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# **FREEDOM OF SPEECH UNDER ARTICLE 19(1)(A): BETWEEN LIBERTY AND STATE REGULATIONS**

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## **1.1 INTRODUCTION**

Freedom of Speech and Expression constitutes one of the most fundamental pillars of a democratic society<sup>1</sup>. It enables individuals to express their thoughts, dissent, and participate effectively in public debate. In a constitutional democracy environment like India, this freedom is not an absolute right but comes with reasonable conditions for the functioning of representative governance and the protection of the autonomy of an individual.

The Indian Constitution guarantees freedom of speech and expression under Article 19(1)(a). This provision shows the vision of the Constitution Framers, who recognised that open debate and the free exchange of ideas are an essential part of examining the political responsibility and social progress. Although some constitutional systems provide near-absolute protection to free speech, the Constitution of India adopts a balanced approach. Article 19(2) provides that states can impose reasonable restrictions on this freedom regarding sovereignty, security, public order, decency, morality, and other specified grounds.

This dual approach (guarantee and restriction) creates a dynamic constitutional environment where the liberty of an individual and the authority of the state must co-occur. The conflict between these two factors plays an important role in decision-making in matters relating to free speech. Over the decades, the judiciary has played a significant role in interpreting the scope of this right and defining the limits of permissible restriction<sup>2</sup>.

## **1.2 Meaning and Scope of Freedom of Speech and Expression**

Freedom of Speech and Expression is not limited to oral communications. It comprises a wide range of expressive activities, which include written communication, artistic expression, symbolic acts, and, at present, digital communication through the internet and social media

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<sup>1</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966).

<sup>2</sup> Durga Das Basu, *Introduction to the Constitution of India* (22nd edn., LexisNexis, 2015).

platforms. The scope of this right has been developed rapidly through judicial interpretation to include freedom of the press, the right to receive information, and the right to communicate ideas through any medium.<sup>3</sup>

In early times, the Supreme Court adopted a relatively narrow approach in interpreting the fundamental rights. However, this approach has evolved significantly over time. In a case like *Romesh Thappar v. State of Madras*,<sup>4</sup> the court highlighted that freedom of speech and expression lies at the foundation of all democratic organisations. This made the beginning of a strong judicial commitment towards the protection of free speech against arbitrary State actions.

Eventually, in *Bennett Coleman & Co. v. Union of India*, the court widened the scope of Article 19(1)(a) by recognising that restrictions on the circulation of newspapers directly affect freedom of expression. This case highlights that even indirect limitations imposed by the state amount to a violation of rights guaranteed by the Constitution.

The evolution of Article 19(1)(a) reached to a significant milestone in *Shreya Singhal v. Union of India*, in this case, the Supreme Court struck down Section 66A of the Information Technology Act, 2000. The Court held that vague and overinclusive restrictions on the internet have a chilling effect on free expression and are therefore unconstitutional. This judgment of the court showed the significance of clarity and precision in laws that seek to regulate speech<sup>5</sup>.

### 1.3 Constitutional limitations under Article 19(2)

While Article 19(1)(a) guarantees freedom of speech, on the other hand, Article 19(2) introduces the concept of reasonable restriction. These restrictions are not arbitrary; they must fulfil the Constitutional standards of reasonableness and must be imposed only on the grounds specifically mentioned under the provision<sup>6</sup>.

The specific grounds include sovereignty and integrity of India, security of the state, public order, decency or morality, defamation, incitement to an offence, and friendly relations with a foreign state. These grounds reflect the need to create a balance between individual freedom, societal interests, and national security.

The judiciary has consistently held that the restriction should not be excessive or disproportionate. There must be a near and direct connection between the speech in question and the distress sought to be prevented. This provision ensures that the state must not go beyond

<sup>3</sup> M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018).

<sup>4</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>5</sup> Seema Chishti, "Why Free Speech Matters in a Democracy," *The Indian Express* (2020).

<sup>6</sup> H.M. Seervai, *Constitutional Law of India* (2013).

and misuse its regulatory powers to repress dissent or unpopular opinions.

Simultaneously, the inclusive wording of certain grounds, such as “public order” and “decency or morality,” has raised concerns about likely misuse. The challenge lies in making sure that all these grounds are interpreted narrowly to preserve the spirit of the fundamental right.

#### 1.4 The Core Constitutional Debate: Liberty vs State Regulation

The main issue in the study of freedom of speech under the Indian Constitution is the stress between individual liberty and State regulation. On one hand, unrestricted speech plays a vital role in democracy as it enables citizens to criticise the government freely, express their thoughts, and participate in public debate. On the other hand, complete freedom may lead to disturbances, cause reputational harm, or pose threats to national security.

This creates constitutional confusion: to what extent should the state be allowed to regulate speech without adjusting democratic values?

The Indian approach is based on “regulated freedom,” where the rights of citizens are protected but subject to defined restrictions. However, the effectiveness of this model depends on judicial interpretation. Courts must ensure that restrictions are justified, proportionate, and follow constitutional principles<sup>7</sup>.

The development of proportionality and the prohibition of law doctrine reflect the judiciary’s attempt to strike this balance. These doctrines act as safeguards against state action and help maintain the integrity of the right to free speech.

#### 1.5 Relevance of the study in the Contemporary Context<sup>8</sup>

In recent years, the importance of freedom of speech has increased significantly due to the advancement of technology and the immense rise in digital communication. Digital platforms or social media platforms have transformed the way individuals express their opinions and participate in public discourse. While these platforms increase political participation, they also create complex issues such as misleading information, hate speech, and online harassment.

In this context, the role of the state in regulating speech has become more important. Regulatory measures on digital platforms, restrictions on online communications, and instances of internet shutdown have sharpened the ongoing debate over boundaries and the safeguarding of freedom of speech and expression. These developments make it necessary to re-examine the constitutional framework governing freedom of expression.

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<sup>7</sup> PRS Legislative Research, “Freedom of Speech and Reasonable Restrictions” (2021).

<sup>8</sup> H.M. Seervai, *Constitutional Law of India* (4th edn., Universal Law Publishing, 2013).

Moreover, concerns have been raised regarding the misuse of legal provisions to curb dissent and criticism. This has led to renewed discussion on the need for stronger judicial safeguards and clearer legal standards.

### 1.6 Objective of the study

The primary objectives of this dissertation are –

- To analyse the scope and meaning of freedom of speech and expression under Article 19(1)(a) of the Indian Constitution.
- To examine the Constitutional limits imposed under Article 19(2).
- To study the development of judicial interpretation through landmark cases.
- To evaluate the balance between individual liberty and state regulation.
- To critically analyse contemporary issues of free speech in India.

### 1.7 Research Questions

This study seeks to answer the following Questions:

- What is the scope of freedom of speech under the Indian Constitution?
- How has the judiciary interpreted and expanded this right?
- What constitutes “reasonable restriction” under Article 19(2)?
- Is the current framework effective in balancing liberty and state interests?
- What reforms are necessary to strengthen free speech protection in India?

### 1.8 Research Methodology

#### **Nature of Research**

The present study is **doctrinal in nature**, as it is primarily based on the analysis and interpretation of legal principles relating to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. The research focuses on examining constitutional provisions, judicial decisions, and legal doctrines rather than collecting empirical or field-based data.

The doctrinal approach is suitable for this study because the research problem involves understanding the constitutional balance between individual liberty and State regulation, which requires interpretation of legal texts and precedents.

## **2. Research Approach**

The research adopts a qualitative analytical approach. It involves critical examination of legal

materials to understand how the right to freedom of speech has evolved and how restrictions under Article 19(2) are applied in practice.

The study is both:

- Descriptive, as it explains the constitutional framework and judicial developments; and
- Analytical, as it evaluates the effectiveness of the balance between liberty and regulation.

### 3. Sources of Data

The research is based entirely on secondary sources, which include:

#### (a) Primary Legal Sources

- Constitution of India (particularly Articles 19(1)(a) and 19(2))
- Judicial decisions such as:
  - Romesh Thappar v. State of Madras
  - Bennett Coleman & Co. v. Union of India
  - Shreya Singhal v. Union of India
  - Anuradha Bhasin v. Union of India

#### (b) Secondary Sources

- Law Commission Reports (e.g., 267th Report on Hate Speech)
- Legal journals and articles
- Books on Constitutional Law
- Online legal databases such as Indian Kanoon

These sources provide both the legal framework and scholarly interpretations necessary for the study.

## II. Theoretical foundation of freedom of speech and expression

### 2.1 Introduction

Freedom of speech and expression is not just a constitutional guarantee, but it is rooted in long philosophical and democratic traditions. The recognition of this freedom under Article 19(1)(a) of the Indian Constitution shows the adoption of principles that have evolved through centuries of legal and political thought<sup>9</sup>. These theoretical foundations provide the standard framework for understanding the importance of speech in a democracy and help in analysing the limits to which state regulation is justified.

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<sup>9</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966).

This chapter mainly examines the key theoretical justifications for freedom of speech and expression and their significance to the Indian Constitution framework. It also examines how these theories affect judicial interpretation and maintain the equilibrium of individual liberty with state interests<sup>10</sup>.

## **2.2 Freedom of Speech as a Democratic Necessity**

One of the main justifications of freedom of speech is its role in sustaining democratic governance. In a representative democratic system, Citizens should be able to give their opinions, criticise the actions of the government, and engage in a democratic debate. In the absence of such freedom, the decision-making process would be opaque and unaccountable. This principle has been recognised by the Indian Supreme Court in *Romesh Thappar v. State of Madras*<sup>11</sup>, That freedom of speech and expression is at the core of all democratic organisations. In this judgment, it was upheld that political discussions are critical to a democracy as it empowers the citizens to form opinions and to influence public policy. This democratic rationale emphasizes that freedom of speech is not just a right of individuals, but also a need of a group. It is transparent, accountable, and responsive in governance<sup>12</sup>.

## **2.3 Marketplace of Ideas Theory.**

One of the most popular, widely held justifications of freedom of speech is the marketplace of ideas theory. It is grounded on the assumption that truth rises out of the free and unfettered exchange of ideas and that truth can be tested and evaluated through an open discussion. This theory relates that the State must not intervene in expression of ideas because the intervention may suppress truth and hamper intellectual development. The task of the State is only to secure the conditions of free discussion being kept. This theory was first developed in the Western tradition of jurisprudence, but its impact can also be traced in Indian constitutional law. In *Shreya Singhal v. Union of India*, the Supreme Court implicitly approved this principle by declaring that only speech that constitutes incitement can be restricted, and that speech that consists of mere discussion or advocacy, unpopular as it may be, must be protected. The theory of marketplace therefore justifies a wide understanding of Article 19(1)(a) but provides a restraint on the ability of the State to control speech.

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<sup>10</sup> Constituent Assembly Debates, Vol. VII (1948).

<sup>11</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>12</sup> B. Shiva Rao, *The Framing of India's Constitution* (1968).

## **2.4 Self-Governance Theory**

The self-governance theory focuses on how free speech allows the citizens to be involved in the political process. It is directly connected with democratic principles and dwells upon the significance of informed decision-making. In this theory, the freedom of speech is the most important to allow the voters to analyse policies, evaluate the candidates and make decisions during elections. It makes sure that people can access information and different opinions, which is essential to engage in the process of governance. This theory is manifested in the judicial rulings in the Indian context that safeguard political speech and the general discourse. The judges have always understood that limitations to political expression should be subjected to highly critical analysis since they directly influence democratic participation. The self-governance theory thus supports the notion that the freedom of speech is part and parcel of the operations of a constitutional democracy.

## **2.5 Person Autonomy and Dignity.**

The other significant reason why freedom of speech is important, rests on the principle of individual autonomy. This view considers free speech as a vital part of personal freedom and self-expression. It acknowledges that people have the right to constitute and express their sentiments without undue interference. The theory is deeply intertwined with the more general notion of dignity, which has been identified as a key value under the Constitution. Free expression of the self is viewed as the important element of human dignity and personal growth. In Justice K.S. Puttaswamy v. Union of India, the Supreme Court has highlighted the significance of dignity and autonomy in regard to basic rights. Despite the fact that the case concerned the right to privacy mainly, it reestablished that individual freedoms and rights including the freedom of expression are central to the constitutional framework. This view emphasizes that freedom of speech is not merely a means to democracy but also an end in itself in regard to identity and self-esteem.

