
CHALLENGES TO THE RIGHT TO DISSENT IN CONTEMPORARY INDIAN SOCIETY

Rahul Kumar Kaushik, LL.B. (Banaras Hindu University, Varanasi, U.P.) and LL.M.
(University of Allahabad, U.P.)
Currently working as a Legal Researcher at the Patna High Court.

“Nothing strengthens authority so much as silence.”

— Leonardo da Vinci

ABSTRACT

The right to dissent serves as an essential pillar of democratic governance. In India, this right gets constitutional protection under Article 19(1)(a) of the Constitution of India, 1950, which provides every citizen the right to freedom of speech and expression. Despite this constitutional safeguard, the effective exercise of dissent in contemporary India often faces numerous daunting challenges. This paper undertakes a comprehensive analysis of these challenges, with particular emphasis on the use of stringent laws such as the Unlawful Activities (Prevention) Act, 1967, the alleged misuse of central investigative agencies, such as the Enforcement Directorate and the Central Bureau of Investigation, against political opponents, journalists, and members of civil society, and the inefficiency of the judicial system to provide timely relief to undertrial dissenters. Taking into account landmark Supreme Court decisions, recent developments, and reports issued by national and international human rights organizations, this paper contends that the cumulative impact of these factors has created a chilling effect on free speech and democratic dissent in India.

Keywords: Right to Dissent, Article 19(1)(a), Freedom of Speech and Expression, UAPA, Sedition, Enforcement Directorate, Undertrial Imprisonment, Chilling Effect, Democracy, India.

1. Introduction

The right to dissent empowers citizens to criticize or question the government and institutional policies, conduct, and decisions; to make constructive and fair comments on the judgment and order of courts; and to hold opinions different from popular opinion. It is not only a constitutional and democratic right but also provides a lifeline to any functioning democracy. Democracy as defined in the words of Abraham Lincoln, “a government of the people, by the people, and for the people.” If the voices of citizens, whether from minority or majority sections, are not given due respect, the very objective of democracy is in peril. In India, this right primarily derives its strength from Article 19(1)(a) of the Constitution¹, which ensures all citizens the freedom of speech and expression. Though the right to dissent does not find explicit mention in the Indian Constitution, the Hon’ble Supreme Court has time and again recognized it as an integral part of freedom of speech and expression.

Even in the face of constitutional safeguard and judicial pronouncements, exercising this right in contemporary India has become an uphill task and, in many cases, criminalized. Citizens who express disagreement with the government policy, journalists who do not sing in praise of the government or dance to the tune of the government, academics who question official narratives, and activists who organize peaceful protests face harsh measures by the government such as arrest under draconian laws, raids by financial investigation agencies, prolonged detention as undertrials, and surveillance through sophisticated spyware. Sometimes, they are even labelled as anti-national.

This paper discusses the challenges faced by citizens, activists, journalists, academics, and political opponents, while exercising their democratic and constitutional right to dissent in India. These challenges are present at political, institutional, and judicial levels through the misuse of laws, alleged misuse of investigative agencies, and delay in judicial relief. Together, these challenges result in creating a 'chilling effect' on free speech and democratic participation, threatening the foundations of Indian constitutional democracy.

2. Constitutional and Legal Framework

2.1 Article 19(1)(a) — The Foundation of Dissent

¹ Constitution of India, 1950, art. 19(1)(a). Primary legal source — constitutional provision

The right to dissent in India is protected under Article 19(1)(a). The Supreme Court has repeatedly held that the right to freedom of speech and expression includes not only speech, but also the right to question or express disagreement with government policies, conduct and decisions. It includes freedom of the press and the right to silence.

In **Romesh Thappar v. State of Madras**,² the Hon'ble Apex Court invalidated a law restricting the distribution of a newspaper in Madras, observing that freedom of speech and press is the cornerstone of all democratic organizations. In **Brij Bhushan v. State of Delhi**,³ the Hon'ble Apex Court declared pre-censorship of the press unconstitutional, affirming that freedom of the press falls within the ambit and scope of freedom of speech and expression under Article 19(1)(a). The court observed that subjecting a journal to pre-censorship is a restriction on the liberty of the press which is an integral part of the freedom of speech and expression. Further in **Kedar Nath Singh v. State of Bihar**,⁴ Hon'ble Supreme Court held that comments, however harshly worded, expressing disagreement with actions of the government, without arousing those feelings which result in public disorder by acts of violence, would not be penal.

