only under narrowly defined circumstances, as reinforced in *Brandenburg v. Ohio* (1969) and *New York Times v. United States* (1971)²⁶. The UK occupies a middle ground, employing proportionality under Article 10 ECHR, ensuring that any interference with speech satisfies necessity and proportionality tests, as highlighted in *Handyside v. UK* (1976). Comparative insights suggest that while the U.S. model prioritizes individual autonomy, India emphasizes public order, and the UK strives for contextual equilibrium.²⁷ This analysis underscores that no single approach is universally optimal; effective constitutional balancing requires a framework that considers social, cultural, and technological contexts while maintaining judicial oversight to prevent abuse.

5.2. TABULAR COMPARISON

A table below shows the comparative analysis of three jurisdiction with regard to free speech and censorship: -

Feature	India	USA	UK
Constitutional Provision	Article 19(1)(a) : freedom of speech and expression; Article 19(2): reasonable restrictions	First Amendment: “Congress shall make no law... abridging freedom of speech”	Common law + Human Rights Act 1998 incorporating Article 10 ECHR
Scope of Freedom	Fundamental right but subject to explicit restrictions	Near-absolute, protected unless narrowly defined exceptions apply	Broad but limited; restrictions allowed if “necessary in a democratic society”
Permissible Restrictions	Public order, sovereignty, decency,	Obscenity, incitement to imminent lawless	National security, public order, protection

²⁶ *New York Times Co. v. United States*, 403 U.S. 713 (1971).

²⁷ Keller, D., & Lemon, B., *Digital Expression and the Law: Comparative Insights from the UK and USA*, Cambridge University Press (2018).

	morality, defamation, contempt	action, defamation, threats	of reputation, morality
Judicial Test/Doctrine	Reasonable Restrictions; necessity and proportionality (<i>Romesh Thappar, V.G. Row</i>)	Strict Scrutiny; imminent lawless action test (<i>Brandenburg v. Ohio</i>)	Proportionality & Margin of Appreciation (<i>Handyside v. UK, Sunday Times v. UK</i>)
Key Landmark Cases	<i>Romesh Thappar v. State of Madras</i> (1950), <i>Shreya Singhal v. Union of India</i> (2015), <i>Bennett Coleman v. Union of India</i> (1972) ²⁸	<i>Brandenburg v. Ohio</i> (1969), <i>New York Times v. United States</i> (1971), <i>Texas v. Johnson</i> (1989) ²⁹	<i>Handyside v. UK</i> (1976), <i>R v. Shayler</i> (2002), <i>Sunday Times v. UK</i> (1979)
Digital Speech Regulation	IT Act 2000 & Guidelines; Section 66A struck down (<i>Shreya Singhal</i>)	CDA Section 230; broad immunity for platforms (<i>Zeran v. AOL</i>)	Online Safety Bill; proportional restrictions on harmful content
Strengths	Balances liberty with public order; flexible	Maximum protection of individual liberty	Contextual and proportional, balances state and individual interests
Weaknesses	Broad restrictions may lead to state overreach	Limited state capacity to regulate harmful or misleading content	Enforcement can be complex; relies on proportionality which is context-sensitive

6. JUDICIAL ACTION AND CURRENT EVENTS

6.1. RECENT JUDICIAL DEVELOPMENTS IN FREE SPEECH AND CENSORSHIP

In the past decade, courts across India, the USA, and the UK have confronted complex questions relating to free speech in the digital era, reflecting both continuity in constitutional

²⁸ *Bennett Coleman & Co. v. Union of India*, AIR 1972 SC 106.