## **2.6 Checking Function of Free Speech**

Another way in which freedom of speech can be used as a power check. In enabling people to comment on what the government is doing and to report wrongdoing, it serves as a check on arbitrary and authoritarian rule. This is the checking role whereby the persons in authority are held to account by the citizen. It allows the media, civil society, and citizens to question the decisions made by the government and demand transparency. In Bennett Coleman and Co. v. Union of India, the Supreme Court has realised the need to have a free press in terms of

upholding democratic accountability. The Court believed that any act to curtail the circulation of newspapers would have a direct impact on the freedom of speech and expression, as it would restrict the flow of information. This role highlights the importance of free speech as an instrument of ensuring constitutional governance and avoiding abuse of power.

### **2.7 Theoretical Justifications Limits.**

Although the above theories largely uphold the safeguarding of free speech, it also agrees that the right cannot be absolute. Free speech can cause harm, such as the threat to social order caused by speech, defamation, or incitement to violent acts. This issue is taken into account by the Indian Constitution, as the Article 19(2) provides the opportunity to make reasonable restrictions based on certain grounds. Those limitations are based on the necessity to find the positive balance between personal freedom and interests in society. The difficulty here is to make sure that such restrictions are enforced in a way that complies with the constitutional principles. Theories of free speech do not refute the need to regulate but insist that any regulation must be justified, proportionate and narrowly focused.

### **2.8 Applicability of Theoretical Foundations in Indian Constitutional Interpretation.**

The above theoretical justifications are important in influencing the judicial interpretation of Article 19(1)(a). These principles are often used by the courts to establish the extent of the right and validity of restrictions. An example is how the marketplace of ideas theory has been reflected through the distinction between discursion, advocacy and incitement in *Shreya Singhal v. Union of India*. In the same vein, the focus on political speech and democratic participation can be said to be based on the self-government theory. These theories offer a guideline on how to balance competing interests and also to ensure that the right to free speech is not unreasonably limited.

## **3 3. Constitutional Framework**

### **3.1 Introduction**

The constitutional framework governing freedom of speech and expression in India is primarily contained in Part III of the Constitution, which guarantees fundamental rights. Article 19(1)(a) confers upon citizens the right to freedom of speech and expression, while Article 19(2) provides for permissible restrictions on this right. Together, these provisions establish a

structured balance between individual liberty and the regulatory authority of the State. The interpretation of these provisions has evolved through judicial decisions, which have clarified the scope of the right and the limits of State intervention. This chapter examines the constitutional text, its components, and the principles developed by the judiciary in applying these provisions.

### 3.2 Article 19(1)(a): Scope and Content

Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression. The Constitution does not define the expression “speech and expression,” and therefore its meaning has been developed through judicial interpretation<sup>13</sup>.

The Supreme Court has consistently held that the scope of this right is broad and includes various forms of communication. It extends beyond spoken or written words to include gestures, symbolic expression, artistic works, and other modes of conveying ideas<sup>14</sup>. Over time, the Court has also recognised that this right includes the freedom of the press and the right to disseminate and receive information.

In *Bennett Coleman & Co. v. Union of India*<sup>15</sup>, the Court held that freedom of speech includes the right to circulation of newspapers, as any restriction on circulation would directly affect the dissemination of ideas. This interpretation established that indirect restrictions on expression are also subject to constitutional scrutiny.

Similarly, in *Shreya Singhal v. Union of India*, the Court recognised that the internet is a significant medium for the exercise of free speech. It affirmed that constitutional protection extends to online expression, thereby adapting the scope of Article 19(1)(a) to contemporary forms of communication.

### 3.3 Freedom of the Press

Although the Constitution does not explicitly mention freedom of the press, it has been read into Article 19(1)(a) by the judiciary<sup>16</sup>. The press plays a critical role in disseminating information, shaping public opinion, and ensuring accountability in governance.

In *Romesh Thappar v. State of Madras*, the Supreme Court held that freedom of the press is an essential part of freedom of speech and expression. The Court struck down a government order that restricted the circulation of a journal, emphasising that such restrictions undermine

<sup>13</sup> M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018)

<sup>14</sup> Eric Barendt, *Freedom of Speech* (2nd edn., Oxford University Press, 2005).

<sup>15</sup> *Bennett Coleman & Co. v. Union of India*, (1973) 2 SCC 788.

<sup>16</sup> Soli J. Sorabjee, “Freedom of the Press under the Indian Constitution,” *Journal of Indian Law Institute* (1975).

democratic values.

The recognition of press freedom ensures that the media can operate independently and provide a platform for diverse viewpoints. At the same time, it is subject to the same limitations as other forms of expression under Article 19(2).

### **3.4 Right to Receive Information**

The scope of Article 19(1)(a) has been further expanded to include the right to receive information. This aspect of the right is essential for informed decision-making and effective participation in democratic processes.

The Supreme Court has observed that the freedom of speech necessarily includes the right to receive information, as communication is a two-way process. Without access to information, the exercise of free speech would be incomplete<sup>17</sup>.

This principle has also contributed to the development of transparency laws and the recognition of the importance of open governance.

### **3.5 Article 19(2): Grounds of Reasonable Restrictions**

Article 19(2) permits the State to impose reasonable restrictions on the exercise of freedom of speech and expression. These restrictions must be imposed by law and must fall within the specific grounds mentioned in the provision.

The grounds are:

- Sovereignty and integrity of India
- Security of the State
- Friendly relations with foreign States
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

Each of these grounds reflects a legitimate State interest that may justify limiting free speech under certain circumstances. However, the restriction must satisfy the requirement of reasonableness, which has been developed through judicial interpretation.

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<sup>17</sup> Alok Prasanna Kumar, "Right to Information and Freedom of Speech," *Economic and Political Weekly* (2015).

### **3.6 Test of Reasonableness**

The concept of “reasonable restrictions” is central to the constitutional framework. The judiciary has evolved certain principles to determine whether a restriction is reasonable.

A restriction must not be arbitrary or excessive. It must have a rational connection with the objective it seeks to achieve. The Court has also emphasised that the restriction should not go beyond what is necessary to address the identified harm.

In applying this test, the courts examine factors such as the nature of the right, the purpose of the restriction, the extent of the limitation, and the prevailing social conditions. This ensures that the balance between individual liberty and State interest is maintained.

### **3.7 Proximity and Nexus Requirement**

One of the key principles developed by the judiciary is the requirement of a proximate nexus between the speech and the harm sought to be prevented. This means that the restriction must be based on a direct and immediate connection between the expression and the threat to public interest.

In *Romesh Thappar v. State of Madras*, the Court held that restrictions on speech must be closely related to public order and not based on remote or speculative grounds. This principle prevents the State from imposing restrictions based on vague or hypothetical concerns.

### **3.8 Vagueness and Overbreadth**

The doctrine of vagueness plays an important role in protecting free speech. A law that is vague or unclear may lead to arbitrary enforcement and create a chilling effect on expression.

In *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the Information Technology Act on the ground that it was vague and overbroad. The Court held that unclear laws fail to provide adequate guidance to individuals and may result in misuse by authorities.

This principle ensures that restrictions on speech are clearly defined and limited in scope.

### **3.9 Distinction between Discussion, Advocacy, and Incitement**

A significant development in free speech jurisprudence is the distinction between discussion, advocacy, and incitement. The Supreme Court, in *Shreya Singhal v. Union of India*, clarified that only speech that reaches the level of incitement can be restricted under Article 19(2).

Discussion and advocacy, even if they are unpopular or critical of the government, are protected under Article 19(1)(a). This distinction is crucial in maintaining the balance between liberty

and regulation.

### **3.10 Relationship between Article 19(1)(a) and Article 19(2)**

The relationship between Articles 19(1)(a) and 19(2) reflects a system of regulated freedom. While the former guarantees the right, the latter imposes limitations to ensure that the exercise of the right does not harm societal interests.

The courts have emphasised that restrictions must be interpreted narrowly so that the essence of the right is not diluted. At the same time, the State is permitted to regulate speech in situations where it poses a real and substantial threat.

This framework requires continuous judicial oversight to ensure that the balance between liberty and State regulation is maintained.

## **4: JUDICIAL EVOLUTION OF FREEDOM OF SPEECH AND EXPRESSION IN INDIA**

### **4.1 Introduction**

The meaning and scope of freedom of speech and expression under Article 19(1)(a) have not remained static. Instead, they have evolved significantly through judicial interpretation. The Constitution provides the framework, but it is the judiciary that has shaped how these rights function in practice<sup>18</sup>.

Over time, the Supreme Court of India has moved from a relatively narrow understanding of free speech to a more expansive and rights-oriented approach. This evolution reflects changing societal conditions, the growth of democratic values, and the emergence of new forms of communication. At the same time, the judiciary has also recognised the need to balance this freedom with legitimate State interests under Article 19(2).

This chapter traces the judicial journey of free speech in India through key phases, highlighting how the courts have interpreted and developed this fundamental right.

### **4.2 Early Constitutional Approach: Strong Protection of Political Speech**

The early years of constitutional interpretation in India played a crucial role in shaping the foundation of free speech jurisprudence. At the time of independence, India had just emerged from colonial rule, where restrictions on speech were frequently used as tools to suppress

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<sup>18</sup> S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002).

dissent. Naturally, the framers of the Constitution placed significant importance on ensuring that such suppression would not continue in a democratic setup. This intent was reflected in Article 19(1)(a), which guaranteed freedom of speech and expression as a fundamental right<sup>19</sup>. In this initial phase, the Supreme Court adopted a strongly liberal and protective approach towards free speech, particularly when it came to political expression. The judiciary recognised that in a democracy, the ability of citizens to freely express their opinions about the government and public affairs is essential. Without such freedom, democratic participation becomes meaningless.

A landmark case that represents this early approach is *Romesh Thappar v. State of Madras*. This case is often regarded as one of the first and most important judgments on freedom of speech in India. It set the tone for how Article 19(1)(a) would be interpreted in the years to come.

The facts of the case involved a ban imposed by the Government of Madras on the circulation of a journal named *Crossroads*. The government justified the ban on the grounds that the publication posed a threat to public safety. However, the petitioner challenged this order, arguing that it violated his fundamental right to freedom of speech and expression.

The Supreme Court, in its judgment, struck down the government order and held that such a restriction was unconstitutional. The Court observed that freedom of speech and expression is at the very foundation of all democratic organisations. It emphasised that the right is not merely about individual liberty but also about ensuring an informed and active citizenry.

One of the most important contributions of this judgment was its interpretation of the term “public order.” At that time, Article 19(2) did not explicitly include “public order” as a ground for restriction (it was added later through the First Amendment). The Court took a narrow view and held that restrictions on speech must be directly related to the security of the State, not merely to general public safety or convenience.

This interpretation significantly limited the power of the State to restrict speech. It meant that unless the speech posed a serious threat to the stability or security of the State, it could not be curtailed. This approach clearly reflected a preference for protecting individual liberty over State control.

Another important aspect of this judgment was the emphasis on the importance of political speech. The Court recognised that criticism of the government, even if harsh or unpopular, is a vital part of democracy. Suppressing such criticism would weaken democratic institutions

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<sup>19</sup> V.N. Shukla, *Constitution of India* (Eastern Book Company, 2019).

and prevent accountability<sup>20</sup>.

This early judicial approach also introduced the idea that restrictions on speech must not be vague or overly broad. Although the doctrine of vagueness was not fully developed at that stage, the Court's reasoning suggested that laws restricting speech must be precise and clearly justified.

However, this strong protection of free speech also created practical challenges. The State argued that it needed broader powers to maintain public order, especially in a newly independent country facing political and social instability. As a result, the Constitution (First Amendment) Act, 1951 expanded the scope of Article 19(2) by adding grounds such as "public order" and "friendly relations with foreign States."

This amendment marked a shift in the constitutional framework, allowing greater scope for State regulation. Nevertheless, the principles laid down in early cases like *Romesh Thappar v. State of Madras* continued to influence judicial thinking.

From a critical perspective, the early approach of the judiciary can be seen as both idealistic and foundational. On one hand, it strongly protected individual liberty and set high standards for restricting speech. On the other hand, it did not fully account for the complexities of governance and the need to maintain public order in certain situations.