These earlier judgments pave the way for the right to dissent in Indian democracy. The right to dissent acts like a rein that keeps power under control. In other words, it acts as a safety valve for democracy.

2.2 Reasonable Restrictions Under Article 19(2)

The right of freedom of speech and expression is not absolute; likewise, the right to dissent which is an indispensable part of it is also not absolute. Article 19(2) of the Constitution permits the state to place 'reasonable restrictions' on free speech on specified grounds, such as the sovereignty and integrity of India, security of the state, public order, decency or morality etc.⁵ However, the Supreme Court has consistently held that such restrictions must be reasonable, proportionate, narrowly drawn, and must have a direct nexus to the specific ground as mentioned in Article 19(2).

² Romesh Thappar v. State of Madras, AIR 1950 SC 124.

³ Brij Bhushan v. State of Delhi, AIR 1950 SC 129.

⁴ Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

⁵ Constitution of India, 1950, art. 19(2). Specifies permissible grounds for restricting freedom of speech and expression.

The landmark judgment in **Shreya Singhal v. Union of India**⁶, powerfully illustrates this principle. The Supreme Court invalidated Section 66A of the Information Technology Act, 2000, which had been arbitrarily used to arrest persons for posting content critical of public officials on social media. The Apex Court ruled that Section 66A was unconstitutional as its broad, vague, and undefined language could encompass any sort of opinion including any serious opinion dissenting with mores of the day, thereby creating a deterrent effect on free speech. The Court further held that any law placing reasonable restriction on free speech can only pass muster if it has direct nexus with any of the restrictions set out in Article 19(a). This judgment remains the most significant affirmation of the right to dissent in the digital age.

2.3 Judicial Recognition of Dissent as a Democratic Necessity

The Supreme Court has recognized dissent not merely as an individual right but as a foundational necessity of democracy. In **Maneka Gandhi v. Union of India**,⁷ the Apex Court emphasized that democracy flourishes through free discussion and open criticism of the government. People can make informed choices only when they are free to express opinions and debate public issues. For this, an independent press is indispensable. The condition of newspapers reveals the real nature of a government—whether newspapers encompass different views, dissent and criticism against governmental policies and actions like a democracy, or they obsequiously sing the praises of the government or lionize or deify the ruler like an authoritarian system. Further in **Romila Thapar v. Union of India**⁸, Hon'ble Supreme Court observed as follows: “.... Individuals who assert causes which may be unpopular to the echelons of power are yet entitled to the freedoms which are guaranteed by the Constitution. Dissent is a symbol of a vibrant democracy. Voices in opposition cannot be muzzled by persecuting those who take up unpopular causes. ...”

Hence, from the above pronouncements of Hon'ble Supreme Court, it is evidently clear that the right of dissent is the bedrock of democracy and without it, democratic governance would resemble a graveyard of constitutional values. It makes the government and institution responsible and accountable. In simple words, it may be considered as the heart and soul of democracy governance.

⁶ Shreya Singhal v. Union of India, (2015) 5 SCC 1.

⁷ Maneka Gandhi v. Union of India, AIR 1978 SC 597. Held Articles 14, 19, and 21 must be read together; law depriving personal liberty must be just, fair, and reasonable — not merely procedurally legal.

⁸ Romila Thapar v. Union of India, AIR 2018 SC 4683

3. Institutional Challenges — Weaponization of Government Agencies

3.1 The ED and CBI: Statistical Evidence of Political Targeting

One of the most concerning challenges to the right to dissent is that the Enforcement Directorate (ED) and Central Bureau of Investigation (CBI) have become a tool to silence critics, intimidate opposition politicians, harass journalists, and cripple civil society organizations. In March 2023, a joint petition was filed before the Supreme Court of India by fourteen major opposition political parties alleging selective targeting by central agencies.⁹ Collectively, these parties had representation of 42.5% of votes cast in the 2019 General Elections and held power in eleven states. The petitioners brought on record statistical evidence before the Court: 95% of political leaders belong to opposition parties, who are investigated by the CBI and ED. This clearly shows a disparity impossible to explain on any basis other than political targeting.

