
THE CONSTITUTION AT A CROSSROADS: LIBERTY, SURVEILLANCE, AND THE EMERGING ARCHITECTURE OF CONTROL

Sanjana Jain & Mariyam Sayeed, Christ (Deemed To Be University), Delhi NCR

ABSTRACT

The Constitution of India, since its inception, has been the successful guardian of the rights of the citizens, specifically for the downtrodden, marginalised sections of society, including the minorities. But what if the ruling regime, which has the majority in the Parliament, can override tenets of the Constitution? Unfortunately, they can indeed amend, repeal, and modify the Constitution if they have a majority of support at their disposal.

The fundamental rights enshrined in the Constitution favour freedom of speech and expression under Article 19(1) (a). However, rights like this face unprecedented challenges arising from state controls and regulations. For instance, the IT rules have expanded executive discretion, which has created a chilling effect on the voices of dissent and journalism. India has been in question for the minorities and their rights in the country in recent past because of the increasing polarisation and the weaponization of media for brewing hatred against the minorities by the ruling regime this image that is created not only hampers the essence of Press Freedom, and also our reputation in world but most importantly is a stepdown from the ideals of the constitution like equality, non-discrimination, and dignity. If there is a voice of dissent by the citizenry, the most draconian law in existence since the time of the British Rule, the Sedition and UAPA (Unlawful Activities (Prevention) Act, 1967), was used by the authorities, which undermines the procedural fairness and substantive democratic freedoms. Despite posterior

to the landmark Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) judgment, which has recognised the right to privacy under Article 21 but there has been unchecked surveillance by the state on the data, dissent and political ideology of the citizens.

This paper will examine how state control and digital realities challenge the Constitutional safeguards, asking whether the existing framework can still protect these rights or if a new paradigm is needed.

Keywords: Constitutional Democracy, Freedom of Expression, Minority Rights, Press Freedom, Authoritarianism and Dissent.

INTRODUCTION

India's constitutional democracy was envisioned by the framers of the Constitution as a transformative project, one that would secure individuals' dignity, liberty, and equality through a robust framework of fundamental rights and political independence. The Constitution of India, adopted in 1950, emerged as a counter to the British colonial oppression and arbitrary power, establishing a system of checks and balances where state authority was to be exercised within constitutional limits. Yet, seventy-five years later, the ideals of the Constitution face unprecedented challenges. The growing consolidation of executive power, the expansion of surveillance technologies and increasing state control over dissent have given a new cloak to the contours of Indian democracy.

In recent times, the emergence of political majorities, digital regulations and coercive laws has blurred the difference between governance, accountability and control. The enactment of laws like the Unlawful Activities (Prevention) Act (UAPA)¹, the Information Technology Rules, 2021², and the expanding architecture of state control, surveillance have collectively curtailed the fundamental freedoms guaranteed. Wherein the journalist, activists, and dissenters have been labelled as anti-national by the ruling regime and corporate-owned media giants, reflecting a shift towards the 'authoritarian constitutionalism' where democratic institutions exist but are hollowed in their functions.

This Article seeks to critically examine the distortion of the Constitution by the state machinery itself and aims to ask: Whether the Constitution and its ideals can restrain the state's overreach in the age of digital authoritarianism? And if not, then India stands at the threshold of the disruption of democracy?

Employing an analytical and doctrinal methodology, this article draws upon judicial decisions, development of new laws and state actions to evaluate the resilience of the Indian Constitution. The aim of this paper spans to judicial, executive and legislative areas, tracing how constitutional morality, once central to the Republic's ethos, now struggles against the growing culture of suppression and surveillance.

¹ The Unlawful Activities (Prevention) Act, 1967 (India).

² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).

EVOLUTION AND LEGACY OF SEDITION LAW

The Sedition Law, Section 124A of the Indian Penal Code³, one of the lasting and enduring legal transplants, continues to silence the voices of dissent against the regime and political powers. The Indian Penal Code of 1860 was drafted by Thomas Babington Macaulay and was enacted in 1860. Sedition law, Section 124 A was inserted into the IPC by James Fitzjames Stephens, a British jurist and politician. It was not originally part of the said law. This law owes its origin to being a repressive measure against the growing agitation against the Wahabi movement in the subcontinent. Stephen rationalised its harsher standards by asserting that "language may be tolerated in England which it is unsafe to tolerate in India because in India it is apt to be transformed into action instead of passing off as harmless gas."

