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# RECALIBRATING THE CONTOURS OF DIGNITY: A CONSTITUTIONAL TIGHTROPE ON WHEN ARTICLE 19 MUST YIELD TO ARTICLE 21

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*"Justice is the soul of the Constitution and dignity is its beating heart."* - Dr.  
B.R. Ambedkar<sup>1</sup>

## ABSTRACT

The Indian Constitution protects the right to free expression under article 19 , whereas Article 21 protects the right to life and personal freedom and dignity. However, when the use of free speech collides with each other , the conflict between these rights becomes apparent. This essay examines the delicate constitutional balance between these two essential rights, highlighting the growing recognition by the apex court that the right to life is inextricably linked to the protection of human dignity. In the July 2025 case M/S CURE SMA FOUNDATION OF INDIA VS. UOI AND ORS., the Court firmly said that Article 21 must take precedence over Article 19 and challenged influencers and stand-up comedians who were accused of making fun of people with disabilities. <sup>2</sup> This historic statement marks a redrawing of the constitutional balance between the preservation of human dignity and the right to free speech. The research illustrates the developing jurisprudence that places dignity above unrestricted speech when the two conflict by critically analyzing significant court rulings. It makes the fact apparent that in a world of digitalization and online performance, a sharp divide between Article 21 and Article 19 is utmost required to be readjusted. Thereby encouraging a sense of responsible freedom of expression.<sup>3</sup>

**Keywords:** Free Speech, Constitutional Ethics, Human Dignity, Article 19, Judicial Balancing Digital expression

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<sup>1</sup> Quote attributed to Dr. B.R. Ambedkar, architect of the Indian Constitution

<sup>2</sup> Cure SMA India Found. v. Samay Raina, Writ Petition (Civil) No. 1008/2024 (S.C. India Dec. 19, 2024)

<sup>3</sup> H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 527-45 (4th ed. 2008)

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## Introduction

The Constitution of India which is the Grund norm is based on the complementary relationship and bedrock of balance between the basic rights.<sup>4</sup> Article 19(1)(a) ensures the freedom of speech and expression, while Article 21 protects the right to life, personal liberty, and dignity, among other fundamental rights. Despite both the rights being an essential concomitants of the democratic setup, conflict between them are becoming more common in this era of digitalization and social media sensationalism.<sup>5</sup> "Article 19 cannot prevail over Article 21," the Supreme Court said in a historic July 2025 ruling, citing a case involving comedians accused of making fun of people with disabilities.<sup>6</sup> This decision marks a watershed moment in constitutional law's doctrinal evolution by restating the far-reaching impact of Article 21.<sup>7</sup> The purpose of this article is to investigate this hierarchy's constitutional underpinnings, look at what it means for free speech, and determine how well it lines up with current legal concepts.<sup>8</sup> This study seeks to provide a detailed understanding of the changing connection between these basic rights by thoroughly analysing constitutional provisions, court decisions, and comparative jurisprudence.

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<sup>4</sup> INDIA CONST. art. 19, 21; see generally M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1247-89 (8th ed. 2018)

<sup>5</sup> D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 456-78 (9th ed. 2019)

<sup>6</sup> Cure SMA India Found. v. Samay Raina, Writ Petition (Civil) No. 1008/2024 (S.C. India Dec. 19, 2024)

<sup>7</sup> Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1 (India)

<sup>8</sup> The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016 (India)

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## 3. The Samay Raina Case: Facts and Judicial Observations

### 3.1 Factual Background

The Cure SMA India Foundation, an organization dedicated for disabled people petitioned Samay Raina for making insensitive comments made on an online web program namely "India's Got Latent," which led to the filing of the lawsuit.<sup>9</sup> People with disabilities are entitled to dignity and protection under several laws, but the petitioners claimed that the content of the programme violated those rights by making disparaging remarks about them.<sup>10</sup> Not only did the case's famous responders help propel it to the forefront, but it also exemplified the larger problem of

controlling online information in this age of the ubiquitous nature of the content circulating online.<sup>11</sup> The important question revolved around whether the content that degraded people with disability be protected under the guise of free speech.<sup>12</sup>

### 3.2 Supreme Court's Key Observations

The Hon'ble supreme court made several important observation during the hearing of the case which heralded a new era in the constitutional law thereby having far reaching effects in the dignity doctrine.<sup>13</sup> Justice Surya Kant the main architect of the judgment unequivocally said that "Article 19 cannot prevail over Article 21," establishing a distinct hierarchy between these essential rights.<sup>14</sup> Instead of following the conventional wisdom of weighing and balancing conflicting rights, this pronouncement marks a watershed in setting this important precedent of far-reaching importance.<sup>15</sup> Further, while deciding between free speech and the right to dignity, the Court emphasised that the latter must take precedence under Article 21.<sup>16</sup> The right to Dignity, the Court said, flows from the same Constitution that protects free expression, but where these two rights are at odds, dignity must win out.<sup>17</sup> The court, further acknowledging the specific difficulties presented by digital platforms, the Court has stated its desire to establish standards and a stern regulatory framework for controlling information on the internet.<sup>18</sup> Given the lack of regulation around internet content filtering, this points to the need for a proactive judicial strategy.<sup>19</sup>

