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FREEDOM OF SPEECH vs. REASONABLE RESTRICTIONS

AUTHORED BY - KASHISH FATIMA KHAN

Designation: Student

University: Amity University, Lucknow Campus

CO-AUTHOR - ARVIND KUMAR SINGH

ABSTRACT

India's unique cultural and religious landscape has led to heated debates about free speech and censorship. The problem has received a lot of attention in recent years, thanks to the rise of social media and the growing influence of digital platforms in public discourse. This study examines the continuing controversy in India regarding freedom of expression and censorship, examining various perspectives and arguments presented by stakeholders.

Proponents of free speech believe it is a basic right that should be defended at all costs. They believe that people should be able to express their beliefs and ideas without fear of censorship or repercussions. Freedom of expression promotes open debate and challenges existing norms and power structures, making it crucial for a healthy democracy.

On the other side, detractors of unrestrained free speech point out the potential for harm abuse that can result from unrestricted expression. They contend that certain kinds of hate speech and disinformation can cause social upheaval and violence. They also emphasize the necessity to safeguard marginalized and vulnerable groups from the detrimental effects of Unchecked Speech

India's social and political factors complicate the debate on free speech and censorship. Religious intolerance, political divisiveness, and historical grudges have all helped shape the debate's contour. Additionally, the role of technology and social media platforms in amplifying and disseminating speech adds another layer of complexity to the discussion.

The dispute over freedom of speech and censorship in India is a complex and difficult issue that raises fundamental questions about rights, duties, and democracy. Balancing free expression and damage prevention is a challenging task for politicians and society.

Keywords: Freedom of speech, censorship, India, social media, democracy

INTRODUCTION

The Fundamental Rights enshrined in *the Indian Constitution* represent the cornerstone of India's democratic structure. They are intended to defend individual *liberty, dignity, and equality* from arbitrary state action, guaranteeing that every person has the freedom to meaningfully participate in the country's political, social, and economic life¹. These rights are more than just legal protections; they also reflect India's dedication to *democracy, fairness, and the rule of law*. They act as a bulwark against tyranny, protecting citizens from the abuse of state power while also encouraging social peace and civic responsibility.

Free speech in India dates back to the pre-independence era, when the struggle against colonial control underlined the need of free expression and criticism. After independence, the framers of the Constitution attempted to preserve this attitude by incorporating free expression within the constitutional structure. The Indian court, particularly the Supreme Court, has interpreted and expanded this right, balancing individual liberty with societal objectives. The Indian Constitution, based on worldwide democratic values and the country's struggle for independence, protected this freedom. They recognized the need of free speech for both personal and societal growth. Citizens have the right to actively participate in democracy, hold governments accountable, and contribute to social and political discourse.

India's constitutional safeguards do not fully protect the right to free speech and expression. Digital media has brought new communication challenges, including hate speech, misinformation, and platform regulation. Furthermore, rules relating to sedition, defamation, and censorship continue to spark controversy about the implications for free expression. High-profile instances and judicial fights highlight the complicated relationship between official authority and individual liberties.

¹ Constitution of India, Preamble; Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

Article 19(2)² of the Constitution outlines appropriate constraints on this freedom, which is not absolute. The constraints aim to balance individual freedoms with the interests of the state and society. They include India's sovereignty and integrity, state security, public order, decency, morality, contempt of court, defamation, and incitement to commit an offense. The difficulty is to ensure that these limits are implemented fairly and do not become weapons for silencing lawful expression. The Judiciary, particularly the Supreme Court of India, has interpreted and defined the scope of this right. The Court's key decisions have broadened free speech while defining its limitations to prevent misuse. These court interventions have helped to defend this right from arbitrary state measures while also ensuring that it adapts to changing societal settings.

This study tries to critically examine the many aspects of free speech and expression in India. This article examines constitutional provisions, Supreme Court decisions, and current challenges to provide a complete overview of how this fundamental right is upheld and disputed in India. This analysis contributes to the discussion of protecting and promoting civil rights in a varied democratic society.

FREEDOM OF SPEECH vs. REASONABLE RESTRICTIONS

The Indian Constitution guarantees the right to freedom of speech and expression as a fundamental right under Article 19(1)(a). This right is considered essential in a democratic society, as it allows individuals to express their opinions, beliefs, and ideas without fear of censorship or retaliation from the government. However, this right is not absolute, and there are certain limitations and restrictions in place to ensure that freedom of speech does not infringe upon other rights or cause harm to individuals or society as a whole.

The debate over freedom of speech and reasonable restrictions in India is a highly contentious and complex issue that has been the subject of intense scrutiny and discussion. It revolves around the delicate balance between the fundamental right to freedom of expression and the need to regulate speech that may incite violence, spread hate speech, or threaten national security. This debate has been a prominent and ongoing issue in Indian society, sparking numerous discussions and controversies about the limits of free expression and the role of the government in regulating speech.

² Constitution of India, Article 19(2).

I. BACKGROUND

The conflict over free speech and expression in India is firmly anchored in the country's rich historical, social, and political environment. India has a long history of public debate and dissent, with the expression of ideas and opinions playing an important part in creating social movements, political reforms, and the war for independence. During the colonial era, free speech and the press were crucial in rallying public opinion against the British Raj, exposing injustices, and instilling a sense of national identity.³

After India gained independence in 1947, the writers of the Constitution recognized the importance of free speech and expression in a democracy and codified it as a fundamental right in Article 19(1)(a).⁴ This privilege was meant not only to safeguard against the authoritarian tendencies of the colonial authority, but also to ensure that the views of all citizens—regardless of religion, caste, or socioeconomic standing—could be heard in the democratic process.⁵

However, India's social diversity, which includes a variety of religions, languages, races, and civilizations, has historically been accompanied by friction and conflict. Episodes of communal violence, political instability, and social discontent have emphasized the potential consequences of unrestrained speech, particularly when it incites violence, distributes misinformation, or encourages hatred. As a result, Article 19(2) of the Constitution allows for appropriate restrictions on free expression in order to balance individual liberty with the needs of public order, morality, and national security.⁶ Over time, courts have attempted to define the boundaries of these restrictions, aiming to guarantee that free expression is not unreasonably restricted while also safeguarding society from harm.

