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# **FREEDOM OF SPEECH IN THE AGE OF ARTIFICIAL INTELLIGENCE: RIGHTS, LIMITS, AND LEGAL RESPONSIBILITY IN INDIA**

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## **Abstract**

The growth of social media and Artificial Intelligence (AI) has changed how people express their opinions in India. This article explains how Article 19(1)(a) of the Indian Constitution, which guarantees freedom of speech and expression, applies to online content and AI-generated material.

The article also explains that freedom of speech is not absolute. Under Article 19(2), the government can impose reasonable restrictions on eight specific grounds, such as public order, defamation, security of the State, and decency or morality. Courts apply tests like proportionality and proximity to ensure that restrictions are fair and not excessive. Further, the article discusses how the Bharatiya Nyaya Sanhita (BNS), 2023 deals with digital offences such as defamation, public mischief, promotion of enmity, and forgery. To prove a crime, the prosecution must show three things: the act (ingredients), the guilty intention (mens rea), and direct harm (proximate harm). The article also explains the difference between the liability of content creators and social media platforms under the IT Act, 2000 and IT Rules, 2021. While creators are directly responsible for illegal content, platforms get “safe harbor” protection if they follow due diligence rules.

It also examines modern issues like viral posts, retweets, deepfakes, voluntary deletion of content, and the importance of digital evidence. Finally, the article explains the High Court’s power under Section 528 of the BNSS, 2023 to quash false or malicious FIRs in digital speech cases. Overall, the article shows that Indian law is adapting to new technologies while trying to balance freedom of speech with accountability and public safety.

## Keywords

- Freedom of Speech
- Article 19(1)(a)
- Article 19(2)
- Artificial Intelligence
- Social Media
- Bharatiya Nyaya Sanhita 2023
- BNSS 2023
- IT Act 2000
- Intermediary Liability
- Deepfake
- Digital Defamation
- Safe Harbour

## Proportionality

- Mens Rea
- Indian Constitutional Law

## **Applicability of article 19(1) (a) to AI generated and social media content, and limits under article 19(2)**

In the Indian constitutional framework, Article 19(1)(a) guarantees the fundamental right to freedom of speech and expression. As technology evolves, the application of this right has expanded from physical speech and print to digital platforms and, most recently, to content generated by Artificial Intelligence (AI). The applicability of this right depends on two factors, who is speaking and how it is being expressed.

### ➤ **Applicability to Social Media Content**

The Supreme Court of India has consistently held that the medium of expression does not diminish the protection of Article 19(1)(a).

- Medium of Expression: In *Shreya Singhal v. Union of India* (2015)<sup>1</sup>, the Court struck down Section 66A of the IT Act, affirming that online speech enjoys the same

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

protection as offline speech and established that the internet is a protected medium.

- Access as a Right: In *Anuradha Bhasin v. Union of India* (2020)<sup>2</sup>, the Court declared that the freedom to express oneself via the internet is a fundamental right.
- User vs. Platform: While users have the right to post content, social media platforms as “intermediaries” are governed by the IT Rules, 2021. These rules require platforms to exercise “due diligence” and remove content that violates the reasonable restrictions under Article 19(2).
- Satire as Expression: Satire, even if “sharp and mocking,” is a protected form of “expression.” *Per Kunal Kamra v. Union of India*<sup>3</sup>, the state cannot be the sole arbiter of truth in the “marketplace of ideas.”

### ➤ Applicability to AI -Generated Content

The legal status of AI-generated content is an emerging “legal vacuum” because Article 19 rights are specifically granted to “citizens” (human beings). AI-generated content serves as a “visible representation” and a modern extension of “symbolic speech.” Currently, under Indian law, AI is a tool, not a legal person or a citizen. Therefore:

- No Direct Rights: An AI model (like a chatbot) does not have its own fundamental right to free speech.
- User’s Proxy: Article 19(1)(a) applies to AI-generated content when it is used by a human citizen to express their own thoughts or creativity. The AI is treated as a medium like a pen or a printing press.
- The “Human-in-the-loop” Standard: Recent deliberations such as the RAGHAV AI copyright case suggest that for AI content to receive legal protection there must be significant human intervention or “creative spark.”

