TWEET, POST, JAIL: HOW FREE IS YOUR SPEECH IN DIGITAL INDIA?

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ABSTRACT

The social media revolution has changed the face of democratic participation in India through giving citizens an opportunity to speak out, criticise, and organize on an unprecedented level. However, increasing governmental regulation, deletion, and criminalisation have raised questions regarding the contours of the right to express online. This paper aims to explore the constitutional protection of the right to freedom of speech online as enshrined in articles 19(1)(a) and 19(2) in conjunction with the Information Technology Act, 2000, IT Rules, 2021, Bharatiya Nyaya Sanhita, 2023, and judicial precedents such as Shreya Singhal, Anuradha Bhasin, the Disha Ravi case, the Mohammed Zubair case, Kunal Kamra, X Corp. vs. Union of India, and Ranveer Allahbadia vs. Union of India. The paper argues that the regulatory ambiguity may lead to a severe chilling effect on the lawfully protected expression and suggests a rights-based approach based on the principles of legality, necessity, proportionality, transparency, and due process.

Keywords: Digital speech, Freedom of Speech, Article 19(1)(a), Social Media, Chilling Effect, Intermediary liability, Content moderation, Article 19(2).

I) Introduction

What does it mean to be free to speak in a democracy? At the most basic level, freedom of speech and expression protects an individual's ability to communicate opinions, beliefs, criticism and ideas without fear of arbitrary State punishment. In India, this protection is constitutionally guaranteed under Article 19(1)(a).[1] Yet the constitutional promise of free speech has become considerably more complicated in the digital age.

A citizen today does not need a printing press, a television channel or a newspaper column to participate in public discourse. A smartphone is sufficient. A post can be published in seconds; a video can reach millions before the State has even noticed it; a criticism of government policy can be transformed into a nationwide political discussion with a single repost. The internet has therefore become not merely a technological space but a constitutional public square**.**

India's extraordinary digital expansion makes this transformation particularly significant. By late 2025, India had approximately 1.06 billion mobile connections and more than one billion internet users.[2] Digital platforms therefore constitute an increasingly important medium through which citizens receive information, criticise public authorities, organise protests and participate in democratic debate.

But the same characteristics that make digital platforms democratically powerful also make them attractive targets for regulation. Online spaces can facilitate hate speech, misinformation, cybercrime, harassment, obscenity and incitement. The State consequently has legitimate reasons to regulate digital communication. The constitutional difficulty arises when legitimate regulation begins to overlap with political criticism, satire, dissent or unpopular opinion. The arrests and prosecutions of individuals for social-media activity have repeatedly raised this question. Section 66A of the Information Technology Act, 2000 once allowed individuals to be arrested for sending online communications considered "grossly offensive" or "menacing".[3] The provision was eventually struck down by the Supreme Court in *Shreya Singhal vs. Union of India*.[4] Disha Ravi was arrested in connection with the alleged circulation of a toolkit relating

[1] INDIA CONST. art. 19, cl. (1), sub-cl. (a).
[2] DataReportal, Digital 2026: India (2026) https://datareportal.com/reports/digital-2026-india.
[3] Information Technology Act, No. 21 of 2000, INDIA CODE (2000), § 66A (India).
[4] Shreya Singhal vs. Union of India, (2015) 5 SCC 1 (India).

to the farmer's protests.[5] Mohammed Zubair faced criminal proceedings over a social-media post. Kunal Kamra's litigation challenged the executive's proposed role in determining whether online information concerning the Central Government was "fake, false or misleading".[6] More recently, the India's Got Latent controversy placed online comedy, obscenity and the limits of constitutional protection before the Supreme Court.[7] These incidents may appear factually unrelated. They are not. They reveal a common constitutional problem: who decides when online expression crosses the line from protected speech to punishable conduct, according to what standards, through what procedure, and with what safeguards against error or abuse?

The phrase "Tweet, Post, Jail" is therefore not intended to suggest that every online prosecution is unconstitutional. Rather, it captures the more subtle danger that the possibility of legal consequences may become sufficiently unpredictable to discourage lawful speech. Constitutional concern, however, is thus not merely one of censorship. It is one of uncertainty. When the citizen does not know whether the post is critical, satirical, obscene, misleading, defamatory, disruptive of public order or "subversive", the logical course of action would perhaps be to remain silent. The Constitution guarantees the freedom to speak without unreasonable fear of government reprisal.

