
FREEDOM OF SPEECH AND EXPRESSION: SCOPE AND LIMITATIONS IN INDIA

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ABSTRACT

Freedom of speech and expression is a fundamental part of democratic rule and a key human right. In India, the Constitution's Article 19(1)(a) ensures this freedom for citizens, but it also allows for "reasonable restrictions" as outlined in Article 19(2). More than seventy years of court rulings have developed a detailed understanding of how to balance personal freedoms with the needs of society as a whole. This paper looks at the constitutional provisions, important court decisions, the extent of this right, the types of limitations that are allowed — such as maintaining public order, security, preventing defamation, obscenity, and sedition and the new challenges brought about by digital communication and social media. The paper concludes with thoughtful comments and suggestions to maintain a strong public space while protecting valid public concerns.

INTRODUCTION

Freedom of speech and expression is generally seen as one of the most important rights in a democratic society. In India, this right is protected by the Constitution, specifically under Article 19(1)(a)¹. Its significance is evident in how it supports open discussion in democracy, promotes social development, and safeguards different viewpoints. However, in India, the right to free speech is not without its challenges. The Constitution allows for reasonable limits under Article 19(2)² to maintain the country's integrity, public order, decency, morality, and other important interests.

Over time, the relationship between free speech and its restrictions has generated discussions among academics, judges, and the public.

Some people believe that the vague terms in "reasonable restrictions" have given the government too much power and led to its misuse in some cases. At the same time,

¹ The Constitution of India, art. 19(1)(a)

² The Constitution of India, art. 19(2)

others support these limitations as essential to prevent speech that can lead to violence or upset social peace.

This paper aims to examine the history, court rulings, and real-world issues related to freedom of speech and expression in India.

By looking at different perspectives and studying new trends in media and digital communication, the study will provide a full picture of how this basic right is being used and challenged today. The analysis will not only show the strengths of India's legal system but also identify areas that need improvement to ensure freedom in a time of fast technological change.

The research method used here is mainly based on legal principles.

It involves a detailed review of constitutional texts, laws, court decisions, and academic writings. This method helps in thoroughly exploring the legal aspects related to free expression and shows how court interpretations have changed over the years.

CONSTITUTIONAL FRAMEWORK

The freedom of speech and expression forms one of the cornerstones of democratic governance in India. The framers of the Constitution recognized that free expression is vital for the discovery of truth, participation in public affairs, and the proper functioning of democracy. Consequently, this right has been enshrined as a fundamental right under Article 19(1)(a) of the Constitution of India, guaranteeing every citizen the right to freedom of speech and expression.

1 Article 19(1)(a): The Core Provision

Article 19(1)(a) states that “All citizens shall have the right to freedom of speech and expression.”

This provision ensures that every individual has the liberty to express one's thoughts,

opinions, and beliefs freely, whether through words, writing, printing, pictures, or any other medium. It encompasses the right to communicate and receive information, form opinions, and participate in public discourse.

The term “speech and expression” has been interpreted broadly by the Indian judiciary to include not only verbal or written communication but also symbolic and artistic expression, freedom of the press, commercial speech, right to information, and even the right to silence.³

2 Article 1 9(2): Reasonable Restrictions

While Article 1 9(1)(a) guarantees freedom of speech and expression, Article 1 9(2) imposes reasonable restrictions in the interests of public order, morality, and the sovereignty and integrity of India. This balance seeks to prevent misuse of the freedom and to ensure that expression does not threaten social harmony or national security.⁴

Article 1 9(2) allows the State to impose restrictions on the following grounds:

1. Sovereignty and Integrity of India
2. Security of the State
3. Friendly Relations with Foreign States
4. Public Order
5. Decency or Morality
6. Contempt of Court
7. Defamation
8. Incitement to an Offence

These categories were shaped through constitutional amendments and judicial interpretation. The First Amendment (1951) was particularly significant as it added

³ M. P. Jain, *Indian Constitutional Law*, 9th edn., LexisNexis, 2023

⁴ H.M. Seervai, *Constitutional Law of India*, 4th edn., Universal Law Publishing, 201 3

new grounds such as public order and friendly relations with foreign states.

3 Judicial Interpretation and Expansion of Scope

The judiciary has played a crucial role in defining the contours of this right. In *Romesh Thappar V. State of Madras*⁵ and *Brij Bhushan V. State of Delhi*⁶, the Supreme Court held that freedom of speech and expression is essential for the proper functioning of democracy and struck down pre-censorship laws that curtailed it.