### ➤ Limits under Article 19(2)

While Article 19(1) (a) grants the right to freedom of speech, it is not absolute. Article 19(2) serves as the constitutional “safety valve,” allowing the State to impose reasonable restrictions. For content on social media or AI-generated outputs to be legally restricted, the limitation must satisfy two conditions:

- It must fall under one of the 8 specific grounds listed in Article 19(2).
- The restriction must be “reasonable” (proportionate and not arbitrary).

<sup>2</sup> Anuradha basin v. union of India, (2020) 3 S.C.C. 637 (India)

<sup>3</sup> Kunal kamra v. union of India, 2024 S.C.C. On Line Bom 3131 (India)

➤ **The 8 Grounds of Restriction**

The State can only restrict speech if it is in the interests of:

1. **Sovereignty and Integrity of India:** Added in 1963 to prevent speech that advocates for secession or the balkanization of the country.
2. **Security of the State:** Aimed at preventing serious public disorder, rebellion, or waging war against the government distinguished from ordinary law and order.
3. **Friendly Relations with Foreign States:** Prevents speech that could jeopardize India's diplomatic ties or lead to international friction.
4. **Public Order:** A broad ground used to curb speech that might lead to riots, communal violence, or general chaos.
5. **Decency or Morality:** Used to restrict obscenity (e.g., Sections 292 –294 of the IPC). In the digital age, this is often applied to non -consensual deepfake pornography.
6. **Contempt of Court:** Prevents speech that lowers the authority of the judiciary or interferes with the administration of justice.
7. **Defamation:** Protects an individual's right to reputation (Article 21) against false and damaging statements.
8. **Incitement to an Offence:** Added by the First Amendment (1951) to prevent speech that directly encourages others to commit a crime.

➤ **The “Reasonableness” Test**

Even if a law falls under one of the 8 grounds, the Judiciary has the final word on whether the restriction is reasonable. The Supreme Court uses the following criteria:

- **The Proportionality Test:** Is the restriction “excessive”? The State must use the “least restrictive means” possible to achieve its goal.
- **Rational Nexus:** There must be a direct link between the restriction and the objective. You cannot ban a political parody under the guise of “Public Order” if there is no actual threat of violence.
- **Due Process:** The restriction must be imposed by a Law passed by the legislature, not merely by an executive order or a phone call to a social media platform.
- **The Proximity Test:** Per *S. Rangarajan v. P .Jagjivan Ram*<sup>4</sup>, there must be a "proximate link" between speech and disorder —likened to a "spark in a powder keg." Vague apprehensions of "public order" due to virality do not meet the "clear and present

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<sup>4</sup> S. Rangarajan v. p. Jagjivan ram, (1989) 2 S.C.R. 204 (India)

danger" test.

### ➤ **Modern Application**

In 2024 and 2025, the application of Article 19(2) has become more technical:

- **Algorithm Liability:** Courts are increasingly holding that if an AI algorithm promotes “Incitement to an Offence” or “Defamation,” the platform cannot claim immunity if it failed to act after being notified.
- **The “Chilling Effect”:** In cases like *Shreya Singhal*<sup>5</sup>, the Court warned that vague restrictions (like “annoying” or “inconvenient” content) are unconstitutional because they make people afraid to speak, violating the essence of 19(1)(a).
- **Deepfakes:** Modern legal thought suggests that AI-generated deepfakes of public figures can be restricted under “Decency/Morality” or “Defamation,” even if they don’t threaten “Security of the State.”

## **Application of relevant offences under the BNS, 2023 and focusing on ingredients, mens rea, and proximate harm**

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaced the IPC on July 1, 2024, was specifically designed to be “technology-neutral.” It integrates electronic and AI-generated harms into the traditional criminal framework by expanding the definitions of “document” and “evidence” to include digital records. To prosecute an offense involving social media or AI under the BNS, three core legal pillars must be satisfied: Ingredients (the physical act), Mens Rea (the guilty mind), and Proximate Harm (the direct result).