This provision aimed to criminalise the disaffection towards the Government established by law. The traces of its origin can be seen in the first major trial of Queen Empress v Jogendra Chunder Bose (1891)⁴, where the editors of the Bengali Journal *Bangobosi*⁵ were prosecuted for their views against the English law of consent. Although the charges were dropped but it laid the inception of the sedition law in the country. The Tilak Trial of 1897 and 1908 by the court against his speeches in the Shivaji festivals and again for his articles in *Kesari*, which the court examined to be promoting hatred against the Raj, wherein the court widened the scope of disaffection to include disloyalty. Mahatma Gandhi was also prosecuted for his writing in *Young India*. He famously said:

"Section 124A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen."

The path of struggle for free speech continues to haunt its torchbearers even after the post-independence period. During the historic Constituent Assembly Debates in 1947-48, Vallabhbhai Patel proposed that the seditious speech should be exempted from the freedom of speech enshrined in Article 19 of the Constitution of India⁶. However, KM Munshi successfully argued for the removal of the sedition law due to its inception was against the dissent of freedom fighters. In the 1950s, *Romesh Thappar v Union of India*⁷, the Supreme Court

³ The Indian Penal Code, 1860, § 124A (India).

⁴ *Queen Empress v. Jogendra Chunder Bose*, (1891) ILR 19 Cal 35 (India).

⁵ *Bangobosi* (Calcutta), 1891 (India).

⁶ India Const. art. 19, cl. 1(a).

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

invalidated a press ban for not falling under the guard of reasonable restriction. Justice Shastri emphasised that the framers of the Constitution explicitly rejected sedition as a constitutional guard. In the Landmark Judgement of Kedar Nath Singh v. State of Maharashtra in (1962)⁸ upheld the constitutional validity of section 124 A but limited its scope to public order and incitement of violence. The Powers continue to misuse the sedition, the Law Commission of India (2018,2023)⁹ and rulings of the High Court have all argued that this law has a chilling effect on free speech.

CONTEMPORARY RELEVANCE OF SEDITION AND REFORMS

The New Age democracy marks the end of blatant use of power by governments like the UK (2009), New Zealand (2008), and Australia (2010). After a decade, in 2022, the Supreme Court of India ordered a temporary suspension of Section 124 A in S.G. Vombatkere v. Union of India¹⁰. The Supreme Court requested the government to re-examine the Law. However, instead of repealing the new sedition like provision that has been introduced in Section 152 of Bharatiya Nyaya Sanhita¹¹, it marks the continuing legacy of the said law. The persistence of Section 124A reflects not merely legal inertia, but the deeper structural comfort the Indian state finds in colonial tools of control. The difference between Section 124A IPC and Section 152 BNS thus lay more in phrasing than in philosophy. Section 124A punished with imprisonment for life any act that brought or attempted to bring into hatred or contempt, or excited or attempted to excite disaffection towards the Government established by law. Section 152 criminalises acts that incite or attempt to create secession, armed rebellion, subversive activities, or endanger sovereignty, unity, and integrity of India, omitting the word “sedition”. While the new law brings upon the scope of violent or separatist activities but the usage of terms like subversive activities and endangering sovereignty open the room for misuse. Thus, even as section 152 is modernised in language, but perpetuates the same colonial relics of suppression under the garb of upholding national integrity.

UAPA (UNLAWFUL ACTIVITIES PREVENTION ACT, 1967); PREVENTIVE DETENTION AND THE EXPANDING ARCHITECTURE OF REPRESSION

⁸ Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 (India).

⁹ Law Commission of India, *Consultation Paper on Sedition* (2018); Law Commission of India, *Report No. 279: Usage of the Law of Sedition* (2023).

¹⁰ S.G. Vombatkere v. Union of India, 2022 SCC OnLine SC 663 (India).

¹¹ The Bharatiya Nyaya Sanhita, 2023, § 152 (India).