In *Maneka Gandhi v. Union of India*⁷, the Court expanded the scope by linking Article 19 (1)(a) with Article 21, emphasizing that freedom of speech is an integral part of the “right to life and personal liberty.”

Further, in *Indian Express Newspapers v. Union of India*⁸, the Court recognized the freedom of the press as an essential part of Article 19(1)(a), even though it is not explicitly mentioned in the Constitution.

4 Related Constitutional Provisions

Article 14⁹ (Right to Equality): Ensures equal protection of free speech without discrimination.

Article 21¹⁰ (Right to Life and Liberty): Protects the right to personal autonomy and dignity, which includes expressive freedoms.

Article 32¹¹: Provides the right to constitutional remedies in case of violation of **Article 19(1)(a)**.

These interconnected provisions ensure that the freedom of speech and expression is not viewed in isolation but as part of a larger constitutional scheme that values liberty

⁵ AIR 1 950 SC 1 24

⁶ AIR 1 950 SC 1 29

⁷ AIR 1 978 SC 597

⁸ (1 985) 1 SCC 641

⁹ The Constitution of India, art. 14

¹⁰ The Constitution of India, art. 21

¹¹ The Constitution of India, art. 32

and justice.

5 Constitutional Amendments and Contemporary Relevance

The First Amendment (1951) was a landmark in shaping Article 19(2), as it allowed the government to place “reasonable restrictions” on free speech to maintain public order and protect state interests. Later amendments and judicial decisions have continued to evolve this balance, especially concerning digital and social media regulation, hate speech, and sedition.

Recent judgments such as *Shreya Singhal v. Union of India*¹² (2015)—which struck down Section 66A of the IT Act for being unconstitutional—underscore the judiciary’s commitment to protecting the digital expression of citizens within constitutional limits.

FOUNDATIONAL JUDICIAL PRINCIPLES

The interpretation of the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution has largely evolved through judicial pronouncements. The Indian judiciary has played a transformative role in defining the contours of this right and determining its scope and limitations. Over the decades, the Supreme Court of India has developed a foundational judicial philosophy that balances individual liberty with collective societal interests — a hallmark of Indian constitutionalism.

1 Freedom of Speech as the Essence of Democracy

The judiciary has consistently emphasized that freedom of speech and expression lies at the heart of democratic governance. In the landmark case of *Romesh Thappar v. State of Madras*¹³, the Supreme Court held that “freedom of speech and expression is

¹² (2015) 5 SCC 1

¹³ Supra note 5 at 4

the foundation of all democratic organizations” . The Court struck down a state-imposed ban on a political journal, ruling that restrictions must strictly fall within the ambit of Article 19(2).

Similarly, in *Brij Bhushan V. State of Delhi*¹⁴, the Court invalidated pre-censorship orders on newspapers, observing that prior restraints are antithetical to democratic principles. These early decisions established that freedom of expression includes freedom from pre-censorship and that any restriction must be narrowly construed.

2 Doctrine of Reasonable Restriction

The doctrine of “reasonable restriction” forms a central judicial principle under Article 19(2). It recognizes that absolute freedom does not exist in any civilized society and that liberty must coexist with social order. The Supreme Court in *State of Madras v. V.G. Row*,¹⁵ laid down the test of reasonableness, asserting that each restriction must be assessed considering:

- The nature of the right alleged to have been infringed,
- The purpose of the restriction,
- The extent and urgency of the evil sought to be remedied, and
- The proportionality between the restriction and the objective.

This case remains a cornerstone in determining whether restrictions on free speech meet constitutional standards.

3 Freedom of Press as an Inseparable Part of Article 19(1)(a)

Although the Constitution does not explicitly mention “freedom of the press,” the Supreme Court in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*¹⁶, and *Bennett Coleman & Co. v. Union of India*¹⁷ held that the freedom of the press is implicit in Article

¹⁴ *Supra* note 6 at 4

¹⁵ AIR 1952 SC 196

¹⁶ *Supra* note 8 at 4

¹⁷ AIR 1973 SC 106

19(1)(a). The Court emphasized that an independent press is essential for the free flow of information and for ensuring public accountability.

In *Sakal Papers (P) Ltd. v. Union of India*¹⁸, it was held that state regulation of the number of pages a newspaper could publish was unconstitutional, as it interfered with the newspaper's right to free expression.