In recent decades, the fast spread of digital media, social networking platforms, and instant communication technology has altered the landscape of free speech in India. Citizens now have unparalleled access to a worldwide audience, enabling increased engagement in public discourse and political discussion. At the same time, these platforms have increased the hazards connected with hate speech, misinformation, cyberbullying, and communal polarization, posing new problems for lawmakers, regulators, and the judiciary.⁷

³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966), 78–80.

⁴ Constitution of India, Article 19(1)(a).

⁵ *Free Speech under the Indian Constitution* (Oxford University Press, 2016)

⁶ Constitution of India, Article 19(2).

⁷ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637; *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

The debate over free expression in India is thus determined by a complex interaction of historical, social, and technological forces. From the colonial struggle for independence to today's issues in the digital age, the conflict between individual liberty and communal interest has been a recurring topic. Understanding this past is vital for assessing key judicial judgments, evaluating current regulatory frameworks, and establishing policies that reconcile the right to free expression with the obligations of citizenship.

II. FREEDOM OF SPEECH IN PRACTICE

Article 19(1)(a) of the Indian Constitution provides citizens the right to express themselves freely and without undue intervention or censure.⁸ This right, however, is not absolute, and its practical use is usually hampered by a mix of legal, societal, and technological constraints.⁹

Censorship, which can occur through both governmental legislation and private entity activities, is one of the most significant barriers to the successful exercise of free speech. Governments have historically controlled speech by legislation designed to defend sovereignty, public order, morality, and decency, as authorized by Article 19(2). For example, regulations relating to sedition under Section 124A of the Indian Penal Code have been used to restrict speech deemed threatening to the state. Private platforms, such as social media, may censor harmful or improper content, impacting public conversation in the digital age.

Another key concern is the risk of retaliation. Individuals who voice unpopular or controversial beliefs may experience social isolation, harassment, or even violence. Such threats cause a "chilling effect," in which citizens stop from expressing their fundamental rights for fear of repercussions. The Supreme Court has acknowledged that, while free expression is crucial, it may be limited to avoid incitement to violence or harm to social cohesion.

The spread of misinformation, fake news, and hate speech has hampered the practice of free speech. While diversity of thought is essential in a democratic society, speech that incites violence, discrimination, or communal strife may be outside the scope of Article 19(1)(a). The landmark judgment in *Shreya Singhal v. Union of India (2015)* overturned overly broad provisions of the Information Technology Act of 2000 that criminalized undefined types of online communication, highlighting the importance of explicit, precise, and balanced speech

⁸ Constitution of India, Article 19(1)(a).

⁹ Free Speech under the Indian Constitution (Oxford University Press, 2016)

limits.

In practice, the protection of free speech necessitates a delicate balance. The state must ensure that citizens can freely express themselves while also protecting the rights and safety of others and keeping the public order. This balance can be accomplished through explicit legal norms, judicial control, and public awareness campaigns such as media literacy programs that prepare citizens to recognize and oppose misinformation responsibly.

III. FREEDOM OF PRESS AND RIGHT TO INFORMATION

1. Freedom of Press – “The Fourth Pillar of Democracy”

The freedom of the press is not directly addressed in the Indian Constitution, but it has been judicially acknowledged as part of Article 19(1)(a), which guarantees freedom of speech and expression. The press is sometimes referred to as the "Fourth Pillar of Democracy," alongside the legislative, executive, and judiciary, because it plays an important role in maintaining accountability, openness, and public information distribution.

The importance of press freedom

- Acts as a monitor over government actions, preventing abuses of power.
- Allows for the free exchange of ideas, opinions, and information, which is necessary in a democratic society.
- Provides a forum for public debate and critique, enabling citizens to make educated decisions.
- Protects democracy by giving voice to marginalized people and countering authoritarian inclinations.

2. Right to Information (RTI) – Complementing Freedom of Speech

The Right to Information Act of 2005¹⁰ is an essential piece of law that puts the right to free speech and expression into practice by securing citizens' access to government information. The logic is straightforward: "Freedom of speech without information is meaningless."

¹⁰ Article 21 (Right to Life and Personal Liberty)

CONSTITUTIONAL BASIS

- According to Article 19(1)(a), the right to know is considered an integral aspect of free speech and expression.
- Article 21 (Right to Life and Personal Liberty) further endorses the Right to Information (RTI), as transparency fosters accountability and effective governance.

Key Features of the RTI Act, 2005

- Empowers citizens to request information from any public authority.
- Mandates government bodies to maintain transparency in their decision-making processes.
- Establishes Public Information Officers (PIOs) at both national and state levels.
- Specifies a time-sensitive protocol (30 days, or 48 hours in emergencies concerning life and liberty) for the dissemination of information.
- Encompasses government institutions, ministries, departments, and organizations that receive state funding.

Limitations on RTI

- The Act also provides certain exemptions under Section 8, such as:
- National security and sovereignty
- International relations
- Trade secrets or intellectual property
- Cabinet papers
- Information forbidden by courts

IV. FREEDDOM OF SPEECH vs. SEDITION (Section 124A IPC)

In India, sedition is defined as Section 124A of the Indian Penal Code (IPC).¹¹ The section criminalizes statements, signs, visible representations, or other means that "*bring into hatred or contempt, or excite or attempt to excite disaffection towards the Government established by law in India.*" The clause clarifies that simple expressions of dissatisfaction of government policies or acts do not constitute sedition unless they incite hatred, contempt, or disaffection in the manner specified by the section. The sedition provision was enacted during the colonial period and has long been considered as a vestige of imperial government intended at

¹¹ Text of Section 124A (Sedition), Indian Penal Code (IPC) — official text and statutory context

suppressing political dissent.