The Supreme Court refused to entertain the petition in its broad form, with the Chief Justice observing that politicians can't claim greater protection and they stand on the same pedestal as ordinary citizens.¹⁰ Senior Advocate Singhvi, arguing for the petitioners, responded with a statement that has become definitive in the discourse on institutional suppression of dissent: "Mass arrests are a threat to democracy. It is a sign of authoritarianism. Process becomes the punishment." This portrays the mechanism by which investigative agencies suppress dissent — not through conviction, but through the cost and duration of legal proceedings themselves.

3.2 Civil Society and NGOs: The FCRA as an Instrument of Suppression

The institutional challenge to dissent extends to civil society organizations. The foreign funding received by Indian organizations is regulated by The Foreign Contribution (Regulation) Act, 2010¹¹ (in short FCRA). Since 2016, FCRA licenses of civil society organizations have been revoked or suspended in a structured manner by authorities; their bank accounts have been frozen; and investigations have been initiated against their leaders. Hence, it results in effectively undermining human rights, legal aid, and advocacy organizations that amplify

⁹ Padmakshi Sharma, *95% Of Political Leaders Investigated by CBI & ED Are Opposition Leaders: Non-BJP Parties Tell Supreme Court*, LIVE LAW (Mar. 24, 2023, 2:04 PM), <https://www.livelaw.in/top-stories/95-of-political-leaders-investigated-by-cbi-ed-are-opposition-leaders-non-bjp-parties-tell-supreme-court-224653>.

¹⁰ Id.

¹¹ Foreign Contribution (Regulation) Act, 2010, No. 42, Acts of Parliament, 2010.

dissenting voices. The Human Rights Watch 2024 report highlights the stark reality that FCRA has been utilized to selectively target government critics, thereby becoming a tool of political suppression.¹²

In February 2024, raids were conducted by the C.B.I at the residence and offices of Harsh Mander, a well-known human rights advocate and former Indian Administrative Service officer.¹³ This action was condemned by scholars, activists, and civil society leaders. Mander publicly stated that state pressure could not silence his conscience or his work as he possessed unwavering determination. This incident beautifully illustrates, both the targeting of dissenters and the resilience of civil society in response.

3.3 Suppression of Media: The NewsClick and BBC Cases

On October 3, 2023, The editor and a journalist of the digital news portal NewsClick was arrested; simultaneously raids were conducted at the the homes of 46 journalists associated with the platform; and process under the Unlawful Activities (Prevention) Act was initiated over accusations involving illegal foreign funding.¹⁴ Twelve international human rights organizations condemned the action of simultaneous raids as a coordinated use of counterterrorism law to silence independent journalism.

In February 2023, search was conducted by Income Tax authorities at the offices of BBC India in New Delhi and Mumbai.¹⁵ This happened in the aftermath of the release of a documentary that scrutinized the government's actions during the 2002 Gujarat riots. Earlier, the government had already blocked it in India by virtue of emergency powers under the Information Technology Rules, 2021. Thus, such a course of action raises serious concern and sends alarming messages to the journalistic fraternity about the institutional consequences of critical coverage.

3.4 Electoral Institutions and Democratic Space

Apprehension with respect to institutional impartiality has been raised by opposition parties,

¹² Human Rights Watch, *India: Laws Misused to Crack Down on Peaceful Dissent*, HUMAN RIGHTS WATCH (Feb. 8, 2024), <https://www.hrw.org/news/2024/02/08/india-laws-misused-crack-down-peaceful-dissent>.

¹³ *Id.*

¹⁴ Human Rights Watch, *India: Arrests, Raids Target Critics of Government*, HUMAN RIGHTS WATCH (Oct. 13, 2023), <https://www.hrw.org/news/2023/10/13/india-arrests-raids-target-critics-government>.