This article thus seeks to examine:

How free is speech in India's digital public space when the law allows wide State control but renders citizens and intermediaries uncertain as to what is permitted? It argues that India's digital speech framework must move from a model of reactive punishment and executive discretion towards one based on clear law, narrow restrictions, independent decision-making, procedural fairness and proportionality.

II) Freedom Of Speech in the Digital Age

A. Article 19 (1)(a): The Constitutional Starting Point

Article 19(1)(a) guarantees all citizens the right to freedom of speech and expression.[8] The Supreme Court has repeatedly emphasised that this freedom lies at the heart of democratic

[5] Disha A. Ravi vs. State (NCT of Delhi), 2021 SCC OnLine Del 616.
[6] Kunal Kamra vs. Union of India, 2024 SCC OnLine Bom 3025 (India).
[7] Ranveer Gautam Allahbadia vs. Union of India, 2025 SCC OnLine SC 698 (India).
[8] INDIA CONST. art. 19, cl. (1), sub-cl. (a).

government because citizens cannot meaningfully participate in democracy without the ability to exchange ideas, criticise public authorities and debate matters of public importance. The right is not confined to traditional forms of communication. It encompasses multiple forms of expression, including written, spoken, artistic and symbolic expression as demonstrated through multiple judicial precedents. The emergence of the internet has therefore not created a new constitutional right to free speech; rather, it has created a new medium through which an existing constitutional right is exercised**.**

This distinction is important.

The reason why a post becomes unprotected under the Constitution does not have anything to do with the fact that it is a tweet. The fact that a political cartoon is posted on Instagram will not mean that it loses its protection. Neither will the fact that a protest message is sent via WhatsApp make it illegal.

B. Article 19(2): Freedom Subject to Restriction

Article 19(1)(a), however, is not absolute.

Article 19(2) permits the State to impose reasonable restrictions upon speech in the interests of:

1. the sovereignty and integrity of India;
2. the security of the State;
3. friendly relations with foreign States;
4. public order;
5. decency or morality;
6. contempt of court;
7. defamation; and
8. incitement to an offence.

This is a crucial constitutional safeguard.[9]

The State does not have a general power to regulate speech just because it finds the speech undesirable, offensive or politically inconvenient. The restriction should be based on a ground set out in the Constitution.

This is particularly significant in online context because digital regulation works incredibly fast and on a huge scale. An instruction by an executive official will make an intermediary delete content which can be accessed by millions of users. A criminal complaint will lead to police inquiry. The filling of several FIRs in different places will put a strain even before the Court decides whether an offence has been committed.

The issue is, therefore, not only whether:

"This speech can be regulated?" But also:

"The State has adopted a constitutionally acceptable process to decide whether it can be regulated?"

III) Beyond the courtroom: What do the global indices say?

The constitutional status of freedom of speech cannot be assessed merely by looking at statutory provisions and judgments of courts. The empirical status of free speech needs to be assessed with respect to press freedom, internet freedom, and democracy as well. India's record on international indices of freedom is not as favourable as the constitutional provision under Article 19(1)(a).

The 2026 World Press Freedom Index published by Reporters Without Borders (RSF) ranks India 157th out of 180 countries, with a score of 31.96. This represents a decline from India's 151st position in 2025. RSF identifies violence against journalists, concentrated media ownership and increasing political alignment of media outlets among the factors contributing to the country's poor position.[10]

This ranking's importance for the digital expression of free speech is something that must not

[9] INDIA CONST. art. 19(2).
[10] Reporters Without Borders, 2026 World Press Freedom Index (2026)

be overlooked. There is a blurring of the lines between "freedom of the press" and "online speech." Journalists are using platforms like X, Instagram, YouTube, and others to post their investigations, correspond with their sources, and spread information. Meanwhile, regular citizens are performing the duties of journalists themselves, documenting what is happening, posting evidence, and spreading information directly to the masses. Restrictions on journalists and restrictions on digital expression thus fall within the same ecosystem of information.