Despite judicial limitations, empirical studies, civil-society reports, and human rights organizations have documented widespread use and abuse of sedition laws against journalists, activists, students, lawyers, filmmakers, and critics, often to intimidate, chill dissent, or launch lengthy prosecutions even when conviction is unlikely. In recent years, there has been a trend of arrest and FIR followed by a lengthy judicial process and a rare conviction. Observers have highlighted extremely low conviction rates, implying that the law is usually used as a coercive tool rather than a legitimate tool for preventing significant disruption. Human Rights Watch, Amnesty International, and other organizations have consistently criticized such misuse and advocated repeal or serious revision.¹²

The contemporary litigation raises several interwoven doctrinal questions¹³:

- 1. Textual vagueness and overbreadth:** Does the phrase “disaffection” and related language provide adequate notice and avoid arbitrary enforcement? Critics argue it does not.
- 2. Compatibility with Article 19(1)(a):** Can a provision with colonial origins survive strict scrutiny when free political speech is core to democracy? The Kedar Nath limits attempt to reconcile the provision, but opponents say the statute’s wording invites misuse.
- 3. Standard of harm:** Should the law criminalize only conduct demonstrably linked to imminent violence (a high threshold), or is a broader “tendency” test sufficient? The choice of standard directly affects the law’s sweep.
- 4. Procedural safeguards:** Should sedition be made non-cognizable (police require sanction before arrest), or require prior government sanction/prosecution approval to prevent harassment? Many reform proposals recommend such safeguards

Human-rights organizations and legal scholars propose two reform paths: outright repeal of the colonial sedition provision and statutory narrowing that

- a) limits criminalization to incitement of imminent violence,
- b) imposes a mens rea requirement, and

¹² www.hrw.org

¹³ indiankanoon.org

- c) introduces procedural checks (sanctioning, non-cognizability, and mandatory judicial oversight for arrests).

Comparative models prioritize narrowly defined offenses (e.g., unlawful assembly, instigation to violence, terrorism statutes with specific elements) over broad political speech bans. Civil-society groups and international observers say that the answer for falsehoods and abuse in a free democracy is counter-speech, independent media monitoring, and tailored punitive penalties for genuine violence—not a broadly worded sedition offense.¹⁴

Beyond legal theory, the empirical result is that broadly drafted sedition laws, when actively applied, have a chilling effect: writers self-censor, journalists avoid investigative reporting on sensitive themes, and citizens refrain from protesting. The cost of democratic debate is high, and the law's deterrent effect extends far beyond criminal conviction figures. Judicial prudence, legislative clarity, and administrative restraint are consequently required to ensure that legitimate criticism does not turn into criminality.

Sedition highlights the contradiction between constitutional guarantees of free speech and the state's need to maintain order and security. Kedar Nath Singh attempted to balance these ideals by limiting the statute's applicability to violent incitements; but, continuous claims of misuse, the interim judicial abeyance (May 2022), and the referral to a bigger bench (September 2023) demonstrate that the argument is not over. The evolving judicial scrutiny, combined with sustained policy debate and civil society activism, suggests that India will continue to rethink whether a colonial-era sedition statute can coexist with a modern, pluralistic democracy — and, if not, what statutory or constitutional alternatives should take its place.¹⁵

V. FREEDOM OF SPEECH vs. HATE SPEECH

Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, which is a cornerstone of Indian democracy. This freedom allows individuals to express their thoughts, distribute ideas, and engage in dialogue without undue state interference. However, Article 19 is not absolute.¹⁶ According to Article 19(2), the State may impose "reasonable restrictions" in the interests of *public order, decency, morality, sovereignty and integrity of India, security of the State, friendly relations with other nations, incitement to an offense, contempt of court, and defamation.*

¹⁴ www.hrw.org

¹⁵ internetfreedom.in

¹⁶ Article 19(1)(a), Constitution of India

The concept of hate speech appears as a major constraint in this setting. Hate speech is defined broadly as *speech that disparages individuals or groups based on religion, caste, race, ethnicity, gender, or other identification markers, with the intent to instigate discrimination, hostility, or violence*. Unlike sedition, which directly tackles dangers to the state, hate speech targets *societal cohesion and the dignity of vulnerable communities*. Despite the serious implications, Indian law lacks a clear and comprehensive statutory definition of hate speech. Instead, **Sections 153A, 153B, 295A, and 505 IPC** are used to prohibit speech that encourages hatred, insults religion, or incites violence.

One of the most serious challenges with free speech in practice is the presence of censorship, both by governments and private individuals. Governments can limit speech through laws, regulations, and even executive orders. For example, the Indian government has regularly used Section 69A of the Information Technology Act, 2000 to prohibit internet content.¹⁷

Private businesses, such as social media platforms, censor speech by eliminating content that is harmful, inflammatory, or violates their community standards. This dual-layer filtering can greatly limit individuals' ability to freely express themselves and engage in democratic dialogue.¹⁸

Individuals confront the threat of reprisal, which is a significant impediment to free expression. Dissenters, journalists, and activists have frequently suffered criticism, intimidation, and even violence for voicing unpopular or controversial views. This generates a chilling effect in which citizens self-censor for fear of punitive consequences, ultimately undermining democratic participation.¹⁹

Another issue concerns the proliferation of misinformation and hate speech, which has confused the concept of free speech. While protecting multiple points of view is critical, damaging expression that incites violence or encourages discrimination must also be regulated. In *Shreya Singhal v. Union of India (2015)*, the Supreme Court struck down Section 66A of the IT Act for being unclear and overbroad, emphasizing that only speech that amounts to "incitement" can be prohibited under Article 19(2).