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<sup>9</sup> INDIA CONST. art. 19

<sup>10</sup> Bennett Coleman & Co. v. Union of India, (1973) 1 S.C.C. 461 (India)

<sup>11</sup> Tata Press Ltd. v. Mahanagar Tel. Nigam Ltd., (1995) 5 S.C.C. 139 (India)

<sup>12</sup> GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 102-15 (1966)

<sup>13</sup> Union of India v. Naveen Jindal, (2004) 2 S.C.C. 510 (India)

<sup>14</sup> INDIA CONST. art. 19, cl. 2

<sup>15</sup> Chintaman Rao v. State of M.P., (1951) S.C.R. 759 (India)

<sup>16</sup> State of U.P. v. Lalai Singh Yadav, (1976) 4 S.C.C. 100 (India)

<sup>17</sup> S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C. 574 (India)

<sup>18</sup> INDIA CONST. art. 21

<sup>19</sup> UPENDRA BAXI, THE INDIAN SUPREME COURT AND POLITICS 145-78 (1980)

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### 3.3 Doctrinal Significance

A more recent trend in constitutional law has the Supreme Court giving more weight to issues of equality and dignity than to wide free expression rights, as seen in this decision.<sup>20</sup> In contrast to more conventional views that stress the need of balancing conflicting rights, the Supreme Court's ruling that respect for individual dignity "trumps" free expression hints to a hierarchical interpretation of constitutional rights.<sup>21</sup> The nitty-gritty of the judgment makes it clear that the Court is prepared to endorse more extensive limitations on digital speech, given its demand for regulatory actions and its suggestion of a system to control material on the digital space.<sup>22</sup> The seriousness of the whole scenario can be viewed from the fact that the court made it clear that the Respondents be present in person in the court of law.<sup>23</sup>

To sum up the ratio of the supreme court's ruling :

First, deviating from the previous rulings that preferred a more conventional balancing approach, a clear hierarchy is now in place between Articles 19 and 21. According to this hierarchical paradigm, Article 21 concerns take precedence where these rights are inherently incompatible.<sup>24</sup>

Secondly, the substantive enlargement of this provision is reinforced by the focus on dignity as a major component of Article 21. An important step towards elevating human dignity as a fundamental constitutional principle is the Court's reinforcement that, in times of conflict, dignity must take precedence over free expression.

Third, the judicial acknowledgement of the difficulties faced on digital media is shown by the Court's emphasis on regulating online content. The law in the digital sphere faces a significant weakness do to poor implementation mechanism in contrary to the traditional flexibility regime of the conventional laws.

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<sup>20</sup> A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 (India)

<sup>21</sup> Sunil Batra v. Delhi Admin., (1978) 4 S.C.C. 494 (India)

<sup>22</sup> Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India)

<sup>23</sup> Francis Coralie Mullin v. Admin., Union Territory of Delhi, (1981) 1 S.C.C. 608 (India)

<sup>24</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India)

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#### 4. Historical Precedents and Jurisprudential Evolution

The Supreme Court tended to see Articles 19 and 21 as having distinct domains in the first several decades after independence. People mostly saw Article 21 as a procedural protection against the arbitrary action of the state, whereas Article 19 was perceived as defending civil and political liberty. These provisions were less likely to be directly at odds with one other due to this compartmentalised approach.<sup>27</sup> This pioneering method was shown in the 1950 case of *A.K. Gopalan v. State of Madras*.<sup>28</sup> Separate from other basic rights, the Court ruled that a law's constitutionality might be examined by looking at it through the lens of any one article alone.<sup>29</sup> A more comprehensive understanding of the interplay between basic rights was thwarted by this mechanical reading.<sup>30</sup>

**4.2 The Maneka Gandhi Revolution** :- *Maneka Gandhi v. Union of India*, decided in 1978, marks a watershed in the interpretation of the Constitution where the court signalled that fundamental rights are not separate but rather form part of the same integrated mesh.<sup>31</sup>, which the Court ruled as rejecting the compartmentalized approach.<sup>32</sup> Any legislation hampering basic rights must be examined in light of all applicable laws, as highlighted by the distinguished judge justice Bhagwati'.<sup>33</sup>

Supreme Court further enlarged the concept of procedure established by law as enshrined under Article 21 of the Constitution by giving it a wider meaning thereby elevating it to the status of substantive rights recognising it as a human dignity as a quintessence of the right to life.<sup>36</sup>