Even today, this phase of judicial interpretation remains highly relevant. It serves as a reminder that freedom of speech is not just another legal right but a cornerstone of democratic governance. The emphasis on protecting political speech continues to guide courts in modern cases, especially when dealing with issues of dissent and criticism of authority.

At the same time, the limitations of this approach highlight the need for a balanced framework. Absolute protection of speech may not always be practical, but excessive regulation can undermine democratic values. The challenge lies in finding a middle path that respects both liberty and the need for regulation.

In conclusion, the early constitutional interpretation of freedom of speech in India established a strong foundation for protecting individual liberty. Through landmark judgments like *Romesh Thappar v. State of Madras*, the Supreme Court emphasised the importance of political speech and limited the scope of State interference. Although later developments introduced greater flexibility in restricting speech, the principles laid down during this phase continue to shape free speech jurisprudence in India.

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<sup>20</sup> H.M. Seervai, *Constitutional Law of India* (4th edn., 2013).

### 4.3 Shift towards Controlled Regulation

The early phase of Indian free speech jurisprudence was marked by a strong and almost uncompromising protection of individual liberty. However, this approach did not remain unchanged. As the realities of governance began to unfold in a newly independent nation, the need for a more balanced approach became evident. The State faced challenges such as maintaining public order, managing political unrest, and ensuring national stability. These concerns led to a gradual shift from an absolutist protection of speech towards a more controlled and regulated framework.

This transition was not sudden but evolved through constitutional amendments and judicial interpretation. The most significant turning point in this regard was the Constitution (First Amendment) Act, 1951, which expanded the scope of restrictions under Article 19(2)<sup>21</sup>. Before this amendment, the grounds for restricting speech were relatively narrow, primarily limited to issues affecting the security of the State. However, the amendment introduced additional grounds such as “public order,” “friendly relations with foreign States,” and “incitement to an offence.”

The inclusion of “public order” as a ground for restriction marked a major shift in the constitutional framework. Unlike “security of the State,” which refers to serious threats such as rebellion or war, public order is a much broader concept. It covers situations ranging from minor disturbances to large-scale unrest. This expansion gave the State greater authority to regulate speech, but it also raised concerns about the potential for misuse<sup>22</sup>.

The judiciary, therefore, had to adapt its approach. Instead of simply striking down restrictions, the courts began to examine whether such restrictions were reasonable and justified within the framework of Article 19(2). This marked the beginning of a more structured and balanced approach to free speech.

One of the important developments during this phase was the emergence of the doctrine of reasonableness. The courts recognised that not all restrictions are unconstitutional; only those that are arbitrary, excessive, or lacking a rational basis would violate Article 19(1)(a). This approach allowed the judiciary to uphold certain regulations while still protecting the core of the right.

A key case that reflects this evolving approach is *State of Madras v. V.G. Row*<sup>23</sup>. In this case, the Supreme Court laid down important principles for determining whether a restriction is

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<sup>21</sup> Upendra Baxi, “Freedom of Speech and Constitutionalism in India,” (2009).

<sup>22</sup> Upendra Baxi, “The Crisis of the Indian Legal System,” (1982).

<sup>23</sup> *State of Madras v. V.G. Row*, AIR 1952 SC 196.

reasonable. The Court held that reasonableness must be assessed in light of various factors, including the nature of the right, the purpose of the restriction, and the extent of the limitation imposed.

The judgment emphasised that the concept of reasonableness cannot be defined in abstract terms. It must be applied in the context of each case, taking into account the prevailing social and political conditions. This flexible approach allowed the courts to balance individual liberty with the needs of society.

Another significant aspect of this phase was the recognition that the State has a legitimate interest in maintaining public order. While the early judgments focused primarily on protecting individual rights, later decisions acknowledged that unrestricted speech could sometimes lead to disorder or conflict.

However, the judiciary also made it clear that the State's power to regulate speech is not unlimited. Restrictions must have a clear and direct connection with the harm sought to be prevented. This principle was reinforced in cases such as *Romesh Thappar v. State of Madras*, where the Court emphasised the need for a proximate nexus between speech and public disorder.

The shift towards controlled regulation also brought into focus the importance of balancing competing interests. On one hand, freedom of speech is essential for democracy. On the other hand, the State must ensure that this freedom does not lead to violence, hatred, or disruption of public order.

This balancing exercise is not always easy. It requires careful consideration of the facts and circumstances of each case. For instance, a speech that criticises government policies may be protected, but a speech that incites violence may be restricted. The challenge lies in distinguishing between the two.

From a critical perspective, this phase of judicial evolution reflects a more realistic approach to free speech. While the early judgments were idealistic in their strong protection of liberty, the later approach recognises the complexities of a diverse and dynamic society.

At the same time, this shift has also raised concerns about the potential for over-regulation. The broad interpretation of terms such as "public order" can sometimes lead to restrictions that go beyond what is necessary. There is a risk that authorities may use these grounds to suppress dissent or control public discourse.

The judiciary has attempted to address these concerns by developing additional safeguards. For example, the requirement of reasonableness ensures that restrictions are not arbitrary. The principle of proportionality, which gained importance in later years, further strengthens this

protection by requiring that restrictions must not be excessive.

Another important development during this phase is the recognition that freedom of speech is not only an individual right but also a social good. It enables the exchange of ideas, promotes transparency, and ensures accountability. Therefore, any restriction on speech must be carefully justified.

Despite these safeguards, the effectiveness of the controlled regulation approach depends largely on its implementation. While the courts have laid down clear principles, their application in practice is not always consistent. This creates uncertainty and may affect the confidence of individuals in exercising their rights.

In the context of modern challenges, the shift towards controlled regulation remains highly relevant. Issues such as hate speech, misinformation, and digital communication require a balanced approach that protects free speech while addressing potential harm. The principles developed during this phase provide a foundation for dealing with these challenges.

In conclusion, the shift towards controlled regulation represents a significant stage in the judicial evolution of freedom of speech in India. It reflects a move from absolute protection to a more balanced framework that recognises both individual liberty and societal interests. Through the development of doctrines such as reasonableness and proportionality, the judiciary has sought to ensure that restrictions on speech are justified and limited.

However, the success of this approach depends on maintaining a careful balance. While regulation is necessary, it must not undermine the essence of the right. Freedom of speech should remain the rule, and restriction the exception. The challenge for the future lies in ensuring that this balance is preserved in an increasingly complex and evolving society.

#### **4.4 Expansion of Press Freedom**

The development of freedom of speech and expression in India did not remain limited to individual speech alone. As constitutional jurisprudence evolved, the judiciary gradually recognised that for democracy to function effectively, institutional forms of expression—especially the press—must also receive strong constitutional protection. This marked an important phase in the judicial evolution of Article 19(1)(a), where the courts expanded the meaning of free speech to include not just the right to speak, but also the right to disseminate information and reach a wider audience.

The Constitution of India does not explicitly mention “freedom of the press” as a separate right. Unlike some other constitutions, such as that of the United States, the Indian Constitution subsumes press freedom within the broader guarantee of freedom of speech and expression.

However, the absence of an explicit provision did not prevent the judiciary from recognising its importance. Instead, the courts interpreted Article 19(1)(a)<sup>24</sup> in a way that naturally included press freedom as an essential component of democratic governance<sup>25</sup>.

In the early stages, the courts had already acknowledged the importance of the press in cases like *Romesh Thappar v. State of Madras*, where restrictions on circulation of a journal were struck down. However, it was in later cases that the judiciary fully developed the idea that freedom of speech also includes the right to circulation and distribution, not merely the right to publish content.

A landmark judgment in this regard is *Bennett Coleman & Co. v. Union of India*<sup>26</sup>. This case represents a turning point in free speech jurisprudence, as it expanded the scope of Article 19(1)(a) to cover indirect restrictions on expression.

The case arose from a government policy that imposed restrictions on the use of newsprint by newspaper companies. The State justified these restrictions on the ground that they were necessary for equitable distribution of limited resources. At first glance, the policy appeared to be an economic regulation rather than a restriction on speech. However, the petitioners argued that limiting the amount of newsprint would directly affect the size, content, and circulation of newspapers, thereby infringing their fundamental right to freedom of speech and expression.

The Supreme Court accepted this argument and struck down the policy. The Court held that any restriction that limits the circulation of newspapers or reduces their ability to publish content amounts to a violation of Article 19(1)(a). This was a significant development because it recognised that freedom of speech is not confined to direct censorship. Even indirect measures that affect the flow of information can infringe this right.

One of the most important contributions of this judgment was the recognition that freedom of speech includes the right to reach an audience. The Court observed that the freedom of a newspaper is not only the freedom of its editor but also the freedom of its readers. If circulation is restricted, the public's right to receive information is also affected.

This idea introduced a broader understanding of free speech as a two-way process—it involves not only the speaker but also the listener. The right to receive information became an essential part of Article 19(1)(a), further strengthening its scope.

Another important aspect of this phase is the recognition of indirect restrictions. Prior to this, most cases dealt with direct restrictions such as bans or censorship orders. However, the Court

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<sup>24</sup> Constitution of India, Article 19(1)(a)

<sup>25</sup> Ministry of Information & Broadcasting, Media Policy Guidelines (India).

<sup>26</sup> *Bennett Coleman & Co. v. Union of India*, (1973) 2 SCC 788.

in *Bennett Coleman & Co. v. Union of India* made it clear that even policies that do not directly target speech can still violate constitutional rights if they have the effect of limiting expression. This principle has far-reaching implications. It means that the State cannot bypass constitutional safeguards by imposing restrictions through economic or administrative measures. Any action that affects the ability of individuals or institutions to express themselves must be tested against Article 19(1)(a).

From a broader perspective, this phase reflects a deeper understanding of the role of the press in a democracy. The judiciary recognised that the media serves as a watchdog, holding the government accountable and ensuring transparency. Without a free press, citizens would have limited access to information, making it difficult to participate effectively in democratic processes.

At the same time, the Court did not suggest that the press is immune from regulation. Like all forms of expression, it is subject to reasonable restrictions under Article 19(2). However, such restrictions must be carefully justified and must not undermine the essential function of the press.

This balance is important because while the press plays a crucial role, it also has responsibilities. Issues such as misinformation, sensationalism, and bias highlight the need for some level of regulation. The challenge lies in ensuring that regulation does not turn into control.

From a critical point of view, the expansion of press freedom during this phase can be seen as a progressive step towards strengthening democracy. By recognising indirect restrictions and the right to circulation, the judiciary ensured that the State cannot easily interfere with the flow of information.

However, this approach also raises certain questions. For instance, where should the line be drawn between legitimate regulation and unconstitutional restriction? Not all economic policies affecting media can be considered violations of free speech. The difficulty lies in distinguishing between measures that genuinely serve public interest and those that indirectly suppress expression.

The courts have attempted to address this issue by focusing on the effect of the restriction rather than its form. If a measure significantly impacts the ability to express or disseminate ideas, it is likely to be scrutinised more strictly. This approach helps in identifying hidden or indirect forms of censorship.

In the context of modern developments, the principles laid down during this phase remain highly relevant. With the rise of digital media, issues similar to those in the newsprint case

have emerged in new forms. For example, restrictions on internet access, control over digital platforms, and regulation of online content all raise questions about indirect limitations on free speech.

The recognition that freedom of speech includes the right to access and distribute information provides a strong foundation for addressing these contemporary challenges. It ensures that constitutional protections are not limited to traditional forms of media but extend to evolving modes of communication.

In conclusion, the expansion of press freedom and the recognition of indirect restrictions represent a crucial stage in the judicial evolution of Article 19(1)(a). Through landmark judgments such as *Bennett Coleman & Co. v. Union of India*, the Supreme Court broadened the scope of free speech to include the right to circulation and the right to receive information. This phase reflects a shift towards a more comprehensive understanding of freedom of speech, one that recognises its social and democratic significance. At the same time, it highlights the need for careful balancing, ensuring that regulation does not undermine the fundamental right. The principles developed during this period continue to guide the interpretation of free speech in India, especially in the face of new and evolving challenges.

#### **4.5 Development of a Rights-Oriented Approach**

The evolution of freedom of speech and expression in India cannot be fully understood without examining the broader transformation in the interpretation of fundamental rights that took place in the late 1970s. This period marked a significant shift in constitutional jurisprudence, moving away from a narrow and formalistic approach towards a more substantive and rights-oriented understanding. The turning point in this transformation was the landmark judgment in *Maneka Gandhi v. Union of India*<sup>27</sup>.