¹⁷ Section 69A, Information Technology Act, 2000

¹⁸ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (discussion on privacy and online expression)

¹⁹ Doctrine of chilling effect

This landmark decision underscored the delicate line between protecting free expression and avoiding its misuse to undermine public order.

Hate speech often occurs during electoral campaigns, where political players exploit communal tensions for electoral gain. The Representation of the People Act of 1951 (Sections 123(3) and 123(3A)) defines appeals to religion, caste, or community during elections as "corrupt practices." However, enforcement has been lax, with numerous cases of harsh comments going unchallenged.²⁰

In modern India, social media platforms have increased the scope and reach of hate speech. Online hate speech has the potential to spread disinformation, worsen communal tensions, and incite real-world violence, as evidenced by mob lynchings in response to cow protection myths and communal riots fueled by viral material.²¹

To ensure free speech in practice, a balance must be struck between protecting individual liberty and preventing harm. This necessitates precise parameters for what constitutes appropriate restrictions, in accordance with Article 19(2), which includes grounds such as sovereignty, security, public order, decency, morality, and contempt of court.²² At the same time, proactive actions such as increasing media literacy, critical thinking, and fact-checking procedures are required to fight misinformation without restricting legitimate opinion²³.

The fight over free speech and hate speech in India echoes bigger issues among constitutional democracies: how to maintain vigorous free expression while preventing it from becoming a weapon against vulnerable people. In the absence of a specific hate speech statute, judicial interpretation and piecemeal implementation of IPC prohibitions serve as the principal safeguard, resulting in ambiguities. As the Supreme Court and Law Commission have stated, India urgently needs a clear legislative framework that defines hate speech, establishes thresholds for limitation, and implements procedural safeguards to prevent misuse²⁴. Until then, the tension between Article 19(1)(a) and Article 19(2) will remain one of the most contentious areas in Indian constitutional law.

²⁰ Representation of the People Act, 1951, Sections 123(3), 123(3A).

²¹ Human Rights Watch, *Violent Cow Protection in India: Vigilante Groups Attack Minorities* (2019).

²² Article 19(2), Constitution of India

²³ Law Commission of India, *Report on Hate Speech* (2017)

²⁴ *Bennett Coleman & Co. v. Union of India* (1973) 2 SCC 788.

VI. FREEDOM OF SPEECH IN DIGITAL ERA

The digital era has significantly altered the contours of the right to free speech and expression guaranteed by Article 19(1)(a) of the Indian Constitution.

Unlike conventional modes of expression, the internet allows people to share their thoughts, mobilize movements, and access information in real time and from anywhere. This expanded digital realm, however, has presented significant obstacles to reconciling free expression with the reasonable constraints provided under Article 19(2).

1. CENSORSHIP IN DIGITAL SPHERE

Governments have regularly used legislative instruments to regulate online content. The most notable example is Section 69A of the Information Technology Act of 2000, which authorizes the state to restrict public access to any material in the interests of sovereignty, security, public order, and other comparable reasons.²⁵ This rule has been controversially applied in cases such as the 2020 blockade of Chinese mobile applications, which was justified by national security concerns.²⁶ While the government claims that such actions fall within the ambit of Article 19(2), critics say that they lack transparency and due process.

2. RETALIATION AND CHILLING EFFECT

Another big issue in the digital age is the danger of retaliation against those who express criticism online. Social media users, journalists, and activists have faced legal action, trolling, harassment, and even physical violence as a result of their online statements²⁷. For example, sedition charges have sometimes been cited for critical remarks against the government, notwithstanding the Supreme Court's warning in *Kedar Nath Singh v. State of Bihar* (1962) that only speech encouraging violence or public disorder might be charged under sedition statutes. Such threats have a chilling effect on citizens, who self-censor to avoid future penalties. The Supreme Court recognized the stifling effect in *Sakal Papers v. Union of India* (1962), where it concluded that restrictions affecting journalistic freedom implicitly constrained Article 19(1)(a). In the digital arena, this philosophy takes even greater relevance, as millions rely on the internet for expression and communication.

²⁵ Section 69A, Information Technology Act, 2000.

²⁶ Ministry of Electronics and Information Technology, Press Release on Ban of Mobile Apps (2020).

²⁷ Human Rights Watch, Report on Online Harassment in India (2019).

3. HATE SPEECH, MISINFORMATION AND FAKE NEWS

The rise of hate speech and misinformation on social media platforms has presented a significant threat to free expression in the digital age. Hate speech frequently blurs the boundary between free expression and unlawful speech that incites violence or discrimination. Misinformation, particularly during events such as the COVID-19 pandemic, demonstrated the dangers of unchecked online content. Although free speech protects diverse viewpoints, it cannot extend to deliberate falsehoods that endanger public health or national security.²⁸ To address this, the Government introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which impose obligations on intermediaries to remove unlawful content.²⁹ While intended to regulate harmful speech, these rules have been criticized for granting the executive excessive control over digital platforms, raising concerns about free expression.

4. INTERNET SHUTDOWNS

Internet shutdowns are another contentious instrument used by governments. In recent years, India has had the highest number of shutdowns in the world, which are frequently justified by concerns about public order and national security³⁰. The Supreme Court ruled that access to the internet is necessary for free speech and expression, and that indefinite internet shutdowns are illegal. However, the Court did not identify the internet as a basic right, leaving some ambiguity for future instances. The digital age necessitates a delicate balancing act: safeguarding the freedom to express oneself online while also addressing valid concerns about security, public order, and social harmony. Courts have generally stated that limits must be "reasonable" and balanced. Promoting media literacy, establishing independent fact-checking institutions, and ensuring open government accountability are critical steps toward protecting free speech while preventing harmful usage of digital platforms.