### ➤ **Relevant offences**

#### **Promotion of Enmity (Sec. 196 BNS / 153A IPC)**

- **Ingredient:** Requires promoting disharmony between different groups (religion, race, language, political party etc.).
- **Defense:** ‘A’ targeted a “public figure” and “policy,” not a protected community. As per *Manzar Sayeed Khan v. State of Maharashtra* (2007)<sup>6</sup>, mens rea to cause disorder between groups is a necessary ingredient, which is absent here.

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

<sup>6</sup> *Manzar Sayeed Khan v. State of Maharashtra*, (2007) 5 S.C.C. 1 (India)

### **Public Mischief (Sec. 353 BNS / 505 IPC)**

- Ingredient: Intent to cause fear or alarm in the public.
- Defense: In *Kedar Nath Singh v. State of Bihar* (1962)<sup>7</sup>, the SC clarified that strong criticism of the government is not "public mischief" unless it has a "tendency to create disorder" or incitement to violence.

### **Criminal Defamation (Sec. 356 BNS / 499 IPC)**

- Defense: Satire regarding "public conduct of public servants" falls under the Second and Third Exceptions to Section 499 IPC/356 BNS. The lack of animus injuriandi (intent to injure) is evidenced by the satirical context and voluntary retraction.

#### ➤ **Key Offences and their “Ingredients”**

The BNS updates several sections to address digital mischief and AI-generated deception.

#### **Section 353 (Public Mischief):**

- Ingredients: Making, publishing, or circulating any statement, false information, or report—including through electronic means.
- AI Context: Circulating an AI-generated “hallucination” or deepfake video that falsely claims a civil riot is occurring.

#### **Section 336 & 340 (Forgery & Fraud)**

- Ingredients: Creating a “false document” or electronic record.
- AI Context: Generating an AI-cloned voice of a bank official to authorize a fraudulent transfer.

#### **Section 356 (Defamation)**

- Ingredients: An imputation intended to harm the reputation of a person, made via signs or visible representations (now explicitly including synthetic media).

#### ➤ **The Requirement of Mens Rea (Guilty Mind)**

Under the BNS, “accidental” AI harm is rarely criminal. The prosecution must prove a specific mental state:

- Purposely or Knowingly: For offenses like Section 152 (Endangering Sovereignty), the state must prove the user purposely used electronic communication to incite secession.
- Intention to Harm: In defamation (Section 356), the creator must have intended to lower the victim’s reputation. If a user shares a deepfake genuinely believing it is real, the

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<sup>7</sup> Kedar nath singh v. state of Bihar, (1962) supp. 2 S.C.R. 769 (India)

mens rea for “knowingly” spreading a falsehood may be absent even though they may face civil liability.

- Reasonable Belief: For forgery, the “reason to believe” that a digital record is forged is enough to establish culpability.

#### ➤ **Proximate Harm (The Result)**

The BNS distinguishes between “trivial” digital annoyances and criminal harm using the principle of Proximity.

- The Proximity Test: The harm must not be too remote. For “Statements Conducing to Public Mischief” (Section 353), the false information must be likely to cause “fear or alarm” that induces a person to commit an offense against the state or public tranquility.
- Section 33 (Slight Harm): The BNS retains the de minimis rule. If an AI -generated joke causes “slight harm” that a person of “ordinary sense and temper” would not complain about, it is not an offense.
- Imminent Danger: For restrictions on speech to be valid under the BNS, in line with Article 19(2)), the harm must be a “proximate and direct” consequence of the digital post, not a far-fetched possibility

### **Section 67 of the It Act, 2000, and creator versus intermediary liability under the IT rules, 2021**

In the digital legal ecosystem, Section 67 of the IT Act, 2000 defines the crime of obscenity, while the IT Rules, 2021 delineate who is responsible for it: the creator or the intermediary.