These judgments together established that freedom of speech includes the right to publish, circulate, and access information, and that government control over content or medium of dissemination would be unconstitutional unless it satisfied Article 19(2).

4 Expansion of the Right: Maneka Gandhi and Beyond

The decision in *Maneka Gandhi v. Union of India*¹⁹ marked a turning point by integrating Article 19(1)(a) with Article 21 (Right to Life and Personal Liberty) and Article 14 (Right to Equality). The Court held that the freedom of speech and expression is not an isolated right but must be understood as part of a cohesive framework ensuring dignity and liberty.

This case led to the “Golden Triangle Doctrine” of Articles 14, 19, and 21 — reinforcing that any restriction on free speech must be just, fair, and reasonable.

5 Freedom of Speech and Public Order

The principle that public order must be distinguished from mere “law and order” or “security of the state” was elaborated in *The Superintendent, Central Prison, Fatehgarh vs. Dr. Ram Manohar Lohia*²⁰. The Court ruled that there must be a proximate and reasonable nexus between speech and the threat to public order — a “clear and present danger” test rather than remote or speculative harm.

This judgment established the proximity test, which remains a guiding principle in

¹⁸ AIR 1962 SC 305

¹⁹ *Supra* note 7 at 4

²⁰ (1960) 2 SCR 821

assessing the constitutionality of speech restrictions.

6 The Modern Digital Dimension

In the digital age, the judiciary has continued to adapt foundational principles to new contexts. In *Shreya Singhal v. Union of India*²¹ (2015), the Supreme Court struck down Section 66A of the Information Technology Act, 2000, holding that vague and overbroad restrictions on online speech violate Article 19(1)(a). The Court reaffirmed that the grounds for restriction must strictly fall within Article 19(2), and introduced the “chilling effect” doctrine, cautioning against laws that deter legitimate expression.

Similarly, in *Anuradha Bhasin v. Union of India*²², concerning internet shutdowns in Jammu and Kashmir, the Court held that access to the internet is integral to freedom of expression and that restrictions must be temporary, proportionate, and subject to judicial review.

7 Freedom and Responsibility: The Balancing Principle

Indian jurisprudence on free speech ultimately rests upon the principle of balance — ensuring that liberty and order coexist. The Court in *K. A. Abbas v. Union of India*²³ recognized that artistic and cinematic expressions are protected under Article 19(1)(a), but they must adhere to reasonable standards of decency and morality under Article 19(2).

This reasoning reflects the Indian constitutional approach — freedom with responsibility, where the exercise of free expression carries with it an obligation not to infringe upon the rights and dignity of others.

²¹ *Supra* note 1 2 at 5

²² AIR 2020 SC 1 308

²³ 1 971 AIE 481

KEY CASES INFLUENCING THE EXTENT AND BOUNDARIES OF FREE SPEECH

Kedar Nath Singh v. State of Bihar²⁴

In this case, the court confirmed that the sedition law (Section 124A IPC) is constitutional, but it also limited its application.

The court ruled that only speech that encourages violence or public disturbance can be punished under sedition. Simple criticism of the government, even if strong, is considered protected speech. This case shows how the court tries to balance the security needs of the state with the freedom of individuals by limiting overly broad criminal laws.

S. Rangarajan v. P. Jagjivan Ram²⁵

This case expanded the protection of free speech to include artistic and cultural expressions.

The court stated that any restrictions or censorship must be based on a clear and present danger to public order. The judgment made it clear that even expressions on controversial topics, including films and art, are protected unless the government can prove a real and immediate threat.

Shreya Singhal v. Union of India²⁶

This case is one of the most significant decisions regarding online speech. In *Shreya Singhal*, the court ruled that Section 66A of the Information Technology Act, which criminalized "offensive" online content, was unconstitutional because it was too vague and too broad. The court found that this section failed to meet the standards of

²⁴ AIR 1962 SC 955

²⁵ (1989) 2 SCC 574

²⁶ *Supra* note 1 2 at 5

reasonableness and certainty, allowing for arbitrary arrests and limiting free speech. The judgment also made a distinction between regulating content, which should be specific and necessary, and other permissible measures that support such regulation.

1 Press and media cases: Bennett Coleman and Sakal Papers

In cases like *Bennett Coleman & Co. v. Union of India*²⁷ & *Sakal Papers (P) Ltd. v. Union of India*²⁸ Supreme Court ruled against regulations that unfairly restricted the press, such as limits on newsprint or newspaper page sizes.