#### 4.3 The Dignity Doctrine Development

The opening lines of Article 21 state that, "no person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>37</sup> The Supreme Court's extensive judicial interpretation has elevated the concept of this procedural safeguard to the status of a substantive right that encompasses many facets of human dignity.<sup>38</sup>

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<sup>25</sup> *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 S.C.C. 545 (India)

<sup>26</sup> *Jeeja Ghosh v. Union of India*, (2016) 7 S.C.C. 761 (India)

<sup>27</sup> *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 S.C.C. 477 (India)

<sup>28</sup> Tanul Thakur v. State of Delhi, Crl. M.C. 4485/2020 (Delhi High Court)

<sup>29</sup> Snyder v. Phelps, 562 U.S. 443 (2011)

<sup>30</sup> R. v. Keegstra, [1990] 3 S.C.R. 697 (Canada)

<sup>31</sup> European Convention on Human Rights, art. 10

<sup>32</sup> German Basic Law, art. 1

<sup>33</sup> Canadian Charter of Rights and Freedoms, s. 1

<sup>34</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India)

<sup>35</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

<sup>36</sup> Digital Services Act, Regulation (EU) 2022/2065

<sup>37</sup> Chintaman Rao v. State of Madhya Pradesh, (1950) S.C.R. 759 (India)

<sup>38</sup> State of U.P. v. Lalai Singh Yadav, (1976) 4 S.C.C. 100 (India)

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The judicial history of acknowledging dignity as a fundamental right can be traced to many judgments like *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* that the right to life included the right to live in a dignified manner.<sup>39</sup> or *Olga Tellis v. Bombay Municipal Corporation* (1985), in which it was held that the right to livelihood is an intrinsic part of the right to life.<sup>40</sup> Any legislation that takes away someone of their ability to earn a livelihood would tantamount to taking their life. However this whole process gained momentum post *Maneka Gandhi* judgment the Supreme Court's decision in *Maneka Gandhi v. Union of India* changed the constitutional landscape in a major way by establishing that Article 21 protects not just biological life but also life with dignity.<sup>41</sup> which was further reiterated by Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), marks an important judgment in recognising privacy rights to the pedestal of basic rights arising from Article 21.<sup>42</sup> The Court's elaborate discussion of dignity as the guiding principle of privacy rights further concretized dignity as a fundamental value of the Constitution. The concept of Dignity, as per the court's jurisprudence, entailed not just one's reputation but also one's independence and sense of self.<sup>43</sup> Courts have recognised the need to safeguard individuals from defamatory statements even under defamation legislation. But a constitutional harm is more than just an offence. This leads to a vital principle: "The Constitution does not guarantee a right not to be offended."<sup>44</sup>

### Judicial Trends on Free Speech and Satire

Satire is a kind of free speech, and Indian courts have carefully upheld this right. In *S. Rangarajan v. P. Jagjivan Ram*, the Court noted: "Freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence."<sup>45</sup> The Court did

emphasise in *Pravasi Bhalai Sangathan v. Union of India*, nonetheless, that expressions that encourage "hate or disharmony".<sup>46</sup>

Additionally, the *Tanul Thakur Meme case*<sup>47</sup> shown how popular opinion may undermine creative freedom, even though courts tend to favour safeguarding speech in the absence of obvious provocation.

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<sup>39</sup> Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 S.C.C. 608 (India)

<sup>40</sup> Olga Tellis v. Bombay Municipal Corporation, (1985) 3 S.C.C. 545 (India)

<sup>41</sup> Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India)

<sup>42</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India)

<sup>43</sup> Ibid. <sup>44</sup> Constitutional principle established in various Indian Supreme Court judgments

<sup>45</sup> S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C. 574 (India)

<sup>46</sup> Pravasi Bhalai Sangathan v. Union of India, (2014) 11 S.C.C. 477 (India)

<sup>47</sup> Tanul Thakur v. State of Delhi, Crl. M.C. 4485/2020 (Delhi High Court)

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## Dignity and Disability Rights

Now this Dignity and Disability Rights In light of India's constitutional guarantee of equality and its international human rights commitments, the country's courts have paid special attention to the right of disabled people to live with respect and dignity.<sup>48</sup> The Supreme Court has acknowledged that people with disabilities have distinct obstacles to their dignity, often caused by prejudiced attitudes and practices in society, which the law ought to aggressively combat.<sup>49</sup> Dignity for people with disabilities requires concrete steps to guarantee their full involvement in society, not just legal equality, as the Supreme Court stressed in *Jeeja Ghosh v. Union of India*.<sup>50</sup> Even when conveyed in seemingly funny situations, negative stereotypes and discriminatory attitudes may severely harm the dignity of individuals with disabilities, as pointed out by the Court. In the Samay Raina case, because the accused material targeted people with impairments, this precedent becomes immediately applicable.