¹⁵ *Id.*

civil society organizations, and electoral observers during the period immediately before and during the 2024 General Elections. Amnesty International viewed the arrest of Arvind Kejriwal (then Delhi Chief Minister) and the freezing of the bank accounts of the Indian National Congress, both of which occurred weeks before polling commenced, as a severe crackdown on peaceful dissent and opposition.¹⁶ Further, the judgment of the Hon'ble Supreme Court in **the Electoral Bonds case**¹⁷, disclosed how a non-transparent political funding system had compromised democratic accountability, as such funding was based on quid pro quo arrangement and was exempt from disclosure to ordinary citizens. Accordingly, the Apex Court invalidated the Electoral Bonds Scheme as violating voters fundamental right to information under Article 19(1)(a).

In **Anoop Baranwal v. Union of India**¹⁸, the Constitution Bench of Hon'ble Supreme Court observed that process of appointment of election commissioner needs to be in such a way that it secures its independence and accordingly, created a committee comprises of Prime Minister, Leader of opposition in parliament and the Chief Justice of India, to advise president with regard to such appointment, until parliament enacts a law in this regard. Subsequently, Parliament enacted a law in this regard, whereby the Chief Justice of India was replaced by a Union Cabinet Minister nominated by the Prime Minister. This gave the government a clear majority in the appointment process, rendering the role of the Opposition largely insignificant. Hence, the credibility and independence of the Election Commission have come under question, as the Opposition has little meaningful role in the appointment process.

4. Draconian Laws as Instruments of Dissent Suppression

4.1 Sedition Law — A Colonial Relic in a Constitutional Democracy

To dismantle India's own independence movement, Britishers enacted Section 124A of the Indian Penal Code, 1860¹⁹ (the sedition provision). It penalizes speech or expression which excites or attempts to excite disaffection against the government established by law.

¹⁶ Amnesty International, *India: Six-Point Human Rights Charter for the New Government*, AMNESTY INTERNATIONAL (June 13, 2024), <https://www.amnesty.org/en/wp-content/uploads/2024/06/ASA2081542024ENGLISH.pdf>.

¹⁷ Association for Democratic Reforms v. Union of India, Writ Petition (Civil) No.880 of 2017.

¹⁸ Anoop Baranwal v. Union of India, WP (C) 104 of 2015, see also Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023.

¹⁹ Indian Penal Code, 1860, s. 124A (sedition) [now re-enacted with modifications as Bharatiya Nyaya Sanhita, 2023, s. 152, which criminalises acts endangering sovereignty, unity and integrity of India].

Notwithstanding, its colonial origin and the intrinsic conflict with Article 19(1)(a), this provision survived in independent India and was repeatedly invoked against citizens engaged in peaceful dissent.

One of the widely reported incidents, wherein sedition law was misused for the arrest of climate activist Disha Ravi in February 2021.²⁰ For sharing an online toolkit described as a document providing information and suggested actions in support of the farmer protests then ongoing across India, Ravi, a 22-year-old activist, was arrested and charged with sedition. Her arrest got national and international condemnation, showing that a law designed for violent subversion of the state was being used against a young citizen exercising fundamental rights of speech and civic participation.

In **S.G. Vombatkere v. Union of India**,²¹ the Supreme Court put a stay on the operation of Section 124A IPC, holding that it was being misused and raised serious constitutional questions of proportionality. The Apex Court directed that no fresh FIRs be registered, no investigation be continued and no any coercive measures be taken under Section 124A IPC while aforesaid provision is under consideration. However, a similar provision has been re-enacted in the Bharatiya Nyaya Sanhita, 2023, showing the legislature's continued interest for laws capable of criminalizing dissent.