VII. REASONABLE RESTRICTIONS UNDER ARTICLE 19(2)

While Article 19(1)(a) of the Constitution protects the fundamental right to free speech and expression, it is not an absolute right. The founders of the Constitution understood that unrestricted speech may imperil sovereignty, security, public order, and social harmony. As a result, Article 19(2) allows the state to impose "**reasonable restrictions**" on fundamental

²⁸ UNESCO, Policy Brief on Fake News and Disinformation (2020).

²⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

³⁰ Access Now, Report on Global Internet Shutdowns (2022)

freedom in the sake of certain goals. The term "reasonable" assures that the constraints are *neither arbitrary or disproportionate*, and that they remain *appropriate to the legitimate goal pursued*.

Grounds for Restrictions

a) Sovereignty and Integrity of India

This ground was added by the 16th Constitutional Amendment Act, 1963, following secessionist movements in certain regions.³¹ Any speech or expression that undermines the unity or territorial integrity of the nation can be restricted. For example, advocacy for secession or promotion of armed rebellion against the State would not enjoy constitutional protection.

b) Security of the State

Freedom of speech cannot extend to speech that endangers the security of the State. The Supreme Court has clarified that only speech that incites violence, rebellion, or public disorder amounts to a threat.

c) Public Order

The term public order is wider than “security of the State” and refers to peace, safety, and tranquility in society. Speech that disrupts public order — such as inflammatory speeches or communal hate propaganda — can be restricted.

d) Decency and Morality

Restrictions on the grounds of decency and morality are intended to prevent obscenity and protect societal values. The interpretation of obscenity has evolved over time, particularly with changing social standards.

e) Defamation

The right to free speech does not include the right to defame others. Article 19(2) explicitly allows restrictions to protect the reputation of individuals.

f) Incitement to an Offence

Speech that incites the commission of an offence is not protected. This ensures that expression does not cross into active provocation of unlawful acts

g) Contempt of Court

Speech that scandalizes or lowers the authority of the judiciary can be restricted to maintain public confidence in the administration of justice

³¹ The Constitution (16th Amendment) Act, 1963

VIII. JUDICIAL TESTS

1. THE REASONABILITY TEST

In *State of Madras v. V.G. Row (1952)*, the Supreme Court established that limits must be "reasonable," that is, they must strike a balance between individual rights and community interests.³² The Court highlighted that reasonableness should be considered objectively, taking into account the nature of the right, the aim of the restriction, and the current circumstances.

2. THE PROPORTIONALITY TEST

In current constitutional law, the proportionality test has become the standard for assessing limits. In *Justice K.S. Puttaswamy v. Union of India (2017)*, the Supreme Court ruled that any restriction on basic rights must be legitimate, necessary, and proportionate to the goal pursued.³³ This ensures that unreasonable or unjust limitations are overturned.

IX. COMPARATIVE PERSPECTIVE ON FREEDOM OF SPEECH

The right to free speech is internationally recognized, although its application varies by jurisdiction, reflecting each society's historical, political, and cultural environment.

In **the United States**, the First Amendment guarantees freedom of speech and expression, with limited restrictions for incitement to unlawful action, obscenity, and defamation.³⁴ The US Supreme Court has consistently favored individual liberty, with judgments like *Brandenburg v. Ohio (1969)* setting the high threshold for limiting speech only when it incites violent violence.

In **India**, Article 19(1)(a) provides free speech, but reasonable restrictions apply under Article 19(2).³⁵ These grounds include India's sovereignty and integrity, public order, decency, morality, and contempt of court.³⁵ The Indian model reflects a balancing of liberty and social responsibility, as evidenced by *Romesh Thappar v. State of Madras (1950)*, in which the Supreme Court overturned pre-censorship on publications while acknowledging reasonable reasons for restriction.

³² *State of Madras v. V.G. Row*, AIR 1952 SC 196

³³ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

³⁴ U.S. Constitution, First Amendment, 1791

³⁵ Constitution of India, Article 19(2)

Article 10 of the **European Convention on Human Rights (ECHR)** protects freedom of expression, but it can be limited for justifiable reasons, such as defending national security or others' rights.³⁶ The European Court of Human Rights applies a proportionality criteria, which ensures that restrictions are narrowly defined and justified.

In conclusion, the United States adopts a near-absolute paradigm, while India and Europe use a qualified and proportionality-based approach that balances freedom and societal interests.

X. EMERGING ISSUES AND CHALLENGES

1) Digital rights, social media regulation, and online misinformation

The internet revolution has changed who can speak, how speech spreads, and how rapidly public opinion emerges. The vast reach of internet platforms raises important considerations concerning the scope of digital rights and the obligations of intermediaries (platforms) that host user material. In India, the legal framework for platform regulation is primarily defined by the Information Technology Act of 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021 (the "2021 IT Rules"), which impose due-diligence obligations on intermediaries and a grievance/notice-take-down regime for digital media and social platforms. These Rules require intermediaries to implement access control mechanisms, appoint grievance officers, and follow transparency/reporting norms; they also introduce a limited "traceability" obligation for trace-back of originators in certain criminal matters—an issue that raises privacy and free-speech concerns.³⁷

Misinformation and "fake news" exacerbate the regulatory problem. Unchecked incorrect content can sway elections, worsen communal tensions, or endanger public health (for example, pandemic-related misinformation). While the Supreme Court overturned Section 66A of the IT Act for being unclear (protecting digital expression from overbroad prosecution), it did affirm that digital communication might be regulated for incitement or public order grounds if carefully and clearly defined.³⁸ Platforms' dependence on content-moderation standards, which are typically private, opaque, and implemented at scale, leads to inconsistent speech regulation and, in some cases, over-removal (chilling speech) or under-enforcement (enabling harmful misinformation to persist). Civil society organizations, journalists, and legal

³⁶ European Convention on Human Rights, Article 10

³⁷ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Ministry of Electronics & IT).