## VI. Reconciling the Conflict

Courts must adopt a context-sensitive balancing test: looking into parameters like , Intent: Was

the speech aimed at hate or satire? Platform: Was it artistic or inciting violence? Impact: Was there actual harm or only perceived insult? The Supreme Court's decision in *Shreya Singhal v. Union of India* struck down Section 66A of the IT Act, by pointing out that a vague and imprecise idea of harm cannot entail restriction on free speech.<sup>51</sup> Therefore, the court gives expression the benefit of the doubt until it crosses the line into hate speech, incitement, or defamation, rather than just causing discomfort or debate.

## 5. Comparative Constitutional Analysis

### 5.1 American Constitutional Jurisprudence

The American and Indian approach in respect of free speech and dignity comes with stark similarities and differences. Unlike India where dignity has been put ahead of free speech, the courts in America have taken a far stricter view when it comes to protecting free speech under its Constitutional First amendment.<sup>53</sup> In favour of content-neutral legislation and an emphasis on the marketplace of ideas paradigm, American courts have traditionally been hesitant to limit speech on the basis of dignity concerns.

The U.S. Supreme Court has repeatedly struck down attempts to limit expression in the name of protecting dignity, warning that such limits are at odds with the idea of democratic self-rule..<sup>54</sup>

The U.S. Supreme Court has upheld the right to free expression in instances such as *Snyder v. Phelps*, highlighting that the solution to offensive speech is not repression but rather greater speech, particularly when it targets vulnerable persons.<sup>55</sup> There is a fundamental difference in the way this approach prioritises expressive freedoms above protection against dignitary injury, which reflects a distinct view of the connection between free speech and human dignity. Distinct constitutional traditions and beliefs about the bounds of free speech are on display in the *Samay Raina* case's contrast with India's approach.

Nevertheless, there are several types of speech that are not protected according to American law. These include threats, encouragement to impending criminal action, and comments used in fighting.<sup>56</sup> Even in societies with robust free speech traditions, considerations about dignity and



safety may, in extreme circumstances, trump expressive liberties, as shown by the evolution of these exceptions.

This is especially true when considering the United States' history of hate speech prohibition. The US has been hesitant to criminalise hate speech, favouring counter-speech instead, in contrast to many other democracies.<sup>57</sup> This method stands in stark contrast to the constitutional structure of India, which allows for limitations based on "decency or morality."

## 5.2 European Human Rights Framework

When it comes to striking a balance between the rights to free speech and dignity, the European Convention on Human Rights offers an alternative approach.<sup>58</sup> Even though the right to free speech is guaranteed in Article 10 of the Convention, limitations may be imposed if they are deemed essential to "the protection of the reputation or rights of others." This revised version makes the possible tension between free speech and dignity rights more explicit.

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<sup>53</sup> U.S. CONST. amend. I

<sup>54</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

<sup>55</sup> *Snyder v. Phelps*, 562 U.S. 443 (2011)

<sup>56</sup> *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)

<sup>57</sup> *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992)

<sup>58</sup> European Convention on Human Rights, art. 10

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Sophisticated jurisprudence has been created by the European Court of Human Rights to balance these conflicting interests.<sup>59</sup>

The Court takes into account the expression's characteristics, the damage it caused, the availability of other remedies, and the public interest in the speech when applying a proportionality test. In comparison to the Samay Raina case's proposed hierarchical architecture, this method is more complex.

Another illuminating case in point is German constitutional law. Human dignity is declared to be "inviolable" and placed at the pinnacle of the constitutional order in Article 1 of the German

Basic Law, which also safeguards free expression.<sup>60</sup>

According to this, there is a distinct hierarchy, much as the Indian Supreme Court had proposed in the *Samay Raina* case.

### **5.3 Canadian Charter Approach**

Another paradigm for rights balance is the Canadian Charter of Rights and Freedoms.<sup>61</sup> Free speech and all other rights may be subject to "reasonable limits" under the Charter's Section 1 so long as these limits can be "demonstrably justified in a free and democratic society." Rather of imposing strict hierarchies, this method places an emphasis on balancing according to the relevant environment.

*R. v. Keegstra (1990)*, an upholding of hate speech prohibitions by the Canadian Supreme Court, shows how, within a strong constitutional framework, considerations about dignity may take precedence over claims of free expression.<sup>62</sup> The framework that might guide Indian law was laid forth by the Court in its consideration of the negative impacts of hate speech on both specific communities and society at large.

## **6. From Viral to Violation: Content Regulation in India's Digital Age**

### **6.1 Digital Revolution and New Challenges**

Challenges to long-standing methods of balancing free speech with dignity rights have emerged in the wake of the digital revolution's seismic shifts in the media environment.<sup>63</sup> With the rise of video-sharing websites and social media, anyone with an internet connection may now reach an audience anywhere in the world.