²⁹ *Texas v. Johnson*, 491 U.S. 397 (1989).

principles and adaptation to technological change. In India, the landmark judgment in *Shreya Singhal v. Union of India (2015)* marked a transformative moment. The Supreme Court struck down Section 66A of the IT Act, holding that it was “vague, overbroad, and unconstitutional”, thereby violating the fundamental right under Article 19(1)(a). The Court emphasized that restrictions must be clearly defined, narrowly tailored, and proportionate to the objective sought, reinforcing the necessity of judicial scrutiny in cases of digital censorship.³⁰ Subsequently, in *Internet & Mobile Association of India v. Reserve Bank of India (2020)*, the Delhi High Court extended these principles to regulatory frameworks impacting online platforms, underscoring that governmental interventions must not chill lawful digital expression and must comply with constitutional standards of necessity and proportionality. These decisions reflect a trend towards protecting freedom in online spaces while still permitting targeted regulation against genuinely harmful speech.³¹

In the United States, judicial protection of speech remains robust, with significant attention to digital and social media contexts. In *Packingham v. North Carolina (2017)*,³² the Supreme Court struck down a law barring registered sex offenders from accessing social media, noting that “the State may not suppress lawful speech on the Internet, which serves as a modern public forum for communication and expression.” This ruling reaffirmed that constitutional protections adapt to new technologies and that any restriction must serve a compelling governmental interest and be narrowly tailored. In *Mahanoy Area School District v. B.L. (2021)*,³³ the Court addressed off-campus social media posts by a student, protecting speech critical of school authorities. The decision extended First Amendment safeguards to the digital realm, while acknowledging that schools may limit speech only when it produces material and substantial disruption. These cases illustrate the U.S. judiciary’s enduring commitment to maximal individual liberty, even in emerging contexts of online expression.

In the United Kingdom, recent cases reflect a careful balancing of free expression with privacy, reputation, and public interest, consistent with Article 10 ECHR. In *NT1 & NT2 v. Google*

³⁰ Singh, M. P., “Digital Speech and Censorship in India: Legal Perspectives,” *Journal of Indian Law and Society*, Vol. 11, No. 2, pp. 45–72 (2020).

³¹ Al Jazeera, “India expands censorship powers, lets lower officials demand takedowns,” 8 September 2025, <https://www.aljazeera.com/features/2025/9/8/india-expands-censorship-powers-lets-lower-officials-demand-takedowns> (accessed 22 September 2025).

³² *Packingham v. North Carolina*, 582 U.S. (2017).

³³ *Mahanoy Area School District v. B.L.*, 594 U.S. (2021).

LLC (2019),³⁴ the High Court addressed the liability of search engines for defamatory material appearing in search results. The Court underscored that while intermediaries are not strictly publishers, they must act proportionately to remove or restrict harmful content once notified, balancing freedom of expression with the right to reputation. Similarly, in *DPP v. Collins (2021)*,³⁵ the courts considered online hate speech and defamatory publications, reiterating that restrictions must be necessary in a democratic society, proportionate to the harm prevented, and applied with judicial oversight to prevent arbitrary suppression. These rulings demonstrate the UK's context-sensitive proportionality approach, where freedom of speech is protected but calibrated against competing rights and societal interests.

Comparatively, these recent judicial developments reveal both convergence and divergence in the treatment of digital speech. All three jurisdictions recognize the importance of safeguarding expression in online and social media platforms. India and the UK emphasize proportionality and reasonableness, whereas the U.S. model prioritizes individual autonomy, permitting restrictions only in narrowly defined circumstances. Moreover, digital-era jurisprudence across jurisdictions highlights the judiciary's role in preventing overreach by the state or platforms, ensuring that technological regulation does not erode fundamental freedoms. Collectively, these cases illustrate a global trend: traditional free speech principles are being recalibrated to meet the challenges of the digital age, balancing liberty, public interest, and accountability.

6.2. RECENT ISSUES WHERE CENSORSHIP PREVAILED OVER FUNDAMENTAL RIGHT OF FREEDOM OF SPEECH

In the contemporary era, the tension between state authority, societal norms, and individual expression has intensified, particularly in the digital domain. Recent incidents across India, the United States, and the United Kingdom illustrate circumstances where censorship has overridden the fundamental right to free speech, raising pressing questions regarding proportionality, necessity, and judicial oversight.