³⁸ striking down Section 66A IT Act

scholars advocate for increased transparency, due process, and independent scrutiny of platform moderation.³⁹

2) Balancing free speech vs. public order in modern India

India's constitutional structure protects free expression (Article 19(1)(a)) while also allowing for reasonable restrictions on public order, security, and other considerations (Article 19(2)). Courts have frequently emphasized contextual and proportionality analyses: limits must be reasonable, necessary, and proximately related to preventing the alleged harm. The Supreme Court's decisions show that the judiciary favors robust public discourse but will allow curbs where speech is likely to produce imminent violence or a direct threat to public order.

In the digital age, the balance is more difficult because online speech may spread quickly and cause widespread disruptions; but, harsh limitations (e.g., protracted internet shutdowns) have serious consequences for rights and livelihoods. In *Anuradha Bhasin v. Union of India*, the Court ruled that access to the internet is essential to free speech and that shutdown orders must be transitory, necessary, proportionate, and subject to judicial review; the verdict also required the disclosure and transparency of shutdown orders. Thus, public-order concerns are still valid, but any reduction must be carefully limited and subject to scrutiny.

3) Privacy, AI-generated content, and freedom of profession in the digital economy

The right to privacy, recognized as a fundamental right by the Supreme Court in *Justice K.S. Puttaswamy (2017)*, has become central to digital-speech questions. Personal data processing, platform traceability orders, and mandated data retention policies implicate privacy interests of speakers and intermediaries alike. India's Digital Personal Data Protection Act, 2023 (DPDP Act) now sets a statutory baseline for personal data processing, obligations of data fiduciaries, and individual rights (consent, correction, grievance redress), although critics note exemptions and implementation concern⁴⁰.

At the same time, AI-generated content (deepfakes, synthetic audio/video) creates new privacy, defamation, and consent concerns: AI can generate realistic but fabricated content that fraudulently connects voice or action to a person, jeopardizing reputational and informational integrity. Governments and platforms are experimenting with detection criteria, required labelling, and removal requirements, but these regulatory measures must be carefully balanced

³⁹ Reports and commentary on platform moderation, transparency and content governance; see Law & policy analyses collected after 2021 IT Rules

⁴⁰ The Digital Personal Data Protection Act, 2023 (Government of India).

to prevent suppressing legitimate speech, satire, or artistic expression.⁴¹

Freedom of profession/business (Article 19(1)(g)) intersects with the digital economy: online creators, journalists, and platform workers rely on digital platforms for a living, but platform policies (demonetization, de-platforming) can have an immediate impact on their economic rights, raising concerns about due process, fairness, and the need for new forms of economic regulation or social protections for gig/creator workers⁴².

4) Fake news, online misinformation, and AI-generated speech

Fake news and misinformation remain significant policy challenges. False narratives can be perpetuated by recommendation algorithms and bot networks, and AI tools can now accelerate and plausibly spread misinformation. The state's response has been multifaceted, including platform takedowns (voluntary or compelled), public advisories, reporter verification, and legislative attempts (such as the 2021 IT Rules' grievance resolution and traceability). However, enforcement frequently faces slow replies, uneven application across platforms, and the possibility of overbroad takedowns that suppress legitimate dissent.⁴³

AI-generated speech heightens the risk since synthetic content might impersonate public leaders or private individuals, complicate provenance, and elude traditional detection tools. Policy responses under consideration globally include

- i. mandatory watermarking/labelling of synthetic media,
- ii. strengthened accountability and transparency obligations for platforms,
- iii. improved media literacy and public-interest notice campaigns, and
- iv. targeted criminal provisions for deliberate political mischief using deepfakes. India has begun wrestling with these measures in advisory and policy forums, but comprehensive statutory regulation relevant to deepfakes has to mature.⁴⁴

5) Balancing national security with civil liberties

National security is a primary reason for regulating speech, particularly when exposure threatens military operations, intelligence, or key infrastructure. Section 69A of the Information Technology Act (limiting access to information for security/public order) and

⁴¹ National Strategy for Artificial Intelligence (NITI Aayog) and government policy analyses on AI risks (deepfakes, misinformation)

⁴² Scholarship and policy commentary on gig economy rights and platform deplatforming effects — see sector reports and labor law analyses.

⁴³ IT Rules 2021 (intermediary obligation)

⁴⁴ Recent incidents (deepfake political videos) and policy advisories; international discussions on watermarking and AI transparency (NITI Aayog, industry reports).

other penal laws can be used to address online content that threatens state interests. However, national-security justifications run the risk of being used too broadly to suppress dissent or conceal government malfeasance. The constitutional and jurisprudential response (as the Supreme Court has repeatedly underlined) is proportionality, necessity, transparency, and reviewability: To prevent abuse, security constraints must be demonstrably essential, tightly limited, and subject to independent review.⁴⁵

The Court's recent emphasis on posting orders for internet shutdowns (in *Anuradha Bhasin*) and its analysis of arbitrary takedowns show a willingness to impose transparency even where security is at stake. At the same time, justified secrecy for national security cannot be jeopardized; thus, the difficult policy problem is developing effective but minimally invasive policies (with safeguards like judicial review, legislative supervision, or sunset provisions) that protect both the nation and civil liberties⁴⁶

XI. JUDICIAL INTERPRETATIONS

ROMESH THAPAR vs STATE OF MADRAS (1950)⁴⁷

Facts:

The person who made the request was the one who printed, published and edited a journal in English called *Cross Roads* in Bombay. The *Cross Roads* journal was banned in the former State of Madras under Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949. To challenge this ban, the person filed a legal petition with the Supreme Court. They argued that the powers granted under the Act went too far and limited freedom of expression as guaranteed by Article 19 of the Constitution of India. In response, the State argued that the restriction on the journal was necessary for public safety and maintaining public order. This was seen as being in line with safeguarding the State's security, which is considered a reasonable limit on freedom of expression according to Article 19(2).