Although this case primarily dealt with the right to personal liberty under Article 21<sup>28</sup>, its implications extended far beyond that provision. It fundamentally altered the way in which all fundamental rights, including freedom of speech under Article 19(1)(a), were interpreted. The Court introduced the idea that laws affecting fundamental rights must not only be legally valid but also fair, just, and reasonable in substance. This marked the emergence of what is often described as the doctrine of substantive due process in Indian constitutional law.

Before this judgment, the prevailing approach was relatively narrow. If a law was enacted by

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<sup>27</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>28</sup> Constitution of India, Article 21

a competent authority and followed the prescribed procedure, it was generally considered valid. The focus was more on the existence of a law rather than its fairness or reasonableness. This meant that restrictions on rights could sometimes be upheld even if they were harsh or arbitrary, provided they met formal requirements.

The decision in *Maneka Gandhi v. Union of India* changed this approach completely. The Supreme Court held that the “procedure established by law” under Article 21 must be fair, just, and reasonable, and not arbitrary or oppressive. More importantly, the Court emphasised that fundamental rights are not isolated provisions but are interconnected. Articles 14<sup>29</sup>, 19, and 21 were interpreted together, creating a more integrated and holistic framework for the protection of rights.

This development had a profound impact on freedom of speech and expression. It meant that restrictions under Article 19(2) could no longer be justified merely by pointing to the existence of a law. The law itself had to meet the standards of fairness and reasonableness. In other words, the judiciary began to examine not just whether a restriction falls within the grounds listed in Article 19(2)<sup>30</sup>, but also whether it is proportionate and non-arbitrary.

One of the key contributions of this phase was the strengthening of judicial review. Courts began to take a more active role in scrutinising State action, ensuring that it does not violate fundamental rights in substance. This shift enhanced the protection of free speech by placing stricter limits on the State’s power to impose restrictions.

Another important aspect of this transformation is the emphasis on non-arbitrariness. The Court made it clear that arbitrariness is antithetical to equality and fairness. Any law or action that is arbitrary would violate Article 14 and, by extension, affect other fundamental rights. This principle became an important tool in challenging restrictions on speech that lack a rational basis.

The shift towards substantive due process also paved the way for the development of the doctrine of proportionality, which became more prominent in later cases. Although not fully articulated in the *Maneka Gandhi* judgment itself, the idea that restrictions must be reasonable and not excessive laid the foundation for proportionality analysis. This doctrine requires that the restriction must be suitable to achieve its objective, necessary in the absence of less restrictive alternatives, and proportionate in its impact.

From a practical perspective, this phase made the protection of free speech more robust. It ensured that individuals are not subjected to unreasonable limitations simply because they are

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<sup>29</sup> Constitution of India, Article 14

<sup>30</sup> Constitution of India, Article 19(2).

imposed through a valid law. Instead, the focus shifted to whether the restriction is justified in a democratic society.

At the same time, this approach also introduced a certain level of subjectivity into judicial decision-making. Determining what is “fair,” “just,” or “reasonable” is not always straightforward. Different judges may interpret these standards differently, leading to variations in outcomes. While this flexibility allows the law to adapt to changing circumstances, it can also create uncertainty.

From a critical standpoint, the shift towards substantive due process can be seen as a necessary and progressive development. It aligns Indian constitutional law with global human rights principles, which emphasise fairness and proportionality in restricting rights. It also reflects a deeper understanding of the importance of individual liberty in a democratic society.

However, it is important to note that this approach does not eliminate the State’s power to regulate speech. Instead, it ensures that such regulation is exercised responsibly and within constitutional limits. The State can still impose restrictions under Article 19(2), but it must justify them in terms of necessity, fairness, and proportionality.

In the context of free speech, this means that laws targeting issues such as defamation, public order, or morality must be carefully designed and implemented. Overbroad or vague provisions are more likely to be struck down, as they fail to meet the standards of fairness established in this phase.

The influence of *Maneka Gandhi v. Union of India* can also be seen in later judgments, where the courts have applied these principles to protect free speech. For example, in cases dealing with censorship, media regulation, and digital expression, the courts have emphasised the need for reasonable and proportionate restrictions.

In modern times, this approach is particularly relevant in dealing with complex issues such as online speech, hate speech, and national security concerns. The principles of fairness and proportionality provide a framework for addressing these challenges without undermining constitutional rights.

In conclusion, the shift towards substantive due process and fairness represents a crucial stage in the judicial evolution of freedom of speech in India. By moving beyond a formalistic approach and focusing on the substance of laws, the judiciary strengthened the protection of fundamental rights. The principles established in *Maneka Gandhi v. Union of India* continue to influence constitutional interpretation, ensuring that restrictions on speech are not only legally valid but also fair, just, and reasonable.

This phase highlights the dynamic nature of constitutional law, where the interpretation of

rights evolves in response to changing societal needs. It reinforces the idea that freedom of speech is not merely a legal guarantee but a living principle that must be protected through continuous judicial vigilance.

#### **4.6 Modern Era: Protection against Arbitrary Restrictions**

The evolution of freedom of speech and expression in India has reached a particularly complex and dynamic stage in the modern era. Unlike earlier phases, where the primary focus was on print media and traditional forms of communication, the contemporary landscape is shaped by rapid technological advancements, digital platforms, and global connectivity. These developments have significantly expanded the scope of speech while simultaneously introducing new challenges for regulation.

The judiciary, in response, has had to reinterpret constitutional principles considering these changing realities. The central question remains the same: how to balance individual liberty with State regulation. However, the context in which this question is addressed has become far more complicated.

A landmark case that defines modern free speech jurisprudence is *Shreya Singhal v. Union of India*<sup>31</sup>. This judgment is widely regarded as a turning point in the protection of free speech in the digital age.

The case challenged the constitutional validity of Section 66A of the Information Technology Act, 2000. This provision criminalised the sending of information through electronic means if it was considered “grossly offensive,” “annoying,” or caused “inconvenience.” While the intention behind the law was to regulate misuse of digital platforms, its language was extremely vague and broad.

The Supreme Court, in a detailed and well-reasoned judgment, struck down Section 66A as unconstitutional. The Court observed that the terms used in the provision were undefined and open to subjective interpretation. As a result, individuals could not reasonably determine what kind of speech was permissible, leading to uncertainty and fear.

One of the most significant contributions of this judgment was the recognition of the “chilling effect.” The Court acknowledged that vague laws could discourage people from expressing their views, even if those views are lawful. When individuals fear legal consequences, they may choose to remain silent rather than risk punishment. This indirect suppression of speech is just as harmful as direct censorship.

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<sup>31</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

Another important aspect of the judgment is the distinction made between discussion, advocacy, and incitement. The Court held that:

- Discussion and advocacy, even if controversial or unpopular, are protected under Article 19(1)(a)
- Only speech that amounts to incitement to violence or public disorder can be restricted under Article 19(2)

This distinction provides a clear framework for evaluating restrictions on speech. It ensures that mere disagreement or criticism cannot be treated as a criminal offence.

The decision in *Shreya Singhal v. Union of India* reflects a strong commitment to protecting free speech in the digital era. It also demonstrates the judiciary's willingness to strike down laws that fail to meet constitutional standards.

Another significant development in modern free speech jurisprudence is the recognition of the internet as a vital medium of expression. In today's world, digital platforms are not just tools of communication; they are essential spaces for public discourse, political participation, and social interaction.

This recognition is evident in the case of *Anuradha Bhasin v. Union of India*<sup>32</sup>, where the Supreme Court examined the legality of internet shutdowns. The case arose from restrictions imposed on internet services in Jammu and Kashmir.

The Court held that access to the internet is an important component of the right to freedom of speech and expression. While it did not declare internet access as a fundamental right in itself, it emphasised that the freedom to communicate through the internet is protected under Article 19(1)(a).

The Court also laid down important guidelines for imposing internet restrictions. It stated that such measures must be:

- Temporary in nature
- Proportionate to the situation
- Subject to periodic review
- Open to judicial scrutiny

This judgment highlights the application of constitutional principles such as proportionality and reasonableness in the context of modern technology. It ensures that restrictions on digital communication are not imposed arbitrarily<sup>33</sup>.

Despite these judicial advancements, modern free speech jurisprudence continues to face

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<sup>32</sup> *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

<sup>33</sup> Gautam Bhatia, "Free Speech Jurisprudence," *Indian Constitutional Law and Philosophy Blog* (2015–2022).

several challenges. One of the most pressing issues is the regulation of social media platforms<sup>34</sup>. Unlike traditional media, these platforms are largely controlled by private entities, raising questions about accountability and control over speech.

The State often seeks to regulate online content to address issues such as misinformation, hate speech, and cybercrime. While these concerns are legitimate, there is a risk that excessive regulation may infringe upon freedom of expression. The challenge lies in finding a balance that protects users without restricting legitimate speech.

Another important issue is the spread of misinformation and fake news. Digital platforms<sup>35</sup> enable rapid dissemination of information, but they also make it easier for false or misleading content to spread. This can have serious consequences, including public panic, social unrest, and harm to individuals.

Regulating misinformation is particularly difficult because it involves distinguishing between false content and legitimate opinion. Over-regulation may lead to censorship, while under-regulation may allow harmful content to proliferate.

The problem of online harassment and hate speech further complicates the issue. While freedom of speech protects expression, it does not extend to speech that incites violence or harms the dignity of others. The challenge is to address such harmful content without restricting broader freedoms.

From a critical perspective, modern free speech jurisprudence reflects both progress and complexity. On one hand, the judiciary has taken strong steps to protect individual liberty, as seen in cases like *Shreya Singhal v. Union of India*. On the other hand, the rapid pace of technological change continues to create new challenges that are not easily addressed within the existing legal framework.

Another concern is the inconsistent application of principles. While the courts have developed clear doctrines such as proportionality and the prohibition of vagueness, their application may vary depending on the facts of each case. This can create uncertainty and affect the predictability of legal outcomes.

Furthermore, the role of the State in regulating digital speech remains a subject of debate. While the State has a duty to maintain order and protect citizens, it must also respect constitutional freedoms. Excessive control over digital platforms may undermine democratic values and limit public discourse.

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<sup>34</sup> Internet Freedom Foundation, “Free Speech and the Internet in India,” (2020).

<sup>35</sup> Internet Freedom Foundation, “Free Speech and Digital Rights Reports” (2020).

In conclusion, the modern phase of free speech jurisprudence represents a critical stage in the evolution of Article 19(1)(a). It reflects the judiciary's attempt to adapt constitutional principles to a rapidly changing technological environment. Through landmark decisions such as *Shreya Singhal v. Union of India* and *Anuradha Bhasin v. Union of India*, the courts have reinforced the importance of protecting free speech while recognising the need for reasonable regulation. The challenge for the future lies in maintaining this balance. As technology continues to evolve, new forms of expression and new risks will emerge. The constitutional framework must remain flexible enough to address these challenges while preserving the core value of freedom of speech.

Ultimately, the strength of a democracy depends on the ability of its citizens to express themselves freely, engage in open debate, and access information. Ensuring that this freedom is protected in the digital age is one of the most important tasks of constitutional law today.

#### **4.7 Recognition of New Forms of Expression**

With the growth of technology, the judiciary has acknowledged that freedom of speech extends to modern forms of communication, including the internet and social media.

The courts have recognised that digital platforms play a crucial role in enabling individuals to express opinions and access information. As a result, restrictions on online speech are subject to the same constitutional scrutiny as traditional forms of expression.

This recognition ensures that constitutional protections remain relevant in a rapidly changing technological environment.

#### **4.8 Balancing Free Speech with Public Order**

While the judiciary has consistently protected free speech, it has also recognised the importance of maintaining public order and security.

The courts have upheld restrictions in situations where speech poses a real and immediate threat to public safety. However, they have emphasised that such restrictions must be based on a clear and direct connection between the speech and the potential harm.

This approach reflects an attempt to maintain a balance between protecting individual liberty and preventing disorder.

#### **4.9 Emerging Trends in Free Speech Jurisprudence**

Recent developments indicate a continued effort by the judiciary to refine the principles governing free speech. The focus has been on ensuring that restrictions are proportionate,

clearly defined, and applied consistently.