A regulatory conundrum has emerged as a result of the widespread use of digital content platforms. There are many positive outcomes from technology's democratisation of media, such as increased civic engagement and creative expression, but there are also some negative outcomes, such as the proliferation of damaging speech.<sup>64</sup>

In the digital realm, the conventional role of major media organisations as gatekeepers has been

significantly diminished. There is typically little editorial control or adherence to established journalistic ethics among online content makers, in contrast to conventional media that functions under professional standards and regulatory regulation.<sup>65</sup>

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<sup>59</sup> *Handyside v. United Kingdom*, 1 EHRR 737 (1976)

<sup>60</sup> German Basic Law, art. 1

<sup>61</sup> Canadian Charter of Rights and Freedoms, s. 1

<sup>62</sup> *R. v. Keegstra*, [1990] 3 S.C.R. 697 (Canada)

<sup>63</sup> JOSE VAN DIJCK, *THE CULTURE OF CONNECTIVITY* 12-35 (2013)

<sup>64</sup> DANAH BOYD, *IT'S COMPLICATED: THE SOCIAL LIVES OF NETWORKED TEENS* 45-78 (2014)

<sup>65</sup> EMILY BELL & TAYLOR OWEN, *THE PLATFORM PRESS* 23-56 (2017)

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This has led to a flood of content online—some inspiring and uplifting, some hurtful or damaging to a person's dignity. The viral nature of the internet only amplifies both the good and the bad. Now, in a matter of hours, something that may have only reached a small audience before the digital age may reach a worldwide audience and do damage on a scale never seen before.<sup>66</sup> The question of how to strike a balance between free speech and safety in the face of this viral potential has refocused attention on the necessity to regulate content and the conventional limits of appropriate discourse.

## **6.2 Regulatory Challenges in the Digital Space**

There are new problems with regulating digital material that can't be solved by the old legal systems.

The first is the complexity that arises from jurisdictions due to the worldwide nature of digital platforms.<sup>67</sup> The dilemma of whether legal norms should be applied arises when content published in one jurisdiction may be viewed globally.

Secondly there is a huge amount of online content, which makes it humanly impossible to deal with so platforms rely more on algorithms. While Artificial intelligence is fast and flexible, it often misses cultural nuances, context, and creative expression.

Third, there's conflicting evidence on the need to protect content producers from due process and the rapidity with which dangerous material may proliferate online.<sup>69</sup> It is possible that the traditional legal procedures, which place an emphasis on careful consideration, may take too long to stop the spread of dangerous information on the internet.

### **6.3 Platform Governance and Self-Regulation**

Online platforms handle harmful content by setting rules. and systems that block things like hate speech, harassment, and discrimination. These community standards protect people's dignity by banning such harmful content. Platforms use these rules to create safer spaces where users can interact without facing abuse or offensive behaviour<sup>70</sup>. This forms part of the content management and governance system in the online sphere to ensure respect and safety virtually.

Online service providers deal with the issues of hate speech, harassment, or discriminatory content by creating content restriction setups and machinery to enforce the same, by using community standards.<sup>70</sup> The issues of responsibility, openness, and uniformity are, however, heightened by platform governance.

A "new speech order," in which private corporations, not democratic institutions, set limits on what can and cannot be said, is the result of platform governance's privatisation of speech control.<sup>71</sup> Concerns over the proper function of private entities in controlling public discourse and democratic accountability are prompted by this change.

The methods used by different platforms to strike a balance between free speech and security concerns in their content rules might vary greatly.<sup>72</sup> Platforms vary in their methods to content management; some are more lenient in their stances on free speech and minimal in their censorship policies. The uneven treatment of comparable information across platforms is a result of this difference.

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<sup>66</sup> NANCY BAYM, PERSONAL CONNECTIONS IN THE DIGITAL AGE 89-112 (2015)

<sup>67</sup> JACK GOLDSMITH & TIM WU, WHO CONTROLS THE INTERNET? 156-189 (2006)

<sup>68</sup> SARAH ROBERTS, BEHIND THE SCREEN: CONTENT MODERATION IN THE SHADOWS 78-105 (2019)

<sup>69</sup> KATE KLONICK, The New Governors: The People, Rules, and Processes Governing Online Speech, 131 HARV. L. REV. 1598 (2018)

<sup>70</sup> EVELYN GOH, The Facebook Dilemma: Policy and Enforcement Challenges in Content Moderation, 45 J. INTERNET L. 12 (2021)

<sup>71</sup> LANGDON WINNER, Do Artifacts Have Politics?, 109 DAEDALUS 121 (1980)

<sup>72</sup> GILLESPIE, TARLETON, CUSTODIANS OF THE INTERNET 134-167 (2018)

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## **Now Legal Framework for Digital Content Regulation in India**

### **A. Constitutional Foundation**

Article 19(1)(a) of the Indian Constitution ensures the right to free speech, with the caveat that it may be subject to reasonable limitations outlined in Article 19 (2). <sup>73</sup> Article 19(2) grants the government the authority to reasonably limit free speech when doing so is necessary to protect India's integrity and sovereignty, national security, good relations with other countries, public order, morality, or against crimes such as contempt of court, defamation, or incitement to violence. <sup>74</sup> Particularly pertinent to the Samay Raina case is the inclusion of "decency or morality" as a basis for limitation; material that targets individuals with disabilities might be seen as falling within this category.