The picture becomes even clearer when internet freedom is examined separately. According to Freedom House's *Freedom on the Net 2025***,** India scores 51 out of 100 and is classified as "Partly Free." The report records continuing restrictions on online content, including website blocking, compelled removal of online material and restrictions affecting political, social and religious expression. It also records internet shutdowns and arrests relating to online commentary.[11] The report is particularly relevant to this article because it evaluates not merely whether citizens formally possess a right to use the internet, but whether they can actually exercise that right without excessive governmental interference. The distinction is crucial. A country may constitutionally guarantee freedom of speech while simultaneously creating an environment in which citizens hesitate to exercise that freedom. Freedom House's broader Freedom in the World 2026 assessment similarly classifies India as "Partly Free," with an overall score of 62/100, comprising 31/40 for political rights and 31/60 for civil liberties.[12]

By themselves, these indexes cannot prove that any given Indian law is unconstitutional. The international ranking cannot substitute for constitutional litigation, and their methodologies necessarily imply some form of evaluative assessment. However, these are highly useful in empirical context when discussing Indian digital-speech laws. Most importantly, these indexes show the pattern that is repeated constantly: the formal availability of the constitutional right and its de facto availability are two different things altogether. This is where the main idea of the chilling effect argument lies.

When journalists have legal and physical threats, when there is the possibility of content blocking or removal, when citizens are threatened with criminal liability for digital expression and thus start censoring themselves, the constitutional protection of freedom of speech remains formally but not necessarily in practice.

[11] Freedom House, Freedom on the Net 2025: India
[12] Freedom House, Freedom in the World 2026

Thus, the international indexes cannot resolve the constitutional question. They complicate it further.

The question relevant for India is not whether Article 19(1)(a) protects digital expression, but rather whether the legal, technological, and institutional environment surrounding this right allows citizens to exercise it properly.

IV) The Information Technology Act, 2000: from Section 66A to Section 69A

A. Section 66A and the Problem of Vagueness

The most significant constitutional warning in India's digital-speech jurisprudence remains *Shreya Singhal vs. Union of India*. Section 66A of the Information Technology Act criminalised sending information through a communication device that was "grossly offensive", "menacing" or intended to cause "annoyance", "inconvenience", "insult", "injury", "hatred" or "ill will".[13]

The language appeared broad but flexible. That flexibility was precisely the problem. What is "annoying" to one person may be harmless to another. What is "offensive" to one political group may be satire to another. A law that leaves citizens unable to predict what speech is criminal gives enforcement authorities excessive discretion. The Supreme Court therefore struck down Section 66A in its entirety.[14] The importance of Shreya Singhal goes beyond the invalidation of one provision. The judgment established a broader constitutional insight: vagueness and overbreadth are especially dangerous when criminal law regulates speech because the uncertainty itself can suppress constitutionally protected expression.

The Court distinguished between three stages of expression: discussion → advocacy → incitement.

Only when expression reaches the level of incitement can it justify the kind of restriction contemplated by Article 19(2), subject to the other constitutional requirements.[15] This framework is invaluable in the digital age.

[13] Information Technology Act, No. 21 of 2000, INDIA CODE (2000), § 66A (India).
[14] Shreya Singhal vs. Union of India, (2015) 5 SCC 1 (India)
[15] Shreya Singhal vs. Union of India, (2015) 5 SCC 1 (India).

A citizen discussing a controversial political policy is not necessarily advocating its unlawful overthrow. A citizen advocating a political position is not necessarily inciting violence. Treating these categories as interchangeable risks converting political disagreement into criminality.

B. Section 69A: Blocking Powers

Section 69A of the Information Technology Act gives the Central Government power to direct blocking of public access to information in specified circumstances, including interests relating to sovereignty and integrity, defence, security of the State, friendly relations with foreign States and public order.[16] Unlike Section 66A, Section 69A was upheld in Shreya Singhal, largely because the Court found that the statutory framework and Blocking Rules contained procedural safeguards.[17] This is important. It is therefore inaccurate to state that Section 69A is itself unconstitutional and vague.

The actual constitutional issue is whether the exercise of blocking power is within the statutory procedure as approved by the Supreme Court. This is especially important in light of the evolution of other methods of taking down online material.

Intermediaries: When Private Platforms Become Constitutional Gatekeepers

Section 79 of the IT Act provides conditional safe-harbour protection to intermediaries for third-party content, subject to statutory conditions.[18] This creates an unusual constitutional dynamic. The government may formally regulate the intermediary rather than the speaker. Yet the practical consequence can still be the suppression of the speaker's expression.