There is also increasing attention to issues such as online speech, misinformation, and hate speech. These challenges require careful balancing, as excessive regulation may undermine democratic values, while inadequate regulation may lead to harm.

The evolving nature of these issues suggests that free speech jurisprudence will continue to develop in response to changing societal needs.

#### **4.10 Conclusion**

The judicial evolution of freedom of speech and expression in India reflects a gradual shift towards stronger protection of individual liberty. From the early emphasis on political speech to the modern focus on digital expression, the courts have played a central role in shaping this right.

At the same time, the judiciary has recognised the necessity of reasonable restrictions to maintain public order and protect societal interests. The challenge has been to ensure that these restrictions do not undermine the essence of the right.

Through principles such as reasonableness, proportionality, and the prohibition of vague laws, the courts have sought to strike a balance between liberty and State regulation. This balance remains at the heart of constitutional adjudication in matters relating to free speech.

### **DOCTRINE OF REASONABLE RESTRICTIONS UNDER ARTICLE 19(2)**

#### **5.1 Introduction**

Freedom of speech and expression under Article 19(1)(a) is one of the most valued fundamental rights in the Indian Constitution. However, this freedom is not absolute. The Constitution itself recognises that unrestricted speech may, in certain circumstances, conflict with societal interests such as public order, national security, and individual dignity.

To address this, Article 19(2) permits the State to impose “reasonable restrictions” on the exercise of free speech. The concept of reasonable restrictions is central to the constitutional framework, as it determines the extent to which the State can regulate expression without violating fundamental rights.

This chapter examines the doctrine of reasonable restrictions, the principles developed by the judiciary to test such restrictions, and the evolving standards applied in constitutional

adjudication<sup>36</sup>.

## 5.2 Nature and Purpose of Reasonable Restrictions

The doctrine of reasonable restrictions under Article 19(2) is based on the idea that fundamental rights, while essential, cannot exist in complete isolation from societal interests. Freedom of speech and expression is a cornerstone of democracy, but it must operate within a framework that ensures the protection of other equally important values such as public order, security, and the rights of others.

The nature of reasonable restrictions is both protective and regulatory. It is protective in the sense that it safeguards society from the harmful consequences of certain forms of speech. At the same time, it is regulatory because it allows the State to impose limitations on speech when necessary. However, this regulatory power is not absolute; it is subject to constitutional limitations.

The purpose of reasonable restrictions can be understood in terms of maintaining a balance between individual liberty and collective welfare. In a diverse society like India, where differences in religion, culture, and language are significant, unrestricted speech may sometimes lead to conflict or social unrest. The Constitution, therefore, allows the State to intervene in such situations to prevent harm.

At the same time, the concept of reasonableness ensures that such intervention is not arbitrary. The restriction must be justified by a legitimate objective and must be applied in a fair and proportionate manner. This requirement prevents the misuse of power and protects individuals from excessive State control.

The judiciary has consistently emphasised that reasonableness is not a fixed or rigid concept. It must be interpreted in the context of each case. Factors such as the nature of the right, the purpose of the restriction, and the extent of the limitation must be considered<sup>37</sup>.

In *State of Madras v. V.G. Row*, the Supreme Court highlighted that the determination of reasonableness requires a careful balancing of competing interests. The Court observed that while the State has the power to impose restrictions, such power must be exercised within constitutional limits.

From a critical perspective, the doctrine of reasonable restrictions reflects a pragmatic approach to constitutional rights. It recognises that absolute freedom may not always be practical, but it also ensures that restrictions are not imposed lightly.

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<sup>36</sup> H.M. Seervai, *Constitutional Law of India* (2013).

<sup>37</sup> Gautam Bhatia, *Offend, Shock or Disturb* (2016)

### 5.3 Grounds of Restrictions under Article 19(2)

Article 19(2) of the Constitution of India lays down the specific grounds on which the State may impose restrictions on the freedom of speech and expression guaranteed under Article 19(1)(a). These grounds form the constitutional basis for regulating speech and are essential to maintaining the balance between individual liberty and societal interests.

The grounds mentioned in Article 19(2)<sup>38</sup> are:

- Sovereignty and integrity of India
- Security of the State
- Friendly relations with foreign States
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

Each of these grounds represents a legitimate concern that may justify limiting speech in certain circumstances. However, the inclusion of these grounds does not mean that any restriction imposed under them is automatically valid. The restriction must still satisfy the requirement of reasonableness.

The ground of sovereignty and integrity of India was added through the Sixteenth Amendment in 1963. It reflects the importance of preserving the unity and territorial integrity of the nation. Speech that promotes secession or threatens the unity of the country may be restricted under this ground. However, the challenge lies in distinguishing between legitimate political dissent and speech that threatens sovereignty.

The ground of security of the State is narrower than public order and relates to serious threats such as war, rebellion, or external aggression. The Supreme Court, in cases like *Romesh Thappar v. State of Madras*, initially interpreted this ground strictly, limiting it to grave threats to the State. This narrow interpretation was later expanded through constitutional amendments, but the principle that restrictions must be closely connected to the threat remains relevant.

Friendly relations with foreign states are a relatively less frequently invoked ground. It allows the State to restrict speech that may harm diplomatic relations. While important, this ground must be applied cautiously to avoid unnecessary limitations on political expression.

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<sup>38</sup> Constitution of India, Article 19(2).

The ground of public order is one of the most widely used and also one of the most controversial. It covers situations where speech may lead to disorder, disturbance, or violence. However, the concept of public order is broad and can be interpreted in different ways. The Supreme Court has emphasised that there must be a proximate connection between the speech and the likelihood of disorder.

This principle was reinforced in *Romesh Thappar v. State of Madras*, where the Court held that restrictions must not be based on remote or speculative grounds. The requirement of proximity ensures that the State does not impose restrictions based on mere apprehension.

The grounds of decency and morality relate to societal standards of acceptable behaviour. These concepts are inherently subjective and may vary over time and across cultures. The challenge lies in applying these standards in a manner that respects freedom of expression while addressing genuinely harmful content.

Contempt of court is another ground that seeks to protect the authority and dignity of the judiciary. While criticism of judicial decisions is allowed, speech that undermines the administration of justice may be restricted. The courts have attempted to balance this by allowing fair and reasonable criticism.

The ground of defamation protects the reputation of individuals. Freedom of speech does not include the right to harm another person's reputation through false statements. At the same time, laws on defamation must be carefully applied to ensure that they do not discourage legitimate criticism or investigative journalism.

Finally, incitement to an offence covers speech that encourages or provokes unlawful acts. This ground is closely related to public order and security. The Supreme Court, in *Shreya Singhal v. Union of India*, clarified that only speech that amounts to incitement can be restricted, while mere discussion or advocacy remains protected.

From a broader perspective, the grounds under Article 19(2) reflect the constitutional attempt to balance competing interests. They recognise that while freedom of speech is essential, it cannot be exercised in a manner that harms society or the rights of others.

However, the broad wording of some of these grounds creates the possibility of misuse. Terms like "public order" and "morality" can be interpreted expansively, allowing authorities to impose restrictions that may not always be justified. This makes judicial scrutiny essential in ensuring that restrictions remain within constitutional limits.

In conclusion, the grounds of restriction under Article 19(2) provide a framework for regulating speech in a democratic society. While they serve important purposes, their application must be carefully controlled to prevent abuse. The effectiveness of this framework depends on

maintaining a balance between protecting individual liberty and addressing legitimate societal concerns.

#### 5.4 Test of Reasonableness

The concept of “reasonableness” is central to the constitutional validity of restrictions imposed under Article 19(2). It ensures that the State’s power to limit fundamental rights is exercised in a fair, just<sup>39</sup>, and non-arbitrary manner. While Article 19(2) specifies the grounds on which restrictions may be imposed, it is the test of reasonableness that determines whether a particular restriction is constitutionally valid.

The Supreme Court has played a crucial role in developing this test through judicial interpretation. One of the earliest and most important cases in this regard is *State of Madras v. V.G. Row*. In this case, the Court laid down the guiding principles for determining reasonableness<sup>40</sup>.

The Court observed that reasonableness cannot be defined in abstract terms. Instead, it must be assessed in the context of each case. Several factors must be considered, including:

- The nature of the right affected
- The purpose of the restriction
- The extent and urgency of the problem
- The proportionality of the restriction

This approach ensures flexibility and allows the courts to adapt the concept of reasonableness to different situations.

One of the key aspects of the test is that the restriction must not be arbitrary or excessive. It should have a rational connection with the objective it seeks to achieve. If the restriction goes beyond what is necessary, it may be considered unreasonable.

Another important element is the requirement of **procedural fairness**. The process through which the restriction is imposed must be fair and transparent. Arbitrary or discriminatory procedures may render the restriction unconstitutional.

The test of reasonableness also involves balancing competing interests. On one hand, the individual’s right to free speech must be protected. On the other hand, the State’s interest in maintaining order and protecting society must be considered. The courts must weigh these interests carefully to arrive at a fair outcome.

From a critical perspective, the test of reasonableness provides an important safeguard against

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<sup>39</sup> S.P. Sathe, “Reasonableness in Constitutional Law,” *ILI Journal* (2005).

<sup>40</sup> V.N. Shukla, *Constitution of India* (2019)

misuse of power. However, it also introduces a degree of subjectivity, as different judges may interpret reasonableness differently. This can lead to variations in judicial decisions.

Despite this, the test remains an essential tool for protecting fundamental rights. It ensures that restrictions are not imposed lightly and that they are justified by legitimate objectives.

In conclusion, the test of reasonableness serves as a crucial check on State power. It ensures that restrictions on free speech are fair, proportionate, and consistent with constitutional values. Its effective application is essential for maintaining the balance between liberty and regulation.

## 5.5 Doctrine of Proportionality

The doctrine of proportionality has emerged as one of the most important tools in constitutional adjudication, particularly in cases involving restrictions on fundamental rights. In the context of Article 19(2), it plays a crucial role in determining whether a restriction on freedom of speech and expression is justified.

At its core, the doctrine of proportionality requires that any restriction imposed by the State must not be excessive. It must be carefully calibrated to achieve its objective without unnecessarily infringing upon individual rights. This doctrine ensures that the balance between liberty and regulation is maintained fairly and rationally<sup>41</sup>.

The development of proportionality in Indian constitutional law is closely linked to the broader evolution of fundamental rights, particularly after the decision in *Maneka Gandhi v. Union of India*. The emphasis on fairness, reasonableness, and non-arbitrariness laid the foundation for applying proportionality in assessing restrictions.

Under the doctrine of proportionality, a restriction must satisfy certain key requirements:

First, it must have a legitimate objective. The restriction should be aimed at achieving one of the grounds specified under Article 19(2), such as public order or security of the State.

Second, there must be a rational connection between the restriction and the objective. The measure adopted should be capable of achieving the intended purpose.

Third, the restriction must be necessary, meaning that there should not be any less restrictive alternative available to achieve the same objective.

Finally, the restriction must be proportionate in its impact, ensuring that the harm caused to the right is not greater than the benefit achieved.

This structured approach allows courts to examine restrictions more rigorously. It prevents the

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<sup>41</sup> Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press, 2012).

State from imposing broad or sweeping measures that go beyond what is required.

The importance of proportionality can be seen in modern free speech cases, including *Anuradha Bhasin v. Union of India*, where the Supreme Court emphasised that restrictions on internet access must be proportionate and subject to review.

From a practical perspective, the doctrine of proportionality strengthens the protection of free speech by ensuring that restrictions are carefully justified. It shifts the focus from mere legality to the quality and necessity of the restriction.

However, the application of proportionality is not without challenges. Determining what is “necessary” or “proportionate” often involves subjective judgment. Different courts may reach different conclusions based on the same facts.

Despite this, proportionality remains a powerful safeguard against excessive State action. It ensures that freedom of speech is not curtailed more than absolutely required<sup>42</sup>.

In conclusion, the doctrine of proportionality plays a central role in maintaining the balance between liberty and regulation. By requiring that restrictions be justified, necessary, and proportionate, it reinforces the constitutional commitment to protecting free speech.

### **5.6 Proximity and Nexus Test**

The proximity and nexus test is another important judicial principle used to evaluate the validity of restrictions under Article 19(2). It focuses on the relationship between the speech in question and the harm that the State seeks to prevent.