Issues Raised

- 1) Does the order issued by the Madras Government infringe upon the petitioner's fundamental right of freedom of speech and expression?

⁴⁵ Blocking rules under Section 69A (Information Technology Act) and Blocking Rules, 2009; see statutory text and rules

⁴⁶ transparency & review for shutdowns; discussion on proportionality and necessity

⁴⁷ <https://indiankanoon.org/>

- 2) Is Section 9(1-A) of the challenged Act (Madras Maintenance of Public Order Act) valid under Section 13(1) of the Constitution, considering its potential inconsistency with the petitioner's fundamental right to freedom of speech and expression?
- 3) Can the petitioner directly approach the Supreme Court of India under Article 32 of the Constitution for relief, or is it necessary to first approach the High Court of the respective State under [Article 226](#)?

Judgement

The order of the Madras Government prohibiting the entry and circulation of the Journal Cross Roads in the State of Madras was quashed. The order of the Madras Government was held to be in violation of the petitioner's fundamental right under Article 19(1)(a) of the Indian Constitution. Section 9(I-A) of the impugned Act authorizing the imposition of restrictions for the purpose of securing public safety and maintenance of public order does not come within the scope of Article 19(2) and was therefore held to be void and unconstitutional.

SHREYA SINGHAL vs. UNION OF INDIA (2015)⁴⁸

Facts

In the year 2012, two girls named as Shaheen Dhada and Rinu Srinivasan, was arrested by the Mumbai police. The arrest was made for expressing their displeasure at a bandh which was called in by the members of Shiv Sena people in Maharashtra for the incident of Shiv Sena chief Bal Thackeray's death. The accusation made against the petitioners was that they were involved in posting their comments on the Facebook and liking the comment at the same time which resulted in widespread public protest. The petitioners by the way of Public Interest, filed the writ petition under Article-32 of the Constitution claiming that section 66A of IT Act 2000 violates the right of freedom of speech and expression of an individual.

Issues involved:

- 1) Whether Sections 66-A, 69-A and 79 of the IT Act are constitutionally valid?
- 2) Whether Section 66A of IT Act is violative of fundamental right of freedom of speech and expression?

⁴⁸ <https://www.legalserviceindia.com/>

Judgment:

The court said: “Every expression used is nebulous in meaning. What may be offensive to one may not be offensive to another”. Therefore, the interpretation was held to be subjective in nature. Hence the court ordered 66A as violative of right to freedom of speech and expression and is not covered under the grounds of reasonable restrictions given under Article 19(2). The court also held that blocking of information for public access given under Section 69A of IT Act is constitutionally valid in nature.

KEDARNATH SINGH vs, STATE OF BIHAR (1962)⁴⁹

Facts:

Kedarnath Singh, a leader of the Forward Communist Party in Bihar, made a public speech that was critical of the government, specifically targeting the Congress Party’s capitalist policies. In his speech, he used strong language to criticise the ruling party and its policies. He referred to the Congress Party in derogatory terms and suggested that there was a need for a revolution to overthrow the government. The authorities, seeing his speech as a threat to public order and peace, filed charges against him under Section 124A (sedition) and Section 505 (inciting public mischief) of the IPC. Singh was convicted by the trial court and sentenced to one year of rigorous imprisonment. Dissatisfied with the decision, Singh appealed to the High Court of Patna. The High Court upheld his conviction, dismissing his appeal. Singh then appealed to the Supreme Court, challenging the constitutional validity of Section 124A of the IPC and arguing that it infringed upon his fundamental right to freedom of speech under Article 19(1)(a) of the Constitution.

Issues Involved:

- 1) Constitutionality of Section 124A of the IPC
- 2) Scope of Sedition
- 3) Reasonable Restrictions
- 4) Interpretation of “Disaffection”

Judgement:

In Kedarnath Singh v. State of Bihar (1962), the Supreme Court upheld the constitutionality of Section 124A of the IPC (sedition) but gave it a narrow interpretation to safeguard free speech

⁴⁹ <https://lawbhoomi.com/>

under Article 19(1)(a). The Court clarified that sedition applies only when speech or acts incite violence or create a tendency to disturb public order, and that mere criticism or disaffection against the government does not amount to sedition. By restricting its scope to cases of incitement to violence and public disorder, the Court ensured that political dissent and legitimate criticism remain protected. While Kedarnath Singh's own conviction was upheld on the ground that his speech had the tendency to incite violence, the judgment remains significant for balancing state security with freedom of expression.

JUSTICE K S PUTTASWAMY vs. UNION OF INDIA⁵⁰

Facts:

A retired High Court Judge K.S. Puttaswamy filed a petition in 2012 against the Union of India before a nine-judge bench of the Supreme Court challenging the constitutionality of Aadhaar because it is violating the right to privacy which had been established on reference from the Constitution Bench to determine whether or not the right to privacy was guaranteed as an independent fundamental right under the constitution of India following past decisions from Supreme Court benches.

Issues:

- 1) Whether or not there is any fundamental right of privacy under the Constitution of India?
- 2) Whether or not the decision made by the Court that there are no such fundamental rights in *M.P. Sharma & Ors. vs. Satish Chandra, DM, Delhi & Ors.* and also, in *Kharak Singh vs. The State of U.P.*, is that the correct expression of the constitutional position?