Decades of judicial interpretation have developed the reasonableness test, culminating in the Supreme Court's ruling in *Chintaman Rao v. State of Madhya Pradesh*, which established that limitations must be acceptable in both their procedural and substantive aspects. <sup>75</sup> It is the responsibility of the Court to determine whether the limitation is reasonable and proportional to the desired results, as well as if it serves a valid governmental purpose. <sup>76</sup> To find out if limitations on disability-themed comedic material are fair under the Constitution, this approach is vital in the Samay Raina case.

Among these limitations are concerns for morality, public morality, and India's independence and sovereignty. The digital era has made it more difficult to apply these rules, as material may now reach various audiences concurrently regardless of geography.

### **B. The Information Technology Act, 2000 and Its Evolution**

Subordinate to the Intermediary Guidelines Rules 2011 in India is the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.<sup>77</sup> Addressing issues of intermediary responsibility and content requirements for online publishers, these guidelines provide a thorough framework for regulating digital material.

Online publishers of news and current events as well as selected audiovisual material (such as films, TV shows and podcasts) are governed by a framework laid forth in the 2021 Rules under the IT Act.<sup>78</sup> Multiple tiers of content filtering and compliance requirements are part of this regulatory architecture's effort to strike a balance between platform autonomy and government control.

### **C. Prohibited Content Categories**

Anyone breaking the law in India by making, uploading, or sharing pornographic, infringing on copyright or patent, or virus-containing material is in violation of the IT Rules.<sup>79</sup> There has to be thorough regulatory frameworks controlling digital content since these broad categories provide the legal basis for enforcement actions and content takedowns, but their interpretation and implementation are still controversial.

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<sup>73</sup> INDIA CONST. art. 19, cl. 1(a)

<sup>74</sup> INDIA CONST. art. 19, cl. 2

<sup>75</sup> Chintaman Rao v. State of Madhya Pradesh, (1950) S.C.R. 759 (India)

<sup>76</sup> Ibid.

<sup>77</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

<sup>78</sup> Ibid.

<sup>79</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India)

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It is clear that the Supreme Court has acknowledged this requirement, as seen by its remarks in the Samay Raina case, which suggest that it may establish regulations for internet material.<sup>80</sup> Several conflicting factors must be considered in any framework for regulating digital material. It has to be clear while being flexible enough to handle new problems as they arise, guarantee responsibility while protecting innovation, and safeguard free speech without allowing actual

damage to occur. The framework also needs to function with different kinds of content and platforms.

Legislation governing digital material may be modelled after the Digital Services Act in the European Union.<sup>81</sup> Platforms must handle unlawful material while maintaining basic rights, according to the Act. Nevertheless, it remains to be seen how well these kinds of methods work in India.

## **7. Implications of the Hierarchical Approach**

### **7.1 Impact on Free Speech Jurisprudence**

A major change has occurred in Indian free speech law with the Supreme Court's decision to rank Article 21 higher than Article 19.<sup>1</sup><sup>82</sup> The primacy given to one right over another might result in stern restrictions on communication that goes against the right to dignity. The resultant effect of which could be that genuine expression in the form of artistic, social media expression or political criticism.

The hierarchy may have a special effect on comic and satirical expression, which often uses irreverence, stereotypes, and exaggeration. Due to its social critical nature and dependence on creative license, comedy has always enjoyed wide protection under free speech rules.<sup>83</sup> Comedy that mocks oppressed communities or delicate topics may face more scrutiny if dignity rights are deemed more important.

The implications extend beyond individual cases to the broader legal ecosystem.<sup>84</sup> Everyone from lower courts to lawyers to content providers now has to figure out how to function within a system where dignity concerns take precedence over free expression arguments. Conservative content production and legal advice practices could result from this, stifling free speech.

### **7.2 Protection of Vulnerable Groups**

The hierarchical method has the potential to safeguard vulnerable and marginalised groups more effectively, who are often the focus of damaging speech. This is a positive aspect of the

strategy.<sup>85</sup> More robust legal protections against discriminatory and disparaging speech could help oppressed groups, such as those who are disabled or members of religious minority.