The continuance of the colonial foundations in laws like Unlawful Activities (Prevention) Act, 1967¹² (hereinafter, UAPA), and the preventive detention laws, the National Security Act, 1980¹³, will be constitutionally justified by the authority time and again, but these laws have entrenched patterns of harsh bail, and procedural unfairness highlights the colonial idea of demolishing every stone of dissent.

Indeed, section 43D (5) of the UAPA¹⁴ is one of the most significant departures from the ordinary criminal process and enables denial of bail on mere prima facie satisfaction of the accusation. The Supreme Court interpreted the said clause restrictively in *National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019)¹⁵, wherein it held that the courts should not evaluate the evidentiary value at the stage of granting bail. This interpretation has made pre-trial detention simply punitive, and the fundamental tenet that bail is the rule and jail the exception gets turned upside down.

But the problem gets aggravated when preventive detention laws, allowing detention without trial based on apprehended threat rather than proven offense, result in substantial diversion from minimum due process. The early imprimatur of the Supreme Court on such powers in *A.K. Gopalan v. State of Madras* (1950)¹⁶ was a legacy of judicial deference to executive discretion. *Maneka Gandhi v. Union of India* (1978)¹⁷ has established that procedure established by law includes fairness, reasonableness, and non-arbitrariness, but schemes like preventive detention has survived within India's otherwise liberal constitutional order. These have been used to demolish dissent specifically on rights activist highlighted in case of *Gautam Navlakha v. NIA* (2021)¹⁸ and *Sudha Bharadwaj v. State of Maharashtra* (2021)¹⁹. Similarly in *Asif Iqbal Tanha v. State of NCT of Delhi* (2021)²⁰, the Delhi High Court held that the authorities should differentiate between the protest and the acts of violence. In *Anuradha Bhasin v. Union of India* (2020)²¹ the court held that curbing the fundamental freedoms must be proportionate and fair and must be subjected to judicial review. Aggregating these cases together the cumulative trajectory indicates that the rhetoric of national security often conceals

¹² The Unlawful Activities (Prevention) Act, 1967 (India).

¹³ The National Security Act, 1980, § 3(2) (India).

¹⁴ The Unlawful Activities (Prevention) Act, 1967, § 43D (5) (India).

¹⁵ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 (India).

¹⁶ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (India).

¹⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

¹⁸ *Gautam Navlakha v. National Investigation Agency*, (2021) 7 SCC 401 (India).

¹⁹ *Sudha Bharadwaj v. State of Maharashtra*, 2021 SCC OnLine Bom 5163 (India).

²⁰ *Asif Iqbal Tanha v. State (NCT of Delhi)*, 2021 SCC OnLine Del 3253 (India).

²¹ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

that animated colonial sedition. If section 124A IPC criminalized disaffection towards the State, the UAPA and the preventive detention laws extend this logic into the present, merely changing the idiom from "disloyalty" to "terrorism" and "sovereignty." The continuity between the two underlines how the colonial architecture of repression continues into the democratic edifice of independent India and reiterates the paradox of freedom under surveillance.

EXECUTIVE AND LEGISLATIVE SUPPRESSION: THE EXPANDING DIGITAL CONTROL APPARATUS

The bedrock of Indian democracy has always been freedom of speech and expression, enshrined under Article 19(1)(a) of the Constitution²². Voicing criticism, asking questions and keeping the government on its toes is what keeps people in control. But the freedom to do so has, however, been increasingly eroded in recent years by various pieces of legislation and presidential actions. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021²³ are the most discussed of them; they greatly increase the executive's authority to regulate internet platforms.

These rules made under the Information Technology Act, 2000 require digital news portals and social media intermediaries to take down any content that is found objectionable by the government or its authorised authorities in relation to matters concerning 'public order' and 'undermining of the sovereignty and integrity of India.' They also force intermediaries to track the 'first originator' of a message, which results in end-to-end encryption being torn apart and poses a direct threat to an individual's privacy recognized in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)²⁴. The absence of an adequate judicial oversight mechanism, coupled with vesting censorship powers in the executive, has institutionalized prior restraint a principle anathema to constitutional jurisprudence.

The practical effect of these provisions is the growth of a culture of digital self-censorship. Faced with the prospect of penalties and operational restrictions, social media companies regularly comply with takedown requests, even in the absence of a valid legal basis for them. Posts that criticize government policy, bring to light human rights abuses, or expose corruption are frequently removed on spurious grounds of national security or public order. This is part of

²² India Const. art. 19, cl. 1(a).