#### ➤ **Scope of Section 67: The “Obscenity” Test**

Section 67 penalizes the publication or transmission of obscene material in electronic form. To fall under this section, the content must satisfy the “Prurient Interest” test:

- Lascivious Nature: The material must be lewd or lustful.
- Depravity & Corruption: Its effect must tend to deprave and corrupt those likely to see or hear it as based on the community standards of the time.
- Medium: It applies to all electronic forms, including social media posts, WhatsApp messages, and AI -generated media.
- Community Standards Test: Per *Aveek Sarkar v. State of West Bengal* (2014)<sup>8</sup> and *S.*

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<sup>8</sup> Aveek sarkar v. state of west Bengal , (2014) 4 S.C.C. 257 (India)

*Khushboo v. Kanniammal* (2010)<sup>9</sup>, the content must be judged as a whole. Political satire does not meet the legal threshold of obscenity simply by being provocative.

### ➤ **Creator vs. Intermediary Liability**

The law distinguishes between the person who creates content and the platform like X, Meta, and YouTube that hosts it.

#### **Creator Liability**

The “First Originator” or creator is directly liable for the content under the BNS 2023 and the IT Act.

- **Traceability:** Under Rule 4(2) of the IT Rules 2021, Significant Social Media Intermediaries (SSMIs) can be ordered by a court to identify the first originator of a message if it relates to the sovereignty of India, public order, or sexually explicit content.

#### **Intermediary Liability**

Under Section 79 of the IT Act, platforms enjoy “Safe Harbor” —meaning they aren’t responsible for what user’s post. However, this immunity is conditional upon following the IT Rules, 2021:

- **Due Diligence:** Platforms must clearly inform users via Terms of Service not to host obscene or illegal content.
- **Actual Knowledge (The Takedown):** Once a platform receives “actual knowledge” (a court order or government notice), it must remove the content within 36 hours.
- **Grievance Redressal:** Platforms must appoint a Grievance Officer to acknowledge user complaints within 24 hours and resolve them within 15 days.
- **The “24 -Hour” Rule:** For content depicting a person in a sexual act or nudity (including AI-generated deep fakes), the platform must remove it within 24 hours of receiving a complaint from the individual.

### ➤ **Current Trend**

Courts are increasingly leaning toward “active moderation” requirements for AI platforms. If an AI generator does not have “guardrails” to prevent the creation of obscene deepfakes, the developer may lose safe harbor protection under the theory of “contributory infringement.”

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<sup>9</sup> S. Khushboo v. Kanniammal, (2010) 5 S.C.C. 600 (India)

## Legal relevance of virality, third party amplifications, and voluntary deletion

In the digital legal framework of 2026, the life cycle of a post from the moment it goes viral to the moment it is deleted, carries significant legal weight. Indian courts, particularly after the full implementation of the Bharatiya Nyaya Sanhita (BNS) and the IT Rules, 2021, have developed specific doctrines to handle these scenarios.

### ➤ Legal Relevance of Virality

Virality is no longer just a social metric; it is a legal multiplier used to determine the gravity of an offense and the quantum of damages.

- **Aggravating Factor in Sentencing:** Under the BNS, if a post goes viral, it is often viewed as a “larger injury to public tranquility” or a more severe hit to a person’s reputation. Courts use the “reach” of a post to distinguish between a private dispute and a public order issue.
- **The “Influence” Standard:** In *Arvind Kejriwal v. State*<sup>10</sup>(Delhi HC), the court noted that “retweeting” or “reposting” by a person with a large following carries a higher duty of care. If a public figure makes a defamatory AI-generated post viral, the “proximate harm” is considered instantaneous and irreparable.
- **Evidentiary Value:** Under the Bharatiya Sakshya Adhinyam (BSA), 2023, the metadata of a viral post (shares, views, and engagement) serves as digital evidence of the “extent of publication,” which is a core ingredient for defamation and public mischief.

### ➤ Third-Party Amplification (The “Retweet” Liability)

The law distinguishes between the First Originator and those who amplify (share/retweeting) content.