These rulings strengthened the role of the press as a public watchdog and limited economic and administrative controls that could restrict freedom of expression.

THE SCOPE OF PROTECTION – IS COVERED^a

Political speech: The most protected category; vigorous criticism of government policies and officials lies at the core of Article 19(1)(a).

Artistic and cultural expression: Protected unless it poses a clear threat to public order or violates narrowly defined prohibitions such as obscenity.

Commercial speech: Protected but can be more heavily regulated (e. g., false advertising).

Speech by non-citizens: Article 19(1)(a) is expressly limited to citizens; non-citizens rely on other constitutional guarantees and statutory protections.

Speech on private platforms: The constitutional right binds State actors; private entities (platforms) impose additional rules under contractual or statutory frameworks (e. g.,

²⁷ *Supra* note 17 at 6

²⁸ *Supra* note 18 at 6

intermediary guidelines).

PERMISSIBLE LIMITATIONS — DOCTRINAL TESTS AND CATEGORIES

The jurisprudence requires that any restriction be:-

- (i) authorized by law
- (ii) aimed at one of the enumerated grounds in Article 19(2)
- (iii) reasonable — assessed for necessity, proportionality, and narrow tailoring.

Important categories:

- 1 Public order and incitement:** The test is imminent and proximate danger — abstract or remote risks do not suffice.
- 2 State security, sovereignty, friendly relations:** Applied selectively where speech threatens national integrity or foreign policy.
- 3 Defamation and privacy:** The law recognizes reputational interests; civil remedies and limited penal sanctions are available.
- 4 Obscenity and decency:** Governed by statutory tests (e.g., Hicklin test originally, later refined) and administrative review in audiovisual media.
- 5 Contempt of court:** Maintains the dignity and effective functioning of the judiciary, though courts balance with public interest in open criticism.
- 6 Sedition:** After Kedar Nath, sedition applies to speech inciting violence or public disorder, not mere criticism.

7. **Digital speech (information technology laws):** Must meet constitutional tests; vague or overbroad restrictions (like Section 66A) are impermissible.²⁹

MODERN CHALLENGES : SOCIAL MEDIA, INTERMEDIARIES, AND MISINFORMATION

The digital environment presents complex issues for traditional legal principles:

1. **Scale and Speed:** Speech on social media spreads quickly, leading to real concerns about public order. However, this rapid spread also makes it easier for authorities to take excessive or reactive measures.
2. **Intermediary Liability:** Laws offer protection to online platforms, such as Section 79 of the IT Act, but this protection comes with conditions, like compliance with due diligence and responding to takedown requests. Courts have carefully balanced the need to protect platforms from liability while allowing the state to regulate content. Recent legal cases highlight ongoing debates about the responsibilities of platforms and their obligations to remove certain content.
3. **Misinformation and "Fake News":** The government emphasizes the importance of accurate information for the public interest. However, regulating misinformation must not become a way to suppress political speech. The Shreya Singhal judgment makes it clear that broad criminal penalties for "offensive" online speech are not in line with constitutional values.³⁰
4. **Hate Speech and Communal Incitement:** Indian law prohibits speech that is likely

²⁹ Law Commission of India, Report No. 267, Hate Speech (201 7).

³⁰ *Supra* note 1 2 at 5

to incite communal violence. Courts assess such cases by looking at the context, the intent behind the speech, and the potential for causing public unrest.

- 5 Platform Moderation and Private Governance:** Content policies set by private platforms often go beyond what is required by the constitution. This raises important questions about individual rights, the influence of corporations, and the need for fair processes to protect users' freedoms.

CRITICAL ASSESSMENT AND TENSIONS

- 1 Vagueness and Overbreadth:** Statutory vagueness can lead to arbitrary enforcement. The Court's invalidation of Section 66A demonstrates the constitutional costs associated with imprecise drafting.
- 2 Excessive Criminalization:** The reliance on penal laws, such as sedition and sections of the Indian Penal Code, for regulating political speech can suppress dissent, even when judicial precedents attempt to limit their scope.³¹
- 3 Prior Restraint versus Post Hoc Punishment:** The Court generally prefers post-hoc legal remedies over prior restraints, such as censorship, unless there is an imminent threat to public order.³²
- 4 Regulating Digital Intermediaries:** The legal framework aims to balance the responsibilities of digital platforms with the right to free expression. However, the procedural safeguards and transparency in the takedown process remain

³¹ *Kedar Nath Singh v. State of Bihar*, AIR 1 962 SC 955

³² *Romesh Thappar v. State of Madras*, 1 950 and *S.Ragaranjan v. P.Jagjivan Ram*, 1 989

inconsistent.