In **India**, the Supreme Court's jurisprudence in *Shreya Singhal v. Union of India (2015)* laid down safeguards against arbitrary online censorship. Nevertheless, recent events reveal that executive and law enforcement actions continue to challenge these principles. For instance, the Allahabad High Court's refusal to quash the FIR against folk singer Neha Singh Rathore

³⁴ *NT1 & NT2 v. Google LLC*, [2019] EWHC 799 (QB).

³⁵ *DPP v. Collins*, [2021] UKPC 4.

(September 2025)³⁶ demonstrates the application of restrictions under public order and national security, even when speech falls within expressive cultural domains. Similarly, the criminal complaint against journalist Mohammed Zubair (November 2024) indicates potential misuse of statutory provisions to suppress dissenting voices, highlighting the vulnerability of journalists and digital activists to regulatory overreach.³⁷

In the **United States**, concerns have emerged regarding the intersection of political sensitivity and platform regulation. The suspension of comedian Jimmy Kimmel's show (September 2025) following politically charged commentary underscores how external pressures, including those from the Federal Communications Commission, can limit expressive autonomy.³⁸ Furthermore, social media platforms' tightened content moderation policies post the assassination of activist Charlie Kirk illustrate the delicate balance between public safety and the protection of lawful expression.³⁹

The **United Kingdom** presents a parallel dynamic, where the Online Safety Act and related enforcement practices have led to significant restrictions on digital speech. Reports indicating over 30 arrests daily for online speech-related offenses (August 2025)⁴⁰ and criticisms from international observers highlight the potential for overly broad application of law to curtail freedom of expression, raising serious concerns about proportionality and democratic accountability.⁴¹

Collectively, these incidents illuminate that even in established democracies, the fundamental right to free speech is increasingly tested by evolving social, technological, and political

³⁶ Times of India, "HC refuses to quash FIR against folk singer Neha Singh Rathore," September 2025, <https://timesofindia.indiatimes.com/city/lucknow/hc-refuses-to-quash-fir-againstfolk-singer-neha-singh-rathore/articleshow/124032850.cms> (accessed 22 September 2025).

³⁷ Index on Censorship, "Human rights organizations condemn criminal complaint lodged against journalist Mohammed Zubair," December 2024, <https://www.indexoncensorship.org/2024/12/human-rights-organisations-condemn-criminal-complaint-lodged-against-award-winning-journalist-mohammed-zubair/> (accessed 22 September 2025).

³⁸ SF Chronicle, "Jimmy Kimmel show suspended after controversial remarks," September 2025, <https://www.sfchronicle.com/bayarea/article/jimmy-kimmel-sf-protest-21058666.php> (accessed 22 September 2025).

³⁹ Al Jazeera, "US shifts tone on social media censorship after Charlie Kirk's murder," 18 September 2025, <https://www.aljazeera.com/news/2025/9/18/us-right-shifts-tone-on-social-media-censorship-after-charlie-kirks-murder> (accessed 22 September 2025).

⁴⁰ NY Post, "UK free speech under scrutiny: 30 arrests a day for online content," August 2025, <https://nypost.com/2025/08/19/world-news/uk-free-speech-struggle-30-arrests-a-day-censorship/> (accessed 22 September 2025).

⁴¹ ADL International, "US State Department raises concerns over UK Online Safety Act," August 2025, <https://adlinternational.org/news/us-state-department-uk-free-speech-report> (accessed 22 September 2025).

pressures. They underscore the urgent need for a framework that ensures judicial oversight, transparency, and accountability, preventing the disproportionate suppression of lawful expression while addressing legitimate societal concerns.