²³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).

²⁴ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).

the same logic as sedition laws in colonial times and the UAPA, 1967, where active disavowal can often amount to disloyalty. A notable example of this misuse was seen in *Dr. Kafeel Khan v. State of Uttar Pradesh* (2020)²⁵, in which the Allahabad High Court overturned his detention under the NSA and UAPA for a speech advocating for unity amid anti-CAA protests. The Court determined that simple criticism of government policy cannot be considered disloyalty to the nation and reiterated that free speech, even when highly critical, is central to constitutional democracy. In the digital age, these laws assume new form in algorithmic suppression and data-driven censorship, what scholars have termed ‘soft authoritarianism through code.’

The coming together of State power and corporate compliance has given rise to an ecosystem where the freedom to speak exists only within boundaries defined by both the government and platform algorithms. This dual control legal and technological marks a transformation in the nature of state surveillance. Social media moderation ensures that no proof of protest or criticism remains in the public realm by secretly eliminating dissent where sedition and UAPA make it illegal. As a result, the chilling effect is now present in the newsfeed and timeline in addition to the courtroom.

POLITICISED NARRATIVES AND MEDIA CAPTURE: MANUFACTURING CONSENT AND SILENCING

Dissent Running parallel to these legislative suppressions is the progressive capture of mainstream media by political and corporate interests. Ownership of major television networks and print houses has become increasingly concentrated in the hands of conglomerates with close ties to those in power. This leads to a systematic distortion of the public sphere, when news of government failures, corruption scandals, or community violence is minimised and tales that glorify state programs or demonise minorities dominate headlines.

This connection between state and corporate interests guarantees that the voice of protest is delegitimised and no longer heard. Defamation suits, raids by investigative agencies, and cancellation of licenses have been issued to working journalists, activists, and independent news organizations. The cases against *The Wire*, *Alt News*, and *News Click* epitomize how legal harassment replaces open debate. The judiciary, though intervening in cases like *Shreya*

²⁵ *Dr. Kafeel Khan v. State of Uttar Pradesh*, 2020 SCC OnLine All 1245 (India).

Singhal v. Union of India (2015)²⁶, has often remained reactive rather than preventive to facilitate such erosion of press autonomy.

Consequently, the media's constitutional role as the "fourth pillar of democracy" is being supplanted by a regime of manufactured consent, in which the narrative is curated not by fact or ethics but by power and profit. In this environment, freedom of speech survives not as a lived constitutional right but as a conditional privilege subject to the approbation of both the State and the algorithm.

JUDICIAL RESPONSE: COURTS AS GUARDIANS OF EXPRESSION

The judiciary has sporadically been a barrier to executive overreach. In *Romesh Thappar v. State of Madras* (1950)²⁷ and *Brij Bhushan v. State of Delhi* (1950)²⁸, the Supreme Court invalidated pre-censorship laws holding that freedom of the press was included under Article 19(1)(a). In like vein, in *Bennett Coleman & Co. v. Union of India* (1973)²⁹, the Court struck down government restrictions on newsprint, holding that freedom of the press includes the right to circulate and disseminate ideas without preprocessing false restrictions by State and prejudice CJI Dhananjaya Y Chandrachud 372 inhibitions non-imposed by law or demand.

What was disconcerting at the time was a SC ruling, in 2015's *Shreya Singhal v. Union of India* case, where Section 66A of the IT Act³⁰ (under which speaking ill of anything online could be punished) was deemed too vague and inserted terms that have little legal sense and impeded free speech. More recently, in *Anuradha Bhasin v. Union of India* (2020)³¹ the Court reiterated that internet is an integral part of freedom of expression and required that restrictions on its use should satisfy the tests of necessity and proportionality. These judgments collectively reaffirm the judiciary's recognition that free speech whether in print or digital form remains the cornerstone of participatory democracy.

Courts have usually deferred to executive discretion in cases relating either to national security, sedition, or UAPA prosecutions. Absence of uniform standards to assess online censorship or data surveillance has left wide gaps in constitutional protection. Though the judiciary has

²⁶ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

²⁷ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124 (India).

²⁸ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129 (India).