Suppose the government tells a platform: Remove this content or risk losing legal protection. The platform now faces a choice. It can challenge the direction, potentially exposing itself to legal risk, or remove the content. This creates what may be described as regulation through intermediary pressure**.** The State does not always need to arrest the speaker. If the platform has sufficient incentive to remove controversial content pre-emptively, the State can influence speech indirectly. This is why intermediary regulation must be examined as a free-speech issue

[16] Information Technology Act, No. 21 of 2000, INDIA CODE (2000), § 69A (India).
[17] Shreya Singhal vs. Union of India, (2015) 5 SCC 1 (India).
[18] Information Technology Act, 2000, No. 21 of 2000, § 79 (India).

rather than merely a technology-law issue.

VI) The IT Rules, 2021 and the Fact Check Unit Controversy

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 significantly expanded the regulatory responsibilities of intermediaries. [19] The controversy became particularly acute following the 2023 amendment concerning information identified by a government-notified Fact Check Unit as "fake, false or misleading" in relation to the business of the Central Government. The constitutional problem was immediately apparent. If the government is itself the subject of criticism, should an organ of that same government have the authority to determine whether the criticism is false? The question was considered by the Bombay High Court in the litigation initiated by Kunal Kamra and others. Justice G.S. Patel struck down the relevant amendment, finding serious problems of vagueness, overbreadth and constitutional compatibility. Justice Neela Gokhale took the opposite view, resulting in a split decision. The matter was subsequently resolved by Justice A.S. Chandurkar in favour of striking down the provision.[20]

The judgment is important for a reason extending beyond the Fact Check Unit itself. It identifies a structural constitutional problem: The State should not simultaneously be the subject of political criticism, the investigator of that criticism, the adjudicator of its truthfulness and the actor capable of causing its removal. This is a classic example of institutional conflict. It is even more troublesome when the standard is "fake, false or misleading." "False" might sometimes be objectively proven. "Misleading," on the other hand, could have many interpretative aspects including omission, context and framing. Politics, very often, lies precisely in such gray areas.

One person might find a particular policy by the government successful, while another finds it disastrous. There may be some truth in both assertions, but there will be fundamental differences in the evaluation that the two citizens make of the policy.

The Supreme Court in March 2026 agreed to hear the Union Government's challenge to the Bombay High Court's ruling. Importantly, the Court declined at that stage to stay the High

[19] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India, pt. II, sec. 3(i) (Feb. 25, 2021) (India).
[20] Kunal Kamra vs. Union of India, 2024 SCC OnLine Bom 3025 (India).

Court's judgment, meaning the constitutional issue remains live. This makes Kunal Kamra one of the most important contemporary cases for understanding the future of digital political speech in India.[21]

VII) The "Sahyog" Model And The New Era Of Content Takedowns

The debate did not end with the Fact Check Unit. In *X Corp vs. Union of India*, decided by the Karnataka High Court on 24 September 2025, X challenged the government's use of Rule 3(1)(d) of the 2021 IT Rules and the Sahyog portal for communicating takedown directions. X argued, among other things, that information blocking orders could only be issued through the mechanism contemplated by Section 69A and the Blocking Rules. The Karnataka High Court rejected the challenge. The Court distinguished the Sahyog portal from Section 69A blocking orders, characterising Sahyog as a facilitative mechanism for routing lawful notices between authorised government agencies and intermediaries[22].

The decision demonstrates an important development in Indian digital regulation. The State is increasingly building administrative infrastructure for rapid online content removal**.** From a governance perspective, centralisation may increase efficiency, accountability and traceability. From a constitutional perspective, however, efficiency cannot substitute legality. The faster a system can remove content, the more important procedural safeguards become. A system capable of suppressing unlawful content within minutes can also suppress lawful content within minutes if its legal boundaries are unclear. The constitutional challenge therefore becomes one of speed versus safeguards**.**

VIII) The Criminalisation of Digital Dissent

A. Disha Ravi: From Toolkit to Terrorism

The arrest of climate activist Disha Ravi in 2021 illustrates how ordinary digital political communication can become entangled with national-security offences. Ravi was arrested in connection with a toolkit associated with the farmers' protests. She was accused of offences including sedition and conspiracy. The Delhi High Court subsequently granted bail and emphasised the importance of constitutional protection for political expression and the absence

[21] Union of India vs. Kunal Kamra & Ors., Diary No. 60880/2024 and connected matters, Supreme Court of India, order dated 10 March 2026.
[22] X Corp. vs. Union of India, W.P. No. 7405 of 2025 (Karnataka HC, 24 September 2025).

of material establishing the necessary criminal nexus.[23]

The case is important because a toolkit is, at its core, a form of information dissemination. The issue from a constitutional perspective would be that one is automatically implying that coordination and/or dissemination constitute conspiracy. Political associations inevitably require communication.