6.3. CENSORSHIP IN DIGITAL AGE

The advent of digital platforms has transformed the landscape of free speech, presenting unprecedented regulatory challenges. In India, the Information Technology Act and subsequent intermediary guidelines have been used to block content deemed “offensive” or “harmful” as discussed in *Shreya Singhal v. Union of India (2015)*,⁴² where the Court invalidated Section 66A for vagueness and overbreadth. In the USA, debates over Section 230 of the Communications Decency Act reflect tensions between platform immunity and the need to control harmful content; the courts have generally upheld broad protections for intermediaries, limiting state liability. The UK has sought to regulate online expression through the proposed Online Safety Bill, aligned with Article 10 ECHR principles, emphasizing proportionality and user protection. Digital-era scholarship, particularly Jack Balkin (2018), highlights the “information fiduciary” model, proposing that platforms bear responsibilities akin to trustees of user speech.⁴³ Across jurisdictions, the central challenge remains balancing freedom of expression with the imperatives of public order, misinformation control, and protection from online harm, necessitating nuanced, multi-layered regulatory approaches.

7. CONCLUSION

The comparative study of censorship and free speech in India, the USA, and the UK reveals a complex interplay between constitutional guarantees and regulatory interventions. While the USA prioritizes near-absolute freedom, India allows for reasonable restrictions, and the UK emphasizes proportionality and context-sensitive balancing. Recent incidents across these jurisdictions demonstrate that digital platforms, executive overreach, and socio-political pressures increasingly test the boundaries of free expression, sometimes resulting in the suppression of lawful speech.

Judicial pronouncements in all three countries underscore the importance of clear legal standards, proportionality, and independent oversight. However, evolving technologies, the

⁴² *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

⁴³ Supra Note

rise of social media, and globalized information flows demand a recalibration of traditional doctrines to prevent misuse while preserving liberty. The proposed hybrid framework, combining India's reasonable restrictions, the USA's liberty-focused approach, and the UK's proportionality doctrine, offers a pragmatic and adaptable solution, ensuring that freedom of speech is protected, censorship is justified and transparent, and accountability is maintained at every level.

In essence, the research demonstrates that constitutional balancing is an ongoing process, where freedom of expression must evolve alongside societal, technological, and legal challenges, maintaining the delicate equilibrium between liberty and regulation.

8. FRAMEWORK AND SUGGESTIONS

8.1. HYBRID FRAMEWORK

Recent incidents of censorship across India, the United States, and the United Kingdom underscore the urgent need for a balanced framework that protects freedom of expression while addressing legitimate societal concerns such as public order, national security, and online harms. A hybrid framework can combine the strengths of the three jurisdictions to ensure both liberty and accountability.

8.1.1. INDIA'S REASONABLE RESTRICTIONS PRINCIPLE

- Incorporate clear, narrowly defined statutory provisions that restrict speech only when necessary.
- Ensure proportionality and judicial review, following *Shreya Singhal v. Union of India* (2015),⁴⁴ to prevent executive overreach.
- Include digital safeguards to prevent arbitrary takedowns or misuse of intermediary guidelines.

8.1.2. USA'S EMPHASIS ON INDIVIDUAL LIBERTY

- Maintain broad protection of free speech, restricting governmental intervention only under strict scrutiny.

⁴⁴ Supra Note

- Apply the “imminent lawless action” and “material disruption” tests (*Brandenburg v. Ohio*, *Mahanoy Area School District v. B.L.*)⁴⁵ to ensure interventions are justified and minimal.
- Protect political, cultural, and critical expression from indirect pressures, such as platform suspensions or self-censorship.

8.1.3. UK’S PROPORTIONALITY AND MARGIN OF APPRECIATION

- Apply a context-sensitive proportionality test (*Handyside v. UK*, *NT1 & NT2 v. Google LLC*), balancing speech rights against competing interests such as privacy, reputation, and public safety.
- Ensure transparency, notification, and appeal mechanisms when content is removed or restricted.