4.2 The Unlawful Activities (Prevention) Act, 1967: Counterterrorism as Dissent Suppression

The Unlawful Activities (Prevention) Act, 1967²² (in short UAPA) is India's principal counterterrorism statute. It allows authorities to designate individuals as “terrorists” and organisations as “terrorist organisations”, permits extended pre-trial detention, and imposes stringent bail conditions. Under Section 43D(5) of the UAPA, a court may deny bail if it forms a prima facie opinion that the accusations are true. In practice, it results in systematic pre-trial detention lasting years. National security is a prime concern of every country in the world, and laws should be made to redress such concern. However, in recent years, under the guise of

²⁰ Krutika Pathi & Sheikh Saaliq, Indian Activists' Arrest Spotlights Crackdown on Dissent, YALE FORUM ON RELIGION & ECOLOGY (Mar. 11, 2021), <https://fore.yale.edu/news/Indian-activists-arrest-spotlights-crackdown-on-dissent>.

²¹ S.G. Vombatkere v. Union of India, 2022 LiveLaw (SC) 470.

²² Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India), as amended by Acts of 2004, 2008, 2012, and 2019.

national security, the UAPA is frequently used against academicians, lawyers, poets, and activists who dissent from government policies or express criticism of the government.

4.3 IT Rules, 2021 and Digital Censorship

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021²³ provide the Central Government, arbitrary powers with respect to the removal of content from online platforms and require digital news media to submit to a three-tier regulatory supervision mechanism with aforesaid government participation at its apex. Multiple petitions challenging these Rules as unconstitutional on ground of unreasonable restrictions on press freedom and expression were filed before different High Courts. Further, all petitions are transferred to Delhi High Court on the direction of the Apex Court.²⁴ Critics argue that the Rules confer in the executive, a power to control over the digital public sphere, which is the primary arena for contemporary dissent and hence it is incompatible with Article 19(1)(a).

5. Judicial Challenges — Delayed Justice and the Undertrial Crisis

5.1 The Undertrial Imprisonment Crisis: Quantitative Evidence

The crisis of undertrial prisoners is one of the most structural entrenched challenges to the right to dissent. According to the National Crime Records Bureau's Prison Statistics India 2022,²⁵ over 75% of India's total prison population comprises undertrial prisoners who have not been convicted of any offence but are awaiting trial. Many are activists, protesters, and dissenters charged under UAPA, where obtaining bail is difficult and hearings are indefinitely deferred. When a person is arrested on dissent-related charges and spends four or five years in judicial custody before acquittal or release, this results in undermining the constitutional value of free expression. Hence, in such a situation, whole process becomes the punishment.

5.2 Judicial Capacity, Arrears, and the Limits of Institutional Protection

Indian judiciary is facing with serious problem of large pendency of cases at all level of its

²³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India), published February 25, 2021.

²⁴ Internet Freedom Foundation, *Constitutional Challenges to the IT Rules, 2021: Arguments Set to Begin*, INTERNET FREEDOM FOUNDATION (Oct. 17, 2024), <https://internetfreedom.in/dhc-it-rules-2021-hearing/>.

²⁵ National Crime Records Bureau, *Prison Statistics India 2022 (As on 01.12.2023)*, Ministry of Home Affairs, Govt. of India, <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf>.

hierarchy. Even the higher courts, constitutionally mandated to protect fundamental rights through writ jurisdiction, face significant institutional challenges. As of April 2018,²⁶ more than 3 crores of cases are pending before the Supreme Court, High Courts, and subordinate courts, including district courts. In UAPA cases, bail applications can take months to be heard; It takes years, or even longer, to reach final adjudication with respect to constitutional challenges to any legislation. In the interval, dissenters remain incarcerated and the deterrent effect on others considering the exercise of their constitutional rights is immediate.

5.3 Bail Jurisprudence and the Right to Speedy Trial

The constitutional safeguards relating to undertrial detention has been acknowledged by the Supreme Court on numerous occasions. In **Union of India v. K.A. Najeeb**,²⁷ the Apex Court held that the right to speedy trial is a fundamental right under Article 21 and that courts have the power to grant bail even in UAPA cases, where trial completion within a reasonable time appears impossible. The Court recognized that prolonged pre-trial detention without trial is a violation of the constitutional guarantee of personal liberty.