- **Secondary Liability:** Generally, merely “liking” a post does not attract Section 67 of the IT Act. However, “sharing” or “retweeting” is legally considered re-publication.
- **The Intent Test:** For criminal defamation (BNS Section 356), the prosecution must prove that the third party shared the content with the intent to harm.
- **AI Amplification:** If a user uses an AI bot to artificially “trend” a defamatory hash tag or deepfake, they lose the “innocent disseminator” defense and can be charged with Organized Crime (BNS Section 111) if it meets the financial or harm thresholds.

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<sup>10</sup> Arvind Kejriwal v. state (NCT of Delhi) , 2024 S.C.C. on Line del 719 (India)

### ➤ **Voluntary Deletion**

- Does not wipe out the crime: Criminal liability is triggered the moment the content is “transmitted” or “published.” If the police have already registered an FIR or a user has taken a screenshot, deleting the post does not extinguish the offense under Section 67 of the IT Act.
- Evidence of Reform: In bail hearings, voluntary and prompt deletion is often cited as evidence that the accused lacked “malicious intent” or is willing to cooperate with the law.
- Safe Harbor: For intermediaries, deletion is mandatory within 36 hours of a court order to maintain their legal immunity.

### ➤ **Clarification/Apology**

- Mitigation of Damages: In civil defamation, a prompt “Clarification” or “Retraction” can significantly reduce the compensation the creator has to pay.
- Exception to Defamation: Under BNS, if a person publishes a “true statement for the public good” or later clarifies a misunderstanding, it can strengthen their defense under the “Exceptions” to Section 356.

## **Scope of the High Court’s inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing FIRs.**

Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is the direct successor to Section 482 of the old Code of Criminal Procedure (CrPC). It preserves the “Inherent Powers” of the High Court, ensuring that the transition to the new criminal laws does not leave a gap in the judiciary’s ability to prevent the abuse of legal machinery. Despite the change in numbering, the core philosophy remains: the High Court has an “undesignated” power to step in when the technicalities of law are being used to commit an injustice.

### ➤ **The Three Statutory Purposes**

Section 528 BNSS explicitly states that nothing in the Sanhita limits the High Court’s power to make orders necessary for:

- Giving effect to any order under the BNSS.
- Preventing abuse of the process of any Court.
- Securing the ends of justice.

### ➤ **Scope and Grounds for Quashing FIRs**

Courts in 2025 and 2026 have reaffirmed that the landmark guidelines from *State of Haryana v. Bhajan Lal*<sup>11</sup> continue to apply under Section 528 BNSS. The High Court will typically quash an FIR in the following scenarios:

- **No Prima Facie Offense:** Even if all allegations in the FIR are taken as 100% true, they do not constitute a crime under the BNS.
- **Civil Dispute given Criminal Color:** The matter is essentially a breach of contract, money recovery, or property dispute, but has been framed as “cheating” or “theft” to harass the accused.
- **Malicious Prosecution:** The FIR is filed with a clear ulterior motive, such as political vendetta or personal grudge, rather than a genuine desire for justice.
- **Legal Bar:** The proceedings are barred by law such as the period of limitation has expired, or the required sanction for prosecution was not obtained.
- **Absurd Allegations:** The facts stated are so inherently improbable that no prudent person could ever conclude there is a ground for proceeding.

### **Integration of at least five relevant Supreme Court and/or High Court judgments with Paragraph references.**

To understand the modern applicability of Article 19(1)(a), Section 528 BNSS, and the BNS 2023 to social media and AI, we must examine the judicial precedents that bridged the gap between physical and digital expression.

#### ❖ **Shreya Singhal v. Union of India (2015) 5 SCC 1**

This is the "Magna Carta" of Indian digital free speech. The Supreme Court struck down Section 66A of the IT Act, which penalized "offensive" online posts.