The core idea behind this test is that there must be a direct and proximate connection between the expression and the threat it poses. Restrictions cannot be justified based on remote, hypothetical, or speculative dangers<sup>43</sup>.

This principle was emphasised in early cases such as *Romesh Thappar v. State of Madras*, where the Supreme Court held that restrictions on speech must be closely linked to the security of the State or public order.

The requirement of proximity ensures that the State does not act on mere apprehensions. It prevents authorities from imposing restrictions simply because speech might potentially lead to disorder at some future point.

Another important case that developed this principle is *Superintendent, Central Prison v. Ram Manohar Lohia*, where the Court clarified that there must be a proximate and reasonable

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<sup>42</sup> Tarunabh Khaitan, “Proportionality in Indian Constitutional Law,” *Oxford Journal of Legal Studies* (2017).

<sup>43</sup> M.P. Jain, *Indian Constitutional Law* (2018).

connection between the speech and the disturbance of public order<sup>44</sup>.

The Court distinguished between different levels of disorder, such as “law and order,” “public order,” and “security of the State,” and emphasised that not every disturbance justifies restriction.

From a constitutional perspective, the proximity test acts as a safeguard against overreach. It ensures that restrictions are based on real and immediate threats rather than vague concerns.

However, applying this test can be challenging, particularly in situations where the impact of speech is not immediate. For example, speech that spreads misinformation may not cause instant harm but could have long-term effects.

Despite these challenges, the proximity and nexus test remains an essential tool in protecting free speech. It reinforces the principle that restrictions must be based on concrete and demonstrable risks.

In conclusion, the proximity test ensures that the State’s power to restrict speech is exercised with caution and precision. By requiring a direct connection between speech and harm, it helps maintain the balance between liberty and regulation.

### **5.7 Vagueness and Overbreadth**

The doctrines of vagueness and overbreadth play a crucial role in protecting freedom of speech from arbitrary and excessive restrictions. These doctrines are based on the idea that laws regulating speech must be clear, precise, and narrowly tailored.

A law is considered vague if it does not clearly define what is prohibited. This creates uncertainty, making it difficult for individuals to understand what kind of speech is allowed.

As a result, people may avoid expressing themselves altogether to avoid the risk of punishment.

A law is overbroad if it restricts more speech than necessary. Even if the objective of the law is legitimate, it may still be unconstitutional if it affects a wide range of protected expression.

The importance of these doctrines was highlighted in *Shreya Singhal v. Union of India*, where the Supreme Court struck down Section 66A of the Information Technology Act.

The Court found that the provision was vague and overbroad<sup>45</sup>, as it used undefined terms such as “annoying” and “offensive.” This allowed for arbitrary enforcement and created a chilling effect on free speech.

The judgment emphasised that laws restricting speech must be clear and narrowly defined. This

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<sup>44</sup> Upendra Baxi, “Public Order and Free Speech,” *ILI Journal* (1990).

<sup>45</sup> Gautam Bhatia, “Vagueness and Free Speech,” *Indian Constitutional Law Blog* (2015).

ensures that individuals can exercise their rights without fear or uncertainty.

From a broader perspective, the doctrines of vagueness and overbreadth are essential for maintaining the rule of law. They prevent the misuse of power and ensure that restrictions are applied in a fair and consistent manner.

However, drafting precise laws is not always easy, especially in areas such as digital communication, where language and context can vary widely. This makes judicial interpretation even more important.

In conclusion, the doctrines of vagueness and overbreadth serve as critical safeguards against arbitrary restrictions<sup>46</sup>. They ensure that laws regulating speech are clear, precise, and limited in scope, thereby protecting the essence of freedom of expression.

### **5.8 Balancing Free Speech and Public Order**

The relationship between free speech and public order represents one of the most challenging aspects of constitutional law. While freedom of expression is essential for democracy, it must be exercised in a manner that does not disrupt societal harmony or lead to violence.

Public order is one of the most commonly invoked grounds under Article 19(2). It allows the State to restrict speech that may lead to disorder or disturbance. However, the broad nature of this concept makes it susceptible to misuse.

The Supreme Court has repeatedly emphasised that not all speech affecting public order can be restricted. There must be a clear and direct connection between the speech and the likelihood of disorder<sup>47</sup>.

This principle was reinforced in *Superintendent, Central Prison v. Ram Manohar Lohia*, where the Court distinguished between minor disturbances and serious threats to public order.

The challenge lies in balancing the need to maintain order with the importance of protecting dissent. In a democracy, criticism of the government and expression of unpopular opinions are essential. Treating such an expression as a threat to public order would undermine constitutional values<sup>48</sup>.

At the same time, the State cannot ignore speech that incites violence or hatred. The key is to ensure that restrictions are applied only when necessary and are supported by evidence.

From a critical perspective, this balance is often difficult to achieve in practice. Authorities

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<sup>46</sup> Internet Freedom Foundation Reports on Free Speech (2020).

<sup>47</sup> PRS Legislative Research, "Freedom of Speech and Reasonable Restrictions" (2021).

<sup>48</sup> National Law School of India Review, "Public Order and Constitutional Freedoms" (2018).

may err on the side of caution and impose restrictions even when the threat is not immediate. This can lead to unnecessary limitations on free speech. Judicial oversight plays a crucial role in addressing this issue. By applying principles such as proportionality and proximity, courts ensure that restrictions are justified and limited. In conclusion, balancing free speech and public order requires a careful and nuanced approach. While maintaining order is important, it must not come at the cost of suppressing legitimate expression. The Constitution seeks to achieve this balance, and its success depends on consistent and careful application.

### **5.9 Judicial Approach: Evolving Standards**

The judicial approach to reasonable restrictions has evolved over time. Earlier decisions focused on the existence of a law and its formal validity. However, modern jurisprudence places greater emphasis on substantive fairness and proportionality. Courts now examine not only whether the restriction falls within Article 19(2) but also whether it is justified in the specific context. This reflects a shift towards a more rights-oriented approach.

### **5.10 Challenges in Application**

Despite the development of these principles, challenges remain in their application. The interpretation of terms such as “public order” and “decency” is often subjective, leading to inconsistent outcomes.

There is also concern that broad or vague laws may be used to suppress dissent. This highlights the need for clear legislative drafting and consistent judicial scrutiny.

### **5.11 Conclusion**

The doctrine of reasonable restrictions under Article 19(2) occupies a central position in the constitutional framework governing freedom of speech and expression in India. While Article 19(1)(a) guarantees this fundamental right, it is Article 19(2) that defines its limits, ensuring that the exercise of individual liberty does not come into conflict with broader societal interests. This chapter has examined the various dimensions of this doctrine, highlighting its significance, evolution, and application in constitutional jurisprudence.

At its core, the concept of reasonable restrictions reflects a carefully crafted balance between two competing values: individual freedom and collective welfare. The Constitution does not adopt an absolutist approach to free speech; instead, it recognises that unrestricted expression

may, in certain circumstances, lead to harm. At the same time, it ensures that any limitation on this right is subject to strict constitutional scrutiny. This dual approach underscores the importance of maintaining equilibrium between liberty and regulation.

The nature and purpose of reasonable restrictions demonstrate that the Constitution seeks not to curtail freedom arbitrarily but to regulate it in a manner that preserves social order and protects the rights of others. The inclusion of specific grounds under Article 19(2), such as public order, security of the State, and defamation, reflects the recognition that certain forms of speech may have consequences that extend beyond individual expression. However, the mere existence of these grounds does not grant the State unchecked power. The requirement of reasonableness acts as a safeguard, ensuring that restrictions are justified, necessary, and proportionate.

The judicial interpretation of Article 19(2) has played a crucial role in shaping the doctrine of reasonable restrictions. Early cases such as *State of Madras v. V.G. Row* laid the foundation by emphasising that reasonableness must be assessed in the context of each case, taking into account factors such as the nature of the right and the purpose of the restriction. This flexible approach has allowed the judiciary to adapt the doctrine to changing social and political conditions.

Over time, the courts have developed various tests and principles to evaluate restrictions on speech. The test of reasonableness ensures that restrictions are not arbitrary or excessive. The doctrine of proportionality requires that the measure adopted by the State must be appropriate and not more restrictive than necessary. Similarly, the proximity and nexus test ensures that there is a direct connection between the speech and the harm sought to be prevented. These principles collectively strengthen the protection of free speech by placing meaningful limits on State power.

The doctrines of vagueness and overbreadth further enhance this protection by requiring that laws regulating speech be clear and precise. The Supreme Court's decision in *Shreya Singhal v. Union of India* illustrates the importance of these doctrines in preventing arbitrary restrictions. By striking down a vague and overbroad provision, the Court reaffirmed that laws must provide clear guidance to individuals and must not create a chilling effect on expression. One of the most significant aspects of the doctrine of reasonable restrictions is its application in balancing free speech with public order. While the State has a legitimate interest in maintaining order, this power must be exercised with caution. The judiciary has consistently emphasised that restrictions must be based on real and immediate threats rather than speculative concerns. This ensures that dissent and criticism, which are essential to democracy, are not

suppressed under the guise of maintaining order.

Despite these judicial safeguards, the application of the doctrine in practice presents several challenges. The broad language of Article 19(2) allows for varying interpretations, particularly in relation to terms such as “public order” and “morality.” This creates the possibility of misuse, where restrictions may be imposed in situations that do not genuinely warrant them. The effectiveness of the doctrine, therefore, depends not only on its theoretical framework but also on its consistent and careful application.

In the contemporary context, these challenges have become even more pronounced. The rise of digital communication and social media has expanded the scope of speech, making it more difficult to regulate. While these developments have enhanced democratic participation, they have also increased the potential for harm, particularly in cases involving misinformation and hate speech<sup>49</sup>. Applying the doctrine of reasonable restrictions in such situations requires a nuanced approach that takes into account the unique characteristics of digital platforms.

From a critical perspective, the doctrine of reasonable restrictions represents both strength and complexity in Indian constitutional law. On one hand, it provides a robust framework for balancing competing interests. On the other hand, its application requires careful judgment and may involve a degree of subjectivity. The challenge lies in ensuring that this subjectivity does not lead to inconsistency or unpredictability.

Ultimately, the doctrine reflects the dynamic nature of the Constitution. It is not a static rule but an evolving principle that adapts to changing circumstances. The judiciary plays a key role in this process, interpreting the Constitution in a manner that preserves its core values while addressing new challenges.

In conclusion, the doctrine of reasonable restrictions under Article 19(2) is essential to understanding the constitutional framework of freedom of speech and expression in India. It embodies the idea that liberty must coexist with responsibility and that rights must be exercised in a manner that respects the interests of society. The success of this doctrine depends on maintaining a careful balance, ensuring that restrictions are imposed only when necessary and in a manner that is fair, just, and proportionate.

As India continues to evolve as a democratic society, the importance of this balance will only increase. The protection of free speech remains fundamental, but it must be accompanied by a commitment to ensuring that this freedom is exercised responsibly. The doctrine of reasonable restrictions, when applied effectively, provides the necessary framework to achieve this

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<sup>49</sup> Law Commission of India, Report No. 267 (Hate Speech, 2017)

objective.

## **6: CONTEMPORARY CHALLENGES TO FREEDOM OF SPEECH AND EXPRESSION**

### **6.1 Introduction**

Freedom of speech and expression under Article 19(1)(a) has always been central to the functioning of democracy in India. However, in recent years, the nature of challenges to this freedom has changed significantly. Earlier, restrictions were mostly related to print media or public speeches. Today, with the rise of technology, social media, and changing political and social environments, new and more complex issues have emerged.

The balance between individual liberty and State regulation has become more difficult to maintain. While the State aims to regulate harmful speech and maintain public order, there is also a growing concern that such regulation may sometimes restrict genuine expression and dissent.

This chapter examines some of the most important contemporary challenges to freedom of speech in India, focusing on how these issues test the constitutional balance under Article 19(1)(a) and Article 19(2).

### **6.2 Freedom of Speech in the Digital Age**

The digital age has fundamentally reshaped the contours of freedom of speech and expression in India. While Article 19(1)(a) guarantees the right to free speech, its application in the context of the internet and digital platforms presents new and complex challenges. Unlike traditional modes of communication, digital platforms enable instantaneous dissemination of information, often reaching a global audience within seconds. This transformation has significantly expanded the scope of expression but has also increased the potential for misuse.