²⁹ *Bennett Coleman & Co. v. Union of India*, (1973) 2 SCC 788 (India).

³⁰ The Information Technology Act, 2000, § 66A (India).

³¹ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

recognized the dangers of arbitrary power, its failure to evolve a clear doctrine on digital free speech and algorithmic accountability has allowed executive overreach to persist. The Supreme Court reiterated that extended detention without considering charge or trial under the UAPA is the violation of Article 21³² in *Union of India v. K.A. Najeeb* (2021)³³. It was held that in cases where delays violate the right to personal liberty, constitutional courts have the authority to grant bail. This decision marked a significant change by stating that the fundamental balance between liberty and state power cannot be overridden by national security measures. Unless the courts extend the same constitutional vigilance to the digital sphere that they did in the formative years of the Republic, the ideals of open debate and fearless expression envisaged by the framers of the Constitution risk being reduced to rhetoric. The challenge of our times, therefore, lies not merely in defending the right to speak but also in keeping the means of speaking—whether through press, protest, or post—free from both legal coercion and algorithmic control.

THE PATH AHEAD: LONGING FOR CHANGE

The tragic clash of civilisations between national security and personal freedom needs to be resolved. One such imperative is that of a stronger judicial check on executive action especially with respect to preventive detention, surveillance and content regulation. The courts will have to develop clear constitutional parameters for measuring online expression restrictions that help the principles of necessity, proportionality and reasonableness maintain consistency. A specific judicial review process for takedown orders and UAPA detentions would create accountability without undermining institutional autonomy.

Secondly, India requires an independent media commission with statutory autonomy to check ownership consolidation, safeguard newsroom integrity and prevent political or corporate intervention. It should act like the Election Commission protected from partisan control and have the power to ensure transparency in media funding, licensing and editorial freedom.

The third reform pertains to data protection and privacy. Strong data protection laws, with no political carve-outs, are necessary to prevent the misuse of personal information for surveillance and digital profiling. The laws as they stand must be re-framed to put citizens, rather than the State, at the heart of informational autonomy. The jurisprudence of privacy

³² India Const. art. 21.

³³ *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 (India).

established in K.S. Puttaswamy must be institutionalised by way of binding norms and independent regulators.

Protection of freedom of the press and whistle-blowers is equally important. The 2014 Whistleblowers Protection Act needs to be amended and have digital journalists brought under its ambit, and those who blow the whistle on government wrongdoing must get immunity. Legal reform should make it a criminal offence to bring strategic suits against public participation (SLAPPs) and deploy the police force against those voicing dissent.

Finally, democratic resilience in the long run will also depend on civic education and a culture of constitutional morality. It requires citizens to internalize the notion that rights are not simply words on a page but active cultures of participation, discussion, and checking powers. Without a public that will protect its own freedoms, judicial and legislative protections may be no more than symbolic. Reform, therefore, should transcend institutional design and work towards cultivating a constitutional conscience in common that can resist authoritarian encroachment.

CONCLUSION

This paper delves into whose vigilance has kept Indian Constitution alive, and argues that it is not inherent strength of the document but the vigilance out there that keeps this statute in shape. The all-pervading assaults by the surveillance state, algorithmic censorship and media capture have laid bare just how fragile constitutional freedoms are unless actively defended. The Educator has been a crusader for teachers and students, Judicial interventions in Anuradha Bhasin, Puttaswamy and K.A. Najeeb have reasserted that liberty can never be put in abeyance at the convenience of power. But the erosion of coercive statutes, diminishing space for civic engagement and executive overreach are signs of a slow hollowing out of democratic institutions.

Maintaining constitutional democracy requires more than court speak, it calls for the civic courage of individuals and the institutional will of organizations. Rights are only as alive as they are demanded, and constitutional morality is nourished only when citizens defend it against both complacency and fear. The challenge, then, is not merely legal but ethical.

This leaves a nagging question as India stands at the crossroad: Is Indian democracy facing democratic backsliding or could constitutional morality resurrect to retrieve the republic that

the makers of its Constitution envisaged? The answer is not going to come from the halls which are screaming power but from the people of this nation in the collective national conscience and ensure that the Constitution lives, not just on paper, therefore to revive the spirit of dissent, dialogue and accountability that animates the republic.