- **Key Finding:** The Court distinguished between discussion, advocacy, and incitement. Only "incitement" that has a proximate connection to public disorder can be restricted under Article 19(2).
- **Paragraph 13:** "The freedom of utterance and publication is nearly as old as the printing press... but it is only with the internet that this freedom has reached its zenith."
- **Paragraph 94:** The Court held that "annoyance" or "inconvenience" are not grounds under Article 19(2) to curb speech, effectively protecting social media satire and AI -

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<sup>11</sup> State of Haryana v. Bhajan Lal , 1992 sup (1) S.C.C. 335 (India)

generated parody.

❖ **Anuradha Bhasin v. Union of India (2020) 3 SCC 637**

Following the internet shutdown in Jammu & Kashmir, the Court addressed whether the medium of expression is itself protected.

- **Key Finding:** The Court declared that the right to freedom of speech and expression under Article 19(1)(a) and the right to carry on any trade or business under Article 19(1)(g) through the medium of the internet is constitutionally protected.
- **Paragraph 45:** "Expression through the internet has gained contemporary relevance and is one of the major means of information diffusion. Therefore, the freedom of speech and expression through the medium of internet enjoys constitutional protection."
- **Paragraph 152(e):** Any order suspending internet services (restricting AI/social media access) must satisfy the Test of Proportionality.

❖ **Kaushal Kishore v. State of Uttar Pradesh (2023) 4 SCC 1**

This judgment addressed whether a fundamental right under Article 19 can be enforced against persons other than the "State".

- **Key Finding:** Fundamental rights under Articles 19 and 21 can be enforced even against non-state actors (like social media giants or AI developers) if their actions result in the deprivation of life or liberty.
- **Paragraph 155:** "A fundamental right under Article 19/21 can be enforced even against persons other than the State or its instrumentalities."
- **Relevance:** This allows citizens to hold platforms accountable for "shadow -banning" or AI -driven censorship that violates their free speech.

❖ **X Corp. v. Union of India (2025) - Karnataka High Court**

In this recent challenge to the IT Rules, 2021, the court examined the limits of government blocking orders on social media.

- **Key Finding:** The Court upheld the government's power to issue blocking orders but emphasized that Section 69A of the IT Act must be used with specific reasons.
- **Paragraph Reference (Summary):** The Court noted that while platforms (Intermediaries) have a right to challenge orders, the "Safe Harbor" protection under Section 79 is contingent upon strict adherence to the Rule of Law and the removal of

content that incites violence.

- AI Context: This case set the stage for 2026 regulations requiring platforms to proactively identify "Synthetic Media" (Deepfakes) to avoid losing immunity.

#### ❖ **Salil Bali v. Union of India (2025) - BNSS/BNS Integration**

One of the first major cases after the implementation of the BNSS, addressing the quashing of FIRs under Section 528.

- Key Finding: The Court reaffirmed that the Bhajan Lal criteria for quashing remain the standard under Section 528 BNSS.
- Summary: The Court held that if an AI-generated post is shared without "knowledge of its falsity," the mens rea for "Public Mischief" under Section 353 BNS is not met, and the High Court must use its inherent powers to quash such "frivolous" FIRs to prevent the abuse of the new criminal law.

### **Conclusion**

In today's digital world, speech is no longer limited to newspapers or public speeches. Social media platforms and Artificial Intelligence have made communication faster, wider, and more powerful. Indian constitutional law recognizes that online speech deserves the same protection as offline speech. At the same time, this freedom is not unlimited. Article 19(2) allows the government to impose reasonable restrictions to protect public order, national security, morality, and the reputation of individuals. The courts play an important role in ensuring that these restrictions are not misused. They apply tests like proportionality and proximity to prevent unnecessary censorship.

The Bharatiya Nyaya Sanhita, 2023 and related digital laws show that India is trying to create a technology-neutral legal system. AI is treated as a tool, and responsibility usually falls on the human user or creator. Platforms also have duties under the IT Rules, 2021, but they can claim safe harbor protection if they act responsibly. As technology continues to develop, especially with AI and deepfakes, the law must carefully balance innovation with accountability. The goal should be to protect freedom of expression while preventing real harm. A strong, fair, and constitutionally guided legal system is essential to maintain this balance in the digital age.