If one's dissemination of information in relation to a protest event is evidence of involvement in a conspiracy to commit a crime, without any connection to an actual crime, the line will be very blurry.

B. Mohammed Zubair and the cost of Multiple Proceedings

The proceedings involving journalist and fact-checker Mohammed Zubair provide another perspective.[24] The problem is not only whether a certain social media posting is an offence.

What matters is the total weight of several prosecutions against a person. He may eventually be acquitted. However, prior to such determination is made, there will be an arrest, investigation, travel prohibitions, lawyer's costs and going through several court hearings.

Thus, an important difference emerges: The punishment for speech may start even before the conviction. Therefore, in cases of digital speech, the mere launch of prosecution is enough to chill speech.

C. Kunal Kamra: Satire, Contempt and the Right to Criticise Institutions

Satire occupies an uncomfortable but important place in constitutional democracies. Its function is often to exaggerate, ridicule and provoke. That is precisely why it requires protection. The litigation surrounding Kunal Kamra demonstrates the difficulty of distinguishing criticism of institutions from contemptuous conduct. More broadly, it raises a question that extends beyond Kamra himself:[25]

Can a constitutional democracy tolerate criticism of the institutions designed to protect the

[23] Disha A. Ravi vs. State (NCT of Delhi), 2021 SCC OnLine Del 616 (India)
[24] Mohammed Zubair vs. State of NCT of Delhi, 2022 SCC OnLine SC 897 (India).
[25] Kunal Kamra vs. Union of India, 2024 SCC OnLine Bom 227 (India) (Patel, J.); Kunal Kamra vs. Union of India, 2024 SCC OnLine Bom 3025 (India) (Chandurkar, J.).

Constitution?

The answer must be yes. Courts, governments and public institutions necessarily possess power. If citizens can criticise only those institutions whose decisions they agree with, freedom of speech becomes meaningless. This does not mean that contempt, defamation or deliberate incitement disappear online. It means that the threshold for restricting criticism must remain constitutionally demanding. A democracy cannot simultaneously proclaim institutional accountability and criminalise ridicule of institutions whenever that ridicule becomes uncomfortable.

D. India's Got Latent: The New Frontier of Digital Speech

The India's Got Latent controversy represents perhaps the clearest contemporary example of the difficulty of regulating speech in a digital environment where traditional broadcasting boundaries have collapsed.

In February 2025, comedian and YouTuber Ranveer Allahbadia appeared on the online comedy programme India's Got Latent. A controversial remark made during the programme resulted in multiple FIRs and criminal proceedings under provisions including the Bharatiya Nyaya Sanhita and the Information Technology Act.[19]

The matter reached the Supreme Court in *Ranveer Gautam Allahbadia vs. Union of India*. The Supreme Court granted interim protection from arrest and subsequently imposed conditions concerning the nature of future online content. It also engaged with the broader question of whether some regulatory framework may be necessary for online content, particularly in relation to decency and morality.[26]

The case is important because it moves the debate beyond political speech.

Digital free speech also includes:

- comedy;
- satire;

[26] Ranveer Gautam Allahbadia vs. Union of India, W.P. (Crl.) No. 83 of 2025

- parody;
- vulgarity;
- artistic expression;
- controversial humour;
- sexual expression; and
- intentionally provocative content.

The constitutional difficulty is that decency and morality are inherently contextual concepts.[27] What is vulgar to one generation may be ordinary comedy to another. What is offensive to one audience may be artistic expression to another. The State may legitimately regulate obscenity in aprtionallyriate circumstances. But a broad morality-based power can become dangerous if it allows the government or courts to determine what citizens are permitted to find funny. The Latent proceedings therefore raise a question that will become increasingly important: Should constitutional free speech standards differ merely because the speech is distributed through an online platform rather than television or print? The answer should ordinarily be no. The medium may justify narrowly tailored regulatory differences. It should not justify abandoning constitutional protection.

IX) BNS Section 152: A New Form of Sedition?