However, execution of this principle across the judicial system has not been uniform. Trial courts and many High Courts are hesitant to grant bail in cases involving UAPA and sedition charges. Hence, one of the most pressing institutional failures in the protection of the right to dissent is the gap between the Supreme Court's jurisprudential commitments and the day-to-day functioning of the bail system.

6. Media Freedom, Surveillance, and the Chilling Effect

6.1 Deteriorating Press Freedom: Documented Evidence

A free press is a building block of dissent in a constitutional democracy. India's ranking on the Reporters Without Borders World Press Freedom Index has declined sharply — from 140th place in 2014 to 157th out of 180 countries in 2026.²⁸ This documented decline reflects the cumulative effect of raids on media organizations, prosecution of journalists, FCRA action against news platforms, and content blocking orders. The pattern of institutional pressure on

²⁶ PRS Legislative Research, *Vital Stats: Pendency of Cases in the Judiciary*, PRS India, <https://prsindia.org/billtrack/prs-products/vital-stats-on-pendency-of-cases-in-the-judiciary-3072>

²⁷ *Union of India v. K.A. Najeeb*, AIR 2021 SC 712.

²⁸ Reporters Without Borders (RSF), *RSF World Press Freedom Index*, available at: RSF World Press Freedom Index.

media houses has created an environment in which self-censorship is rational and dissenting journalism is hazardous. Hence, it ultimately results in producing a chilling effect on press freedom with direct consequences for the right to public dissent.

6.2 The Pegasus Surveillance Affair

In July 2021, a joint investigation by seventeen international media organizations disclosed that NSO Group's Pegasus spyware had allegedly been used by the government to surveil the phones of journalists, opposition politicians, human rights activists, and academics of several countries including India.²⁹ The Apex Court in **Manohar Lal Sharma v. Union of India**,³⁰ formed an independent Technical Committee to enquire into the allegations of unlawful surveillance.

The implications for the right to dissent are profound. The right to dissent includes not only the right to speak publicly but the right to organize, coordinate, and plan collective action, all of which require private communication. State surveillance of the kind alleged in the Pegasus matter strikes at this organizational dimension of dissent.

7. Conclusion

The right to dissent in contemporary India stands at a critical juncture. Seven decades of progressive constitutional jurisprudence — from Romesh Thappar and Brij Bhushan to Shreya Singhal and K.A. Najeeb — have established dissent as a fundamental democratic right, integral to the freedom of speech and expression guaranteed by Article 19(1)(a). The Supreme Court has, on numerous occasions, recognized that dissent is not disloyalty, that criticism of the state is not sedition, and that the protection of uncomfortable and challenging speech is the true measure of a democracy's commitment to constitutional values.

Yet, the reality of dissent in contemporary India is at peril, with these constitutional commitments. Citizens who dissent often face serious consequences, particularly arrest under UAPA and sedition laws, which are so broadly worded that virtually any critical expression can be characterized as criminal. They face investigation by agencies. They confront a judicial system that, despite its constitutional commitments, is incapable of delivering timely relief,

²⁹ Forbidden Stories & Amnesty International. (2021, July 18). The Pegasus project [Joint investigative series]. Forbidden Stories. <https://forbiddenstories.org/case/the-pegasus-project/>.

³⁰ Manohar Lal Sharma v. Union of India, W.P.(Cri.) No.314 of 2021, SC.

resulting in the process becoming the punishment. And they face pervasive surveillance that chills the organizational and communicative dimensions of dissent before any legal action is taken.

Addressing these challenges requires action at multiple levels. Laws that have demonstrably been misused to criminalize legitimate dissent must be comprehensively reformed, with precise definitions and efficient judicial oversight replacing arbitrary executive discretion. Investigative agencies must be rendered genuinely independent through legislative reform insulating their functioning from political direction. The undertrial crisis must be addressed through judicial and legislative reform — including expanded fast-track courts, mandatory periodic bail reviews, and statutory limits on pre-trial detention in non-violent matters. Digital rights must be recognized as an integral dimension of Article 19(1)(a) and protected accordingly. The strength of Indian democracy will ultimately be measured not by the confidence with which it silences its critics, but by the integrity with which it protects them.