One of the defining features of digital speech is its accessibility. Social media platforms have democratised expression by allowing individuals to participate in public discourse without the need for institutional backing. This has strengthened democratic engagement, particularly by amplifying voices that were previously marginalised. However, the absence of editorial control and the speed of information sharing have also led to concerns regarding misinformation,

online abuse, and the spread of harmful content<sup>50</sup>.

The Supreme Court addressed the constitutional implications of digital speech in *Shreya Singhal v. Union of India*, where it struck down Section 66A of the Information Technology Act, 2000<sup>51</sup>. The provision was held to be unconstitutional on the grounds of vagueness and overbreadth, as it criminalised online speech using undefined terms such as “annoying” and “offensive.” The Court emphasised that such vague laws create a chilling effect and discourage individuals from exercising their right to free expression<sup>52</sup>.

The judgment also introduced an important distinction between discussion, advocacy, and incitement. It clarified that only speech that amounts to incitement to violence or public disorder can be restricted under Article 19(2), while mere discussion or advocacy remains protected. This principle is particularly relevant in the digital context, where opinions are often expressed strongly and may be misinterpreted.

Despite judicial safeguards, regulating digital speech remains a challenge. The State continues to introduce regulatory frameworks to address concerns such as misinformation and harmful content. However, these measures must comply with constitutional requirements, including reasonableness and proportionality.

In conclusion, the digital age has expanded the scope of free speech while simultaneously complicating its regulation. The challenge lies in ensuring that the constitutional guarantee under Article 19(1)(a) is preserved without compromising societal interests.

### **6.3 Hate Speech and Its Regulation**

Hate speech represents one of the most contentious issues in contemporary free speech jurisprudence. It involves expressions that promote hatred, discrimination, or violence against individuals or groups based on identity markers such as religion, caste, or ethnicity. While freedom of speech protects a wide range of expression, it does not extend to speech that undermines the dignity and rights of others<sup>53</sup>.

The Constitution permits restrictions on such speech under Article 19(2) on grounds of public order, morality, and incitement to an offence. However, defining hate speech is inherently complex. Broad definitions may lead to over-regulation, while narrow definitions may fail to address the problem effectively.

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<sup>50</sup> NITI Aayog Discussion Paper on Data Governance (2022).

<sup>51</sup> Ministry of Electronics and IT, Information Technology Rules (2021).

<sup>52</sup><sup>5252</sup> Internet Freedom Foundation, “Digital Rights in India” (2020).

<sup>53</sup> Amnesty International, “Hate Speech and Free Expression in India” (2019)

The judiciary has attempted to strike a balance by focusing on the impact of speech rather than its mere content. In *Pravasi Bhalai Sangathan v. Union of India*, the Supreme Court recognised the harmful effects of hate speech but emphasised the need for careful legislative action rather than judicial overreach.

From a constitutional perspective, the challenge lies in distinguishing between offensive speech and harmful speech. While the former may be protected, the latter can be restricted if it poses a threat to public order or incites violence. This distinction is crucial in maintaining the balance between free expression and societal harmony<sup>54</sup>.

In conclusion, the regulation of hate speech requires a nuanced approach that respects constitutional freedoms while addressing genuine harm.

#### **6.4 Sedition and Free Speech**

The law of sedition remains one of the most debated aspects of free speech in India. Section 124A of the Indian Penal Code criminalises speech that brings hatred or contempt against the government. While intended to protect the State, its broad wording has raised concerns about misuse.

The Supreme Court, in *Kedar Nath Singh v. State of Bihar*, upheld the constitutionality of sedition but limited its application to speech that incites violence or public disorder<sup>55</sup>. The Court clarified that mere criticism of the government does not amount to sedition.

Despite this interpretation, concerns remain about the use of sedition laws to suppress dissent. The challenge lies in ensuring that the law is applied strictly within constitutional limits.<sup>56</sup>

#### **6.5 Internet Shutdowns and Restrictions**

Another major challenge to free speech is the increasing use of internet shutdowns. These shutdowns are often imposed in the interest of public order or national security.

However, such measures have a significant impact on freedom of speech, as they restrict access to information and limit communication. In *Anuradha Bhasin v. Union of India*, the Supreme Court held that access to the internet is an important part of freedom of speech and expression<sup>57</sup>.

The Court emphasised that restrictions on internet access must be:

- Temporary
- Proportionate

<sup>54</sup> Law Commission of India, Report No. 267 (2017).

<sup>55</sup> Law Commission of India, Consultation Paper on Sedition (2018).

<sup>56</sup> Arghya Sengupta, "Sedition and the Constitution," *Vidhi Centre for Legal Policy* (2020).

<sup>57</sup> Access Now, "Internet Shutdowns and Human Rights" (2020).

- Subject to judicial review

Despite this, concerns remain about the frequent use of shutdowns and their impact on fundamental rights.

## 6.6 Media Regulation and Press Freedom

The role of the media in a democracy is to inform the public and hold those in power accountable. However, media regulation has become a controversial issue.

There are concerns about:

- Government control over media
- Pressure on journalists
- Self-censorship

While regulation is necessary to ensure responsible journalism, excessive control may undermine press freedom. The challenge is to maintain independence while ensuring accountability<sup>58</sup>.

The principles laid down in *Bennett Coleman & Co. v. Union of India* continue to be relevant in this context, as they emphasise the importance of free circulation of information.

## 6.7 Chilling Effect on Free Speech

One of the less visible but significant challenges to free speech is the “chilling effect.” This occurs when individuals refrain from expressing their views due to fear of legal consequences or social backlash.

In *Shreya Singhal v. Union of India*, the Supreme Court recognised that vague laws can create such an effect, discouraging people from exercising their right to free speech<sup>59</sup>.

The chilling effect undermines democracy, as it limits open discussion and the exchange of ideas. It is often caused not only by laws but also by their unpredictable enforcement.

## 6.8 Balancing Free Speech with Public Order

Maintaining public order is one of the key responsibilities of the State. However, it is also one of the most frequently used grounds for restricting speech.

The challenge lies in ensuring that this ground is not used to suppress dissent. Courts have repeatedly emphasised that there must be a clear and direct connection between speech and the

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<sup>58</sup> Ministry of Information & Broadcasting Guidelines (India).

<sup>59</sup> Gautam Bhatia, “Chilling Effect in Free Speech,” *Indian Constitutional Law Blog* (2015).

threat to public order.

If restrictions are imposed too easily, they may weaken the protection of free speech. At the same time, failure to regulate harmful speech may lead to unrest. This makes the balance particularly delicate<sup>60</sup>.

### **6.9 Emerging Issues in Free Speech**

In addition to the challenges discussed above, new issues continue to emerge. These include:

- Regulation of social media platforms
- Spread of misinformation and fake news
- Online harassment and trolling
- Role of private companies in controlling speech

These issues raise complex questions about the role of the State, the responsibility of individuals, and the limits of regulation.

### **6.10 Conclusion**

The contemporary landscape of freedom of speech and expression in India reflects a complex interplay between constitutional guarantees and evolving societal realities. While Article 19(1)(a) continues to serve as the foundation of democratic expression, the challenges examined in this chapter demonstrate that the exercise of this right is increasingly shaped by technological advancements, social tensions, and State regulation. These developments have not diminished the importance of free speech; rather, they have made its protection more critical and its regulation more nuanced.

One of the most significant transformations in recent times has been the emergence of the digital age as the primary medium of expression. The internet and social media platforms have expanded the reach of speech beyond traditional boundaries, enabling individuals to participate in public discourse more actively than ever before. However, this expansion has also introduced new risks, including misinformation, online abuse, and rapid dissemination of harmful content. The constitutional framework, originally designed in a pre-digital era, now faces the challenge of adapting to these realities without compromising its core principles.

The judicial response to digital speech, particularly in *Shreya Singhal v. Union of India*, highlights the importance of safeguarding free expression against vague and overbroad restrictions. By striking down Section 66A of the Information Technology Act, the Supreme

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<sup>60</sup> Centre for Policy Research, “Free Speech and Public Order” (2019).

Court reaffirmed that laws regulating speech must be clear, precise, and narrowly tailored. This judgment not only protected online expression but also reinforced the broader principle that freedom of speech cannot be curtailed on uncertain or subjective grounds.

At the same time, the rise of hate speech presents a serious challenge to the exercise of free speech in a diverse society like India. While the Constitution permits restrictions on such speech under Article 19(2), the difficulty lies in defining its scope and ensuring that regulation does not become excessive. The need to balance individual liberty with the protection of social harmony requires a careful and context-sensitive approach. Over-regulation risks suppressing legitimate expression, while under-regulation may allow harmful speech to proliferate<sup>61</sup>.

The issue of sedition further illustrates the tension between State authority and individual freedom. Although the Supreme Court in *Kedar Nath Singh v. State of Bihar* limited the application of sedition to cases involving incitement to violence, concerns about its misuse persist. The continued relevance of this colonial-era law raises important questions about its compatibility with modern democratic values. Ensuring that dissent is not equated with disloyalty remains essential to preserving the spirit of free speech<sup>62</sup>.

Another significant challenge is the increasing use of internet shutdowns as a tool of governance. While such measures may be justified in certain situations, their impact on freedom of expression and access to information cannot be ignored. The decision in *Anuradha Bhasin v. Union of India* underscores the need for proportionality and accountability in imposing such restrictions. It highlights that even in matters of national security, constitutional safeguards must be respected.

The role of the media and the question of press freedom also remain central to contemporary free speech discourse. A free and independent press is essential for ensuring transparency and accountability in a लोकतांत्रिक system. However, increasing regulation and economic pressures may affect the ability of the media to function effectively. The principles laid down in *Bennett Coleman & Co. v. Union of India* continue to serve as an important reminder that indirect restrictions on the press can be as harmful as direct censorship<sup>63</sup>.

The concept of the chilling effect adds another layer of complexity to the discussion. When individuals refrain from expressing their views due to fear of legal consequences or social backlash, the very purpose of freedom of speech is undermined. This phenomenon is particularly relevant in the digital age, where speech can attract widespread attention and

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<sup>61</sup> Gautam Bhatia, *Offend, Shock or Disturb* (2016).

<sup>62</sup> Upendra Baxi, "Freedom of Speech and Constitutionalism" (2009).

<sup>63</sup> Oxford Handbook of the Indian Constitution (2016).

scrutiny. Addressing the chilling effect requires not only clear legal standards but also a broader commitment to protecting dissent and encouraging open dialogue.

Ultimately, the challenge of balancing free speech with public order remains at the heart of constitutional adjudication. While maintaining order is a legitimate objective, it must not be used as a pretext to suppress dissent or criticism. The judiciary has consistently emphasised the need for a direct and proximate connection between speech and harm, ensuring that restrictions are imposed only when necessary.

In conclusion, the contemporary challenges to freedom of speech and expression highlight the dynamic nature of constitutional law. The principles underlying Article 19(1)(a) and Article 19(2) remain relevant, but their application must evolve in response to changing circumstances. The protection of free speech requires a delicate balance between liberty and regulation, one that is guided by constitutional values and informed by judicial interpretation.

As India continues to navigate these challenges, the role of the judiciary, legislature, and society becomes increasingly important. Ensuring that freedom of speech remains robust and meaningful is essential not only for individual liberty but also for the health of democracy itself. The future of free speech in India will depend on the ability to adapt to new realities while remaining faithful to the foundational principles of the Constitution.

## **7: CRITICAL ANALYSIS – BALANCING LIBERTY AND STATE REGULATION**

### **7.1 Introduction**

Freedom of speech and expression under Article 19(1)(a) is often described as the backbone of democracy. However, its true strength lies not only in its recognition but in how it is applied and protected in practice. While earlier chapters examined the constitutional framework, judicial evolution, and contemporary challenges, this chapter goes a step further—it critically evaluates whether the current system maintains a fair balance between individual liberty and State regulation<sup>64</sup>.

The Indian constitutional model does not provide absolute freedom of speech. Instead, it follows a system of regulated liberty, where the State is allowed to impose reasonable restrictions under Article 19(2). The real question, however, is whether these restrictions remain “reasonable” in practice or whether they sometimes go beyond what the Constitution intends.