Recognising that certain groups are more susceptible to damaging dignity and worth practices, the focus on dignity rights is in line with international human rights standards.<sup>86</sup> But naysayers contend that disadvantaged populations can be harmed by a paradoxical limitation of debate on social concerns and discrimination if dignity rights are too broadly protected. In order to raise awareness and motivate social change, it is crucial to openly debate social issues, particularly those impacting disadvantaged groups.<sup>87</sup>

### 7.3 Judicial Role and Democratic Governance

The hierarchical structure also begs the concerns of how judicial monitoring relates to democratic government and what the proper function of the court is in controlling speech.<sup>88</sup> It is possible that the courts will be crossing over into domains normally controlled by democratic discourse and legislative procedures by setting content standards.

Judicial protection of constitutional rights is necessary, according to the counterargument, especially in cases when minority interests are not adequately protected by legislative procedures.<sup>89</sup> Although it may be unpopular with the majority feeling, courts have a constitutional obligation to uphold basic rights, especially dignity rights.

In the context of digital content, where legislative solutions may be slow to keep up with technical progress, striking a balance between judicial activism and democratic governance becomes even more challenging.<sup>90</sup> Addressing regulatory loopholes may require judicial action, but it has to be calibrated carefully so that democratic accountability is maintained.

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<sup>80</sup> Cure SMA India Found. v. Samay Raina, Writ Petition (Civil) No. 1008/2024 (S.C. India Dec. 19, 2024)

<sup>81</sup> Digital Services Act, Regulation (EU) 2022/2065

<sup>82</sup> Constitutional jurisprudence analysis based on Supreme Court observations <sup>83</sup> Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952)

<sup>84</sup> Legal ecosystem implications of hierarchical rights approach

<sup>85</sup> International human rights framework on vulnerable groups protection

<sup>86</sup> UN Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006



<sup>87</sup> JOHN STUART MILL, ON LIBERTY 56-89 (1859)

<sup>88</sup> Judicial role in rights protection and democratic governance

<sup>89</sup> RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 134-167 (1977)

<sup>90</sup> Technological change and judicial response dynamics

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## **8. Critiques and Counterarguments**

### **8.1 The Absolutist Free Speech Perspective**

The hierarchical approach, according to its detractors, water down free expression, which is a cornerstone of democracies. <sup>91</sup> Their position is that the right to free speech is fundamental to democracy and all other democratic processes, rather than just one among many. Democratic accountability, societal advancement, and personal self-actualization are all rendered impossible in the absence of strong safeguards for free expression.

The absolutist view is that, instead of censorship, counter-speech is the best response to hate speech. <sup>92</sup> According to the marketplace of ideas hypothesis, public conversation and democratic deliberation suffer when any kind of speech restriction is imposed, regardless of how offensive it may be. The premise is that truth is revealed via free and open discussion.

Restrictions on speech based on dignity are vulnerable to misuse, according to absolutists, since dignity is subjective by definition. <sup>93</sup> What one person finds dignified may be insulting to another, and dignity standards may be used to stifle genuine criticism or opposition, they argue.

### **8.2 The Balancing Approach Defenders**

That free expression and dignity are basic principles that need cautious, context-specific balancing, according to proponents of conventional balancing methodologies, is more important than categorical prioritisation.

Courts may take into account things including the kind of speech, the degree of injury, the availability of other remedies, and the general public interest. <sup>95</sup> Compared to a strict hierarchical method, this adaptability might provide more nuanced and suitable results.

## **9. Future Directions and Recommendations**

### **9.1 Developing Comprehensive Guidelines**

An opportunity to create a thorough framework that tackles the complicated problems of speech control in the digital era has arisen with the Supreme Court's suggestion that it may establish standards for online content regulation.<sup>100</sup> Legal artistic, political, and social expression should be able to coexist with speech that violates people's dignity, and these rules should make that distinction very evident.

Restrictions on speech should not be larger than required to fulfil the legitimate objective of safeguarding dignity, and the rules should contain principles of proportionality to ensure this.<sup>101</sup> Notice, a chance to respond, and methods for independent review are all procedural protections that should be provided.

By setting standards for platform rules, enforcement tactics, and appeals processes, any regulatory framework should also address platforms' roles in content control. \*<sup>102</sup> Private content filtering should supplement, not replace, constitutional safeguards, according to the framework.

### **9.2 Strengthening Institutional Capacity**

It will be necessary to develop institutional capacity across the legal system in order to effectively apply the hierarchical approach.<sup>103</sup> Digital platforms and the procedures for content distribution would need improved technological knowledge on the part of the judiciary. A new generation of lawyers will need to learn how to navigate the complex relationship between digital technology and constitutional law.

Investigating and prosecuting instances involving online dignity breaches will need training and resources for law enforcement authorities.<sup>104</sup> Cases involving vulnerable groups need sensitivity training and the ability to gather and analyse digital evidence technically.