Judgment:

The nine-judge bench delivered its unanimous judgement, which recognised the right to privacy as a fundamental right under the Indian Constitution. Justice D.Y. Chandrachud, delivering the majority opinion, held that the right to privacy is protected under Article 21 (Right to Life and Personal Liberty) and is an essential aspect of the freedoms guaranteed by Part III of the Constitution.

The court overruled the earlier decisions in *M.P. Sharma v. Satish Chandra* and *Kharak Singh*

⁵⁰ <https://lawlex.org/>

v. State of Uttar Pradesh, both of which had denied privacy as a fundamental right. The judgement clarified that privacy is integral to the dignity and autonomy of individuals and cannot be compromised without adequate justification. The court established that any encroachment on the right to privacy must meet the following three conditions:

- **Legality:** There must be a law that authorises the invasion of privacy.
- **Necessity:** The state must have a legitimate aim to justify the infringement.
- **Proportionality:** The means used to achieve the aim must be proportional to the infringement.

The judgement also emphasised that privacy extends to all spheres of life, including personal, familial, and sexual orientation. It underscored that sexual orientation is a core aspect of an individual's privacy, and any discrimination based on it violates the right to dignity and equality under Articles 14 and 15 of the Constitution.

FUTURE TREND AND RECOMMENDATIONS

1. Evolving Free Speech Jurisprudence

With the increasing growth of digital platforms, the next frontier of free speech lawsuits will focus on algorithmic moderation, AI-generated content, and platform liability. Courts will increasingly be asked to decide how far social media sites can regulate speech and whether such regulation is a "reasonable restriction" under Article 19(2). India may require a Digital Free Speech Code that strikes a balance between user rights and platform accountability.

2. Balancing Free Speech with Misinformation Control

The surge of fake news, deepfakes, and hate speech poses serious threats to democratic discourse and public order. Future regulatory frameworks should adopt a proportionality test—ensuring restrictions are necessary, narrowly tailored, and least restrictive. Independent oversight bodies (rather than only government control) could monitor harmful content while avoiding excessive censorship.

3. Constitutionalization of Digital Rights

Just as the Puttaswamy judgment recognized the Right to Privacy, the Supreme Court may soon articulate a broader framework for digital rights under Articles 19 and 21. This could include protection of online anonymity, net neutrality, and the right to access information, which are increasingly vital in the digital economy.

4. Revisiting Sedition and Outdated Laws

The ongoing misuse of Section 124A (sedition) and colonial-era statutes emphasizes the critical need for change. Future constitutional jurisprudence should redefine or repeal sedition, limiting it to acts that directly promote violence or armed insurrection. This would bring Indian law into line with international free speech principles.

Recommendations

- Establish explicit criteria for online speech regulation to avoid ambiguity and arbitrariness.
- Add a proportionality test to Article 19(2) jurisprudence for all prohibitions
- Repeal or alter Section 124A of the Indian Penal Code (sedition) to line with democratic free speech values.
- Create an independent digital rights commission to handle online speech conflicts.
- Promote media literacy programs to help citizens critically assess falsehoods.
- Ensure transparency in government-imposed internet shutdowns through time-bound court review
- Encourage self-regulation of OTT platforms with little state meddling

CONCLUSION

Article 19 of the Indian Constitution embodies one of the most significant pledges to *democracy and individual liberty*. It enshrines *freedoms* like as *speech, expression, association, mobility, residence, and profession*, which serve as the foundation for participatory governance and ensure that citizens are more than just subjects of the state, but active participants in creating its future. These liberties promote the flow of ideas, allow for dissent, and encourage creativity and invention, ultimately strengthening the very underpinnings of India's democratic experiment.

Yet, the drafters of the Constitution were acutely aware that unrestricted liberty could *jeopardize social peace, national integrity, and public safety*. As a result, **Article 19(2)** and related clauses established the idea of "**reasonable restrictions**," which allows the state to limit certain liberties in carefully defined instances. This delicate balance of liberty and order has long been the hallmark of Indian constitutional doctrine. Over the years, the judiciary has played an important role in determining the scope of fundamental freedoms. The courts have reaffirmed, through landmark decisions such as *Romesh Thappar v. State of Madras*,

Kedarnath Singh v. State of Bihar, and Shreya Singhal v. Union of India, that while free speech and expression are sacred, they must not be used to incite violence, spread hatred, or destabilize the state.

This judicial journey reveals that freedom is not static, but rather evolves in response to societal requirements. In the current era, this progress is most obvious in the digital domain. *Social media platforms, internet news channels, and artificial intelligence* have revolutionized the way information is created and consumed. While these technologies have increased the number of voices and democratized access to information, they have also created new difficulties such as *online misinformation, fake news, hate speech, and algorithmic manipulation of public opinion*. *Privacy concerns, surveillance technologies, and AI-generated content* all compound the situation. These concerns cannot be fully addressed by existing legal theories alone; they necessitate new, forward-thinking frameworks that preserve constitutional rights while protecting society from new threats.

Thus, the future of Article 19 lies in a subtle recalibration—one that recognizes liberty as the heart of democracy while simultaneously acknowledging that liberty entails responsibilities. Laws and regulations must be proportionate, transparent, and responsible, so that they do not become tools of censorship or political suppression. Citizens must simultaneously cultivate media literacy, critical thinking, and respect for pluralism in order to maintain the spirit of free expression in an age of abundant information.

To summarize, **Article 19** continues to be a living guarantee of rights, growing throughout time but being firmly based in democratic principles. Free speech is the foundation of Indian democracy, yet it is not absolute. Its protection necessitates vigilance, judicial sensitivity, and legislative vision. As India faces the difficulties of the digital age, one timeless lesson remains clear: liberty and order are not rivals, but rather complementing foundations of a just and inclusive constitutional system.

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