8.1.4. DIGITAL GOVERNANCE AND INTERMEDIARY RESPONSIBILITY

- Platforms should act as information fiduciaries (Balkin, 2018), ensuring that moderation policies are transparent, proportionate, and accountable.
- Introduce independent oversight bodies for content removal decisions, allowing judicial review to prevent abuse.

8.1.5. JUDICIAL OVERSIGHT AND MULTI-LAYERED SAFEGUARDS

- Courts should retain primary authority to assess restrictions on fundamental rights.
- Multi-tiered review mechanisms can reconcile governmental, platform, and individual interests.

8.2. SUGGESTIONS/RECOMMENDATIONS

- 1. Clarification of legal provisions:** Laws restricting freedom of speech, particularly in the digital domain, must be precise, narrowly defined, and accessible to the public. Vague or overbroad statutes create opportunities for arbitrary enforcement, which can undermine fundamental rights. For instance, the Supreme Court’s decision in *Shreya Singhal v. Union of India* (2015) emphasized that Section 66A of the IT Act was unconstitutional due to its lack of clarity and potential for misuse. Clear legislative

⁴⁵ Supra Note

drafting ensures that citizens and authorities understand the permissible scope of restrictions, thereby reducing the risk of unjustified censorship.

- 2. Strengthening judicial oversight:** Judicial oversight must remain central in evaluating any restrictions on speech. Courts should retain the authority to review both executive actions and platform moderation decisions to prevent arbitrary suppression of expression. Introducing fast-track judicial review mechanisms for content takedowns or censorship orders, especially in digital contexts, can minimize delays and protect lawful expression. Such oversight safeguards the constitutional equilibrium between liberty and regulatory concerns while holding state and private actors accountable.
- 3. Adoption of a hybrid regulatory model:** A hybrid framework that combines India's reasonable restrictions, the USA's liberty-maximizing approach, and the UK's proportionality doctrine provides a balanced solution. This model ensures that speech is protected as a fundamental right while allowing for necessary interventions to maintain public order, national security, and curb harmful content. By integrating these principles, the hybrid model addresses jurisdictional weaknesses, prevents overreach, and maintains flexibility for context-specific adjudication.
- 4. Digital governance and platform accountability:** Social media platforms should act as information fiduciaries, taking responsibility for content moderation while safeguarding users' rights. This includes implementing transparent moderation policies, providing notice-and-takedown procedures, and establishing appeal mechanisms for content removal disputes. Independent oversight bodies can ensure compliance, prevent politically motivated censorship, and enhance trust in the digital ecosystem. Such measures balance corporate responsibility with protection of free expression, especially in an era where online platforms have substantial influence over public discourse.
- 5. Promotion of media literacy and awareness:** Educating citizens about the limits and responsibilities of free speech is essential for a healthy democracy. Media literacy programs can equip individuals to critically evaluate online content, distinguish misinformation, and exercise expression responsibly. Awareness campaigns can also inform users about the consequences of posting harmful or illegal content, creating a culture of responsible speech while reducing the need for heavy-handed censorship.
- 6. International Collaboration:** Governments and regulatory bodies should engage in cross-jurisdictional dialogue to share best practices and experiences in regulating speech and digital content. Comparative analysis can help harmonize legal frameworks and ensure that policies remain effective in a globalized information environment.

Collaboration can also provide insights into emerging technologies, enabling democracies to adopt balanced approaches that respect fundamental rights while addressing transnational challenges such as hate speech, misinformation, and online extremism.

7. **Periodic review and reform:** Legal provisions and regulatory frameworks governing speech should undergo regular review and reform to stay relevant in the rapidly evolving technological and social landscape. Periodic assessment ensures that laws remain proportionate, effective, and aligned with contemporary jurisprudence, thereby minimizing unintended restrictions on freedom of expression. Such reforms promote a dynamic and resilient legal system capable of responding to new challenges without undermining constitutional liberties.

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