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<sup>64</sup> Isaiah Berlin, “Two Concepts of Liberty,” in *Four Essays on Liberty* (Oxford University Press, 1969)

This chapter examines that tension in depth. It looks at how the law operates on paper versus how it functions, and whether the balance between freedom and control is genuinely maintained.

## 7.2 Is Freedom of Speech Truly Protected in Practice?

At a theoretical level, India provides strong constitutional protection to freedom of speech. Judicial decisions such as *Shreya Singhal v. Union of India* demonstrate the Court's commitment to striking down laws that are vague or excessive.

However, the practical reality often appears more complex. While the courts have laid down clear principles, their implementation is not always consistent. Individuals may still face legal action, social pressure, or administrative restrictions for expressing dissenting views.

This creates a gap between constitutional ideals and ground-level reality. The right exists, but its exercise may still carry risks. This raises an important concern: a right that cannot be exercised freely loses much of its value<sup>65</sup>.

## 7.3 Broad Nature of Article 19(2): A Source of Concern

One of the central issues in free speech jurisprudence is the broad wording of Article 19(2). Grounds such as "public order," "decency," and "morality" are open to interpretation. While this flexibility allows the State to respond to different situations, it also creates the possibility of misuse<sup>66</sup>.

For example, what constitutes "public order" can vary depending on context. A peaceful protest or critical statement may be seen as a legitimate expression in one situation and a threat to order in another. This ambiguity gives authorities considerable discretion.

The judiciary has attempted to limit this discretion by requiring a proximate connection between speech and harm, as seen in *Romesh Thappar v. State of Madras*. However, the effectiveness of this safeguard depends on its consistent application.

The concern, therefore, is not the existence of restrictions, but the breadth of their interpretation.

## 7.4 Public Order vs Dissent: A Delicate Balance

Public order is one of the most frequently invoked grounds for restricting speech. While maintaining order is essential, there is a risk that this ground may be used to suppress dissent.

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<sup>65</sup> C. Edwin Baker, *Human Liberty and Freedom of Speech* (Oxford University Press, 1989).

<sup>66</sup> Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press, 2012).

In a democracy, dissent is not only inevitable but necessary. It allows citizens to question authority, demand accountability, and bring attention to social issues. If dissent is treated as a threat to public order, the very purpose of free speech is undermined.

Courts have recognised that there must be a clear and direct link between speech and the likelihood of disorder. However, in practice, preventive measures are sometimes taken even when the threat is not immediate.

This creates a tension between maintaining order and protecting liberty. The challenge lies in ensuring that public order is not used as a convenient justification for restricting unpopular opinions.

### **7.5 Vagueness and the Risk of Arbitrary Enforcement**

Another major concern is the presence of vague legal provisions that regulate speech. Laws that are not clearly defined leave room for subjective interpretation and inconsistent enforcement.

The Supreme Court addressed this issue in *Shreya Singhal v. Union of India*, where it struck down a provision for being vague and overbroad. The Court recognised that unclear laws create a chilling effect, discouraging people from expressing themselves freely.

Despite this, concerns about vagueness continue in various forms. When individuals are unsure about what is permissible, they may choose to remain silent rather than risk legal consequences. This highlights an important point: the protection of free speech depends not only on judicial decisions but also on the clarity of laws.

### **7.6 Chilling Effect: The Invisible Restriction**

The concept of the chilling effect is one of the most significant yet often overlooked challenges to free speech. It refers to a situation where individuals refrain from expressing their views due to fear of legal action or social backlash.

Unlike direct restrictions, the chilling effect is subtle. It does not involve an explicit ban, but it limits speech in practice. People may avoid discussing controversial topics or criticising authority because they are unsure of the consequences.

This is particularly relevant in the digital age, where speech can reach a wide audience and attract immediate reactions. The fear of backlash, combined with the possibility of legal consequences, can discourage open discussion.

The recognition of this effect in judicial decisions shows an awareness of the problem. However, addressing it requires not only legal safeguards but also a culture that values free

expression.

### **7.7 Digital Age Challenges: Regulation vs Freedom**

The rise of digital platforms has transformed the way speech is expressed and regulated. Social media allows individuals to share ideas instantly and reach large audiences. At the same time, it has increased concerns about misinformation, hate speech, and online abuse.

The State faces a difficult task in this context. On one hand, there is a need to regulate harmful content. On the other hand, excessive regulation may restrict legitimate expression.

The decision in *Shreya Singhal v. Union of India* reflects an attempt to strike this balance by protecting discussion and advocacy while allowing restrictions on incitement.

However, the challenge remains ongoing. As technology evolves, new forms of speech and new methods of regulation continue to emerge. The legal framework must adapt without compromising constitutional values.

### **7.8 Inconsistency in Judicial Approach**

While the judiciary has played a crucial role in protecting free speech, there have been instances where decisions appear inconsistent. In some cases, courts have taken a strong stand in favour of liberty, while in others, they have upheld restrictions that seem broad.

This inconsistency creates uncertainty. It becomes difficult to predict how similar cases may be decided, which can affect the confidence of individuals in exercising their rights.

A consistent and principled approach is essential to maintain the credibility of constitutional protections. The application of doctrines such as proportionality and reasonableness must be uniform across cases.

### **7.9 Role of the State: Protector or Regulator?**

The State plays a dual role in relation to free speech. It is both a protector of fundamental rights and a regulator of expression. This dual role can sometimes create conflict.

As a protector, the State must ensure that individuals can exercise their rights without fear. As a regulator, it must impose restrictions to maintain order and prevent harm.

The challenge lies in ensuring that the regulatory function does not overshadow the protective role. If the State focuses too much on control, it may weaken the very rights it is supposed to protect.

This requires a careful and balanced approach, supported by judicial oversight.

### **7.10 Need for Clearer Standards and Reforms**

The analysis of free speech in India suggests the need for clearer legal standards and consistent application of principles. Some key areas for improvement include:

- Narrow interpretation of broad grounds such as public order
- Clear drafting of laws to avoid vagueness
- Greater reliance on proportionality
- Strengthening judicial review

These measures can help ensure that restrictions remain within constitutional limits<sup>67</sup>.

### **7.11 Conclusion**

The constitutional framework of freedom of speech in India is designed to balance liberty and regulation. While this balance is theoretically sound, its practical implementation presents several challenges.

Broad grounds of restriction, vague laws, inconsistent judicial decisions, and emerging digital issues all contribute to the complexity of the issue. At the same time, judicial interventions have played an important role in safeguarding free speech.

The key to maintaining this balance lies in ensuring that restrictions are applied carefully, consistently, and only when necessary. Freedom of speech must remain the rule, and restriction the exception.

A strong and vibrant democracy depends on its citizens' ability to speak freely, question authority, and participate in public discourse. Preserving this freedom, while addressing legitimate concerns, remains an ongoing constitutional challenge.

## **8: CONCLUSION AND SUGGESTIONS**

### **8.1 Introduction**

Freedom of speech and expression under Article 19(1)(a) occupies a central position in the constitutional framework of India. It is not only a legal right but also a reflection of democratic values, individual autonomy, and open governance. Throughout this study, the evolution, scope, limitations, and contemporary challenges of this right have been examined in detail.

This chapter brings together the key findings of the research and evaluates whether the existing constitutional framework successfully maintains a balance between individual liberty and State

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<sup>67</sup> Law Commission of India, Consultation Paper on Media Law (2014).

regulation. It also offers certain suggestions aimed at strengthening the protection of free speech in India.

## 8.2 Summary of Findings

The analysis conducted in the previous chapters highlights several important aspects of freedom of speech in India.

First, Article 19(1)(a) provides a broad and flexible guarantee of free speech, covering various forms of expression including speech, writing, press, and digital communication. The judiciary has played a crucial role in expanding the scope of this right over time.

Second, Article 19(2) introduces reasonable restrictions, reflecting the need to balance individual rights with societal interests. While these restrictions are constitutionally valid, their application depends largely on judicial interpretation.

Third, landmark decisions such as *Romesh Thappar v. State of Madras* and *Shreya Singhal v. Union of India* demonstrate the judiciary's commitment to protecting free speech. At the same time, they highlight the importance of limiting State interference.

Fourth, the doctrine of reasonable restrictions, along with principles such as proportionality, proximate nexus, and the prohibition of vague laws, acts as a safeguard against arbitrary State action.

Finally, contemporary challenges such as digital regulation, hate speech, and internet shutdowns have made the application of these principles more complex. These issues require continuous evaluation and adaptation of the legal framework.

## 8.3 Evaluation of the Balance between Liberty and State Regulation

The Indian constitutional model is based on the idea of regulated freedom. It does not treat freedom of speech as absolute but allows for restrictions in specific circumstances. In theory, this approach is well-balanced, as it seeks to protect both individual liberty and collective interests.

However, the practical implementation of this balance raises certain concerns. The broad wording of Article 19(2) allows for varying interpretations, which can lead to inconsistent application. Grounds such as "public order" and "morality" are particularly susceptible to misuse<sup>68</sup>.

The judiciary has attempted to address these concerns by developing clear principles. For

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<sup>68</sup> Upendra Baxi, "The Crisis of the Indian Legal System," (1982).

instance, in *Shreya Singhal v. Union of India*, the Court emphasised that only speech amounting to incitement can be restricted, thereby protecting discussion and advocacy<sup>69</sup>.

Despite these efforts, challenges remain. The gap between constitutional protection and actual practice indicates that the balance is not always effectively maintained. While the framework is strong, its success depends on consistent and careful application.

#### **8.4 Key Issues Identified**

The study identifies several key issues that affect the protection of free speech in India:

##### **1. Broad and Ambiguous Grounds of Restriction**

The wide scope of Article 19(2) creates uncertainty and allows for subjective interpretation.

##### **2. Risk of Over-Regulation**

In some cases, State regulation may extend beyond what is necessary, affecting legitimate expression.

##### **3. Chilling Effect on Speech**

Fear of legal consequences or social backlash may discourage individuals from expressing their views.

##### **4. Inconsistent Judicial Approach**

Variations in judicial decisions can create uncertainty regarding the limits of free speech.

##### **5. Emerging Digital Challenges**

New forms of communication require updated legal responses without compromising constitutional values.

#### **8.5 Suggestions and Recommendations**

In light of the issues identified, the following suggestions are proposed to strengthen the protection of freedom of speech:

##### **8.5.1 Narrow Interpretation of Restrictions**

Courts should continue to interpret the grounds under Article 19(2) narrowly. Restrictions should be applied only in cases where there is a clear and direct threat to public interest.

##### **8.5.2 Strengthening the Doctrine of Proportionality**

The doctrine of proportionality should be consistently applied in all cases involving restrictions

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<sup>69</sup> Centre for Policy Research, “Free Speech and Public Order in India” (2019).

on speech. This will ensure that limitations are not excessive and are justified by necessity.

### **8.5.3 Clear and Precise Drafting of Laws**

Legislation affecting speech must be clearly defined to avoid vagueness. Ambiguous terms should be avoided to prevent arbitrary enforcement.

### **8.5.4 Protection against Chilling Effect**

Courts and authorities should recognise and address the chilling effect of vague or overly broad laws. Safeguards should be introduced to ensure that individuals can exercise their rights without fear.

### **8.5.5 Judicial Consistency**

A consistent approach in judicial decisions is essential to maintain clarity and confidence in the legal system. Established principles should be applied uniformly.

### **8.5.6 Regulation of Digital Speech**

Any regulation of digital platforms should balance the need to prevent harm with the importance of protecting free expression. Excessive control over online speech should be avoided.

### **8.5.7 Awareness and Legal Literacy**

Increasing awareness about constitutional rights can empower individuals to exercise their freedom of speech responsibly and confidently.

## **8.6 Concluding Remarks**

Freedom of speech and expression remains one of the most significant indicators of a democratic society. The Indian Constitution provides a strong foundation for this right, supported by an evolving body of judicial interpretation.

However, the protection of this freedom is not a one-time achievement but an ongoing process. It requires constant vigilance, careful interpretation, and a commitment to constitutional values. The balance between liberty and State regulation must always be maintained in a way that preserves the essence of the right. Restrictions should remain the exception, and freedom the rule.

Ultimately, the strength of democracy depends on the ability of its citizens to express

themselves freely, question authority, and participate in public discourse. Protecting this freedom is not only a legal obligation but also a constitutional responsibility.