Advocacy and civil society organisations are vital in keeping an eye on implementation and pushing for middle ground solutions that safeguard dignity rights with free expression.<sup>105</sup> The

prevention of regulatory authority abuse and the assurance of responsibility can only be achieved with the support of these groups.

### 9.3 Public Education and Awareness

In the end, public comprehension and approval are what make a regulatory structure operate.<sup>106</sup> In order to assist individuals understand their rights and duties in the digital world, public education campaigns should raise awareness of both the right to free expression and the need to treat others with respect.

Efforts should be made to educate content producers so that they can comprehend the ethical and legal implications of their work.<sup>107</sup> Included in this is instruction on how to be sensitive to the needs of under-represented groups, familiarity with one's legal responsibilities, and the tools accessible for resolving disagreements.

In order to equip people to assess material critically and identify potentially dangerous or deceptive information, media literacy education is crucial.<sup>108</sup> A decrease in the demand for damaging material and an increase in the production of information that is both intelligent and responsible may be achieved via increased media literacy.

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<sup>100</sup> Supreme Court's indication for comprehensive guidelines development

<sup>101</sup> Proportionality principle in constitutional restrictions

<sup>102</sup> Platform governance and constitutional protection integration

<sup>103</sup> Institutional capacity building requirements

<sup>104</sup> Law enforcement training for digital content cases

<sup>105</sup> Civil society role in rights protection monitoring

<sup>106</sup> Public education importance in regulatory framework success

<sup>107</sup> Content creator education and legal awareness

<sup>108</sup> Media literacy education for digital citizenship

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### 9.4 International Cooperation and Learning

Due to the worldwide reach of digital platforms, coordinated and efficient control of material necessitates international collaboration.<sup>109</sup> India has to talk to other democracies so they may

learn from each other, create shared norms, and work together on enforcement.

India may benefit from studying other countries' content control strategies to learn from their mistakes and implement their best practices.<sup>110</sup> In order to create solutions tailored to India's unique constitutional principles and socioeconomic circumstances, it is helpful to compare and contrast various regulatory systems.

Platform governance, jurisdictional disputes, and the execution of regulatory judgements are all examples of cross-border difficulties that need international collaboration.<sup>111</sup> We may need multilateral structures to tackle the worldwide circulation of digital information.

## **10. Conclusion**

The Samay Raina case was a watershed point in the development of constitutional law in India when the Supreme Court made its remarks. Beyond the customary balancing techniques, the Court has established a more hierarchical conception of basic rights connections by stating that Article 21 must prevail above Article 19 where these rights clash.

A more universal tendency towards regulating speech with an emphasis on protecting people's dignity and safety, especially online, is mirrored in this theological shift. There is a new sense of urgency around the need for efficient regulatory frameworks due to the specific difficulties encountered by online content creators, such as the widespread availability of digital platforms, the potential for digital material to spread rapidly, and the democratisation of media production. There are benefits and drawbacks to the hierarchical method. The potential for improved safeguards for marginalised communities, who are often the focus of harmful internet information, is an encouraging development. In comparison to more conventional methods of balancing, it is more transparent and predictable, which might lead to less litigation and better guidelines for platforms and content providers.

There are major worries about the effect on democratic debate, creative freedom, and free speech that this method brings up.<sup>115</sup> Due diligence and protections are necessary due to the possibility of too wide application, the subjective character of dignity decisions, and the misuse of regulatory authority.

The implementation is the deciding factor in whether the hierarchical method succeeds or fails. It is critical to have thorough regulations that spell out expectations, protect procedures, and provide reasonable penalties. Implementation that is both successful and balanced will also need public education, strengthened institutional capacity, and international collaboration. It would be a struggle for India to negotiate its new constitutional framework while upholding the democratic principles that support free speech and human dignity.<sup>117</sup> In the never-ending battle to strike a balance between these core constitutional obligations in the digital era, the Samay Raina case marks the start of a new chapter rather than its conclusion.

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<sup>109</sup> International cooperation in digital content regulation

<sup>110</sup> Comparative regulatory analysis and best practices

<sup>111</sup> Cross-border digital governance challenges

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The ramifications of this change in doctrine transcend beyond specific instances and affect the larger structure of constitutional government in India. The final litmus test, as the judicial system, legislative bodies, and people adjust to this new paradigm, will be to determine if the hierarchical approach fulfils or undermines the constitutional guarantee of a society that upholds both personal liberty and human worth.

The progression of constitutional interpretation from A.K. Gopalan's first compartmentalised approach to Maneka Gandhi's integrated understanding and, most recently, the hierarchical model arising from the Samay Raina case, exemplifies this dynamic character. While staying faithful to basic constitutional principles, constitutional law must adapt to new problems and societal changes.