The repeal of the colonial-era sedition provision under the Indian Penal Code did not eliminate national-security restrictions on speech. Section 152 of the Bharatiya Nyaya Sanhita, 2023 criminalises acts that intentionally or knowingly excite or attempt to excite secession, armed rebellion or subversive activities, or encourage separatist feelings, and acts that endanger the sovereignty, unity and integrity of India.[28] The provision is broader in wording than the traditional sedition provision in certain respects. The constitutional concern is not that national security should receive no protection.

It obviously should. The concern is how broadly the offence is interpreted.

[27] INDIA CONST. art. 19, cl. 1(a).
[28] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 152 (India).

A democratic government must distinguish between: criticism of the State, and conduct that genuinely threatens the sovereignty, unity or integrity of the State.

The former is constitutionally protected. The latter may legitimately attract criminal sanctions. The danger arises when criticism is rhetorically characterised as anti-national and subsequently converted into a criminal investigation. The constitutional principle established in Shreya Singhal remains relevant: advocacy cannot automatically be equated with incitement.[29]

X) Criminal Defamation and Digital Speech

Defamation creates another constitutional tension.

Article 19(2) expressly recognises defamation as a legitimate ground for restricting speech. [30] The Supreme Court upheld the constitutionality of criminal defamation in Subramanian *Swamy vs. Union of India*.[31]

However, online communications give rise to reputational damage that is much more potent. Defamation may be disseminated across millions of people in seconds and last permanently, accessible through search engines. On the other hand, the convenience involved in filing lawsuits for defamation raises a concern regarding the law being used tactically against criticism.

The key constitutional distinction should therefore remain between:

- genuine protection of reputation; and
- using reputation as a shield against legitimate criticism.

Public officials and public figures must inevitably tolerate a greater degree of scrutiny because their conduct affects public life. A democracy in which public officials can silence criticism merely by claiming reputational injury would be incompatible with meaningful accountability.

XI) Internet Shutdowns and The Right To Access Information

Digital free speech cannot be examined solely through individual posts. If the State shuts down

[29] Shreya Singhal vs. Union of India, (2015) 5 SCC 1.
[30] INDIA CONST. art. 19, cl. 2.
[31] Subramanian Swamy vs. Union of India, (2016) 7 SCC 221.

the internet, it does not merely prevent one person from speaking.

It can prevent:

- journalists from reporting;
- citizens from receiving information;
- students from accessing educational resources;
- businesses from operating;
- protesters from communicating;
- lawyers from accessing courts; and
- citizens from documenting events in real time.

This was recognised by the Supreme Court in *Anuradha Bhasin vs. Union of India*.[32]

The Court recognised the significance of the internet as a medium for the exercise of constitutionally guaranteed rights, and that any limitations on internet services have to meet the constitutional requirements, such as the test of proportionality. The internet is not itself necessarily a fundamental right. But when the internet becomes the medium through which a fundamental right is exercised, restrictions on access can directly affect the exercise of that right. Thus: Digital rights are increasingly becoming the infrastructure through which traditional constitutional rights are exercised.

XII) The Chilling Effect: The Real Cost of Uncertain Speech Laws

The most significant argument of this article is that the constitutional harm caused by digital regulation cannot be measured merely by the number of convictions.

Suppose 100 people post criticism online. Suppose the State prosecutes five. The constitutional impact may extend to all 100. Why? Because the other 95 observe what happened. They may

[32] Anuradha Bhasin vs. Union of India, (2020) 3 SCC 637.

decide: "I will not post that." That is the chilling effect**.**[33] It operates silently. There is no arrest. No conviction. No court order. No censorship notice. There is simply self-censorship. This is why vagueness is particularly dangerous in speech law. When people do not know precisely what is prohibited, they do not necessarily test the boundaries of legality. They retreat from them. The consequence is a reduction in the "marketplace of ideas". And the people most likely to retreat may be precisely those without money, political influence or legal protection. A wealthy media organisation may challenge a takedown order. A college student may simply delete the post. A comedian may stop making jokes. An activist may stop sharing protest material. A journalist may decide not to publish an investigation. Thus, the chilling effect disproportionately burdens ordinary citizens**.**

XIII) The Constitutional Test: Legality, Necessity and Proportionality

India's digital free-speech framework can be tested through four questions: Is there a law? Does the restriction fall within Article 19(2)? Is it necessary and proportionate? And are adequate procedural safeguards available?