- 5 **Press Freedom under Economic Regulation:** Cases such as Bennett Coleman and Sakal emphasize that not only direct censorship but also economic controls can threaten the freedom of the press.

RECOMMENDATIONS

- 1 **Statutory clarity:** Draft laws regulating speech (including online) with narrow definitions, mens rea requirements where appropriate, and clear procedural safeguards to prevent arbitrary enforcement.
- 2 **Proportionality and notice:** Require clear notice and reasoned orders for takedowns and arrests; incorporate independent review mechanisms for content removal.
- 3 **Strengthen intermediary transparency:** Mandate public transparency reports, appeal mechanisms, and minimal due process for content moderation at scale.
- 4 **De-criminalize speech where possible:** Shift many speech disputes from criminal to civil regulatory or administrative remedies to reduce chilling effects.
- 5 **Judicial training and fast track review:** Equip courts with guidelines on digital speech, evidence, and context-sensitive assessments; accelerate review in cases involving speech restrictions.
- 6 **Public literacy and counter-speech:** Invest in media literacy and public education to counter misinformation through democratic means rather than state censorship.

CONCLUSION

Freedom of speech and expression is one of the most valued and essential elements of a democratic society. It enables people to share thoughts, challenge authority, and engage effectively in the process of governance. The Indian Constitution, specifically Article 19(1)(a), guarantees this right as a fundamental aspect of personal freedom and societal development. At the same time, Article 19(2) reflects the foresight of the Constitution's framers in ensuring that this freedom does not lead to social disorder or division. As a result, the Indian legal system carefully balances individual rights with the need for societal harmony, and this balance is continuously shaped by court rulings.

This paper examines key historical and recent judicial decisions, including *Romesh Thappar*, *Brij Bhushan*, *Kedar Nath Singh*, *Sakal Papers*, *Bennett Coleman*, *Maneka Gandhi*, and *Shreya Singhal*.

These rulings highlight the judiciary's essential role in shaping and protecting the boundaries of free speech. Collectively, they confirm that while free speech is important, it is not unlimited. Any restrictions placed on it must be fair, necessary, and appropriate. The Doctrine of Reasonable Restriction, as established in *V.G. Row*, provides a lasting standard for determining whether government-imposed limits meet constitutional requirements.

In today's world, the rise of digital media, social networks, and fast communication has changed how people express themselves.

While these platforms give citizens more opportunities to share opinions, they also bring new issues like false information, online harassment, and invasions of privacy. The Supreme Court's decisions in *Shreya Singhal v. Union of India* and *Anuradha Bhasin v. Union of India* reinforce the idea that even in the digital age, any limits on speech must be carefully designed and reviewed by the courts. These cases show that the internet is a

key tool for expression and that controlling speech online must follow the same legal protections as traditional forms of communication.

Despite these developments, challenges still exist.

The continued use of old colonial laws against sedition, frequent internet blockages, and unclear legal language show a gap between constitutional values and how the government actually implements them. Relying on criminal penalties for speech-related matters often leads to a “chilling effect,” which discourages open discussion and democratic debate. Additionally, the increasing power of private tech companies to control public conversations raises concerns about responsibility, openness, and the right to privacy in spaces outside of government control.

To preserve the spirit of Article 19(1)(a), the focus should be on reform and strengthening this freedom instead of limiting it.

Clear laws, open procedures, judicial supervision, and efforts to improve public understanding of media are vital to ensuring that free speech remains both active and responsible. Rather than stifling disagreement, the government should treat it as a valuable part of democracy, allowing thoughtful discussion to take place instead of censorship.

Ultimately, the Indian Constitution's promise of free speech is not just a legal right but a cultural and moral principle that supports democracy itself.

The courts, lawmakers, and citizens all have a shared responsibility to support and maintain this freedom, always keeping in mind the values of equality, unity, and national identity. As India continues to move forward into the digital age, protecting this right will be key to ensuring the health and strength of its democratic system and the depth of its constitutional ideals.

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