A restriction on speech must have a valid legal basis and pursue one of the constitutionally recognised grounds under Article 19(2). Mere offence, disagreement or political discomfort cannot, by themselves, justify suppression. The restriction must also bear a rational connection to a legitimate objective and impair free expression no more than necessary. The Supreme Court has recognised proportionality as requiring legality, legitimate purpose, necessity, proportionality and safeguards against abuse.[34]

Procedural fairness is equally important. A person whose speech is restricted should, ordinarily, receive notice, reasons, an opportunity to challenge the decision and access to independent or judicial review. In the digital sphere, where content can disappear within minutes, due process cannot become an afterthought.

XIV) Why "Hurt Sentiments" cannot become a general exception to free speech

One of the recurring justifications for restricting online speech is that it has "hurt sentiments."

[33] Shreya Singhal vs. Union of India, (2015) 5 SCC 1 (India).; Mohammed Zubair vs. State of NCT of Delhi, 2022 SCC OnLine SC 897 (India).
[34] Anuradha Bhasin vs. Union of India, (2020) 3 SCC 637 (India).

But offence alone cannot become a general exception to Article 19(1)(a).

Political criticism may offend supporters. Religious criticism may offend believers. Satire may offend its subject. Journalism may damage reputations. Academic research may challenge established beliefs. The possibility of offence is inherent in a society that protects disagreement.

The constitutional distinction must therefore be between offence and legally recognised harm. In *S. Rangarajan vs. P. Jagjivan Ram*, the Supreme Court emphasised that restrictions based on public order require a proximate connection with the anticipated harm, rather than a remote or speculative possibility. [35] Similarly, *Shreya Singhal vs. Union of India* distinguished discussion and advocacy from incitement, protecting expression until it crosses the constitutionally relevant threshold.[36]

This does not mean that digital platforms should be unregulated. They can facilitate genuine incitement, cybercrime, exploitation, harassment and other serious harms. The question is not whether the State may regulate, but how narrowly and fairly it must do so.

XV) From Censorship to Self-Censorship

The real risk of vague rules of speech regulation is not just prosecution. It is the silence that comes thereafter. A citizen will refrain from posting after witnessing another being charged with an FIR. A journalist will abandon the inquiry. A student will think twice about criticizing a public official. A comedian will refrain from delivering controversial jokes. There is no need for any order from a court. There is no need for any conviction. Just the prospect of being punished can do the trick.

This is the chilling effect – when the risks of speaking become too great for citizens to speak out despite lawful expression.

India thus needs a framework for digital rights based on five principles: clear law, judicial independence, reasons for taking down a post, retrospective examination of emergency regulations and protection from repeat trials for the same speech. The cost of defending one's lawful expression should never itself turn into punishment.

[35] S. Rangarajan vs. P. Jagjivan Ram, (1989) 2 SCC 574.
[36] Shreya Singhal vs. Union of India, (2015) 5 SCC 1.

XVI) Conclusion

The question "How free is your speech in Digital India?" does not have an easy answer. India's Constitution continues to offer one of the most robust legal protections of freedom of speech via Article 19(1)(a). Jurisprudence of the Supreme Court on the matter, such as in Shreya Singhal and Anuradha Bhasin cases, makes it clear that digital expression cannot be taken out of the scope of constitutional protections on the basis of its digitality. However, the reality is much more complex. The simultaneous existence of criminal law, intermediary rules, executive takedown powers, national security laws, defamation law, and the rapidly changing digital law regime makes it hard for citizens to navigate when their expressions end and when criminal actions begin. The case of Disha Ravi, Mohammed Zubair and Kunal Kamra show various aspects of the issue. The proceedings in India's Got Latent demonstrate that the problem extends beyond political speech to comedy, satire, and online entertainment.

They do not show that India is unable to regulate digital speech. They show something else: India has to regulate digital speech without banning dissent entirely. In the Constitution's scheme of things, it is not about an internet without any rules at all. It is about an internet that has clearly defined, narrowly tailored, legal, proportional, and judicially reviewable rules. The State must be able to prevent incitement, cybercrime, exploitation and threats to national security. It must never be allowed the capacity to determine which political statements, jokes, criticisms and uncomfortable truths its citizens can say. Free speech is not tested by whether people can speak favourably of their government. Free speech is tested by whether they can speak against it without fear. And constitutionalism on the internet is not tested by whether the State can take down harmful content. Constitutionalism on the internet is tested by whether the State is strong enough to take down harmful content but resists the impulse to take down uncomfortable content because it is uncomfortable.