
FREEDOM OF SPEECH AND REASONABLE RESTRICTIONS UNDER ARTICLE 19 OF THE CONSTITUTION OF INDIA

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ABSTRACT

Free speech is the lifeblood of a democracy, yet no constitutional guarantee is unconditional. This paper examines the interplay between Article 19(1)(a) of the Constitution of India, which guarantees the fundamental right to freedom of speech and expression, and Article 19(2), which permits the State to impose reasonable restrictions on eight specified grounds. This paper looks at the development of free speech jurisprudence from *Romesh Thappar v. State of Madras* to *Anuradha Bhasin v. Union of India*, considering how courts have managed the tension between individual liberty and collective interests such as public order, State security, decency and contempt of court. It also considers the ongoing debate over sedition under section 124A of the Indian Penal Code, the gap in India's hate speech law that remains to be filled, and the new issues presented by the shutdowns of the internet, rules on intermediary liability and the proliferation of misinformation in the digital era. The paper concludes that while India possesses a rich and evolving free speech jurisprudence, its enforcement on the ground remains uneven, and that safeguarding Article 19(1)(a) in the years ahead will require independent courts, a free press, and an educated, engaged citizenry.

Keywords: Article 19, Freedom of Speech, Reasonable Restrictions, Sedition, Hate Speech, Digital Age.

Introduction

Freedom of speech and expression is not only a legal provision enshrined in the Constitution but it is the very oxygen of a living democracy. It is the right which makes the citizens question power, make governments accountable, share ideas and participate meaningfully in the public life. Without it, democracy is no more than a hollow performance. In India, this fundamental freedom is available under Article 19(1)(a) of the Constitution which guarantees to every citizen the right to freedom of speech and expression.¹

But no freedom is absolute, not even the freedom of speech. The framers of the Indian Constitution, steeped in legal thought and lived experience, knew that unregulated speech could be used to harm individuals, destabilise the state or tear apart the social fabric. They therefore built into Article 19 itself, under Article 19(2), a carefully calibrated regime of reasonable restrictions, which allows the state to impose limits on free speech in specified, enumerated circumstances.

This wide-ranging report looks at the constitutional guarantee of freedom of speech under Article 19(1)(a), the scope and limits of the reasonable restrictions under Article 19(2), the evolution of this provision through landmark judicial decisions, and the contemporary challenges that test this balance in an age of digital communication, fake news and political polarisation. The tension between free speech and its permissible restrictions is one of the most dynamic and contested areas of Indian constitutional law and one that directly impacts the quality of our democracy every single day.

Constitutional Text and Scope of Article 19(1)(a)

Article 19(1)(a) of the Indian Constitution provides that all citizens shall have the right to freedom of speech and expression. Though expressed in deceptively simple terms, the courts have over decades read into this provision an expansive and evolving meaning that reaches far beyond the spoken or written word.

The Supreme Court of India has held that the freedom of speech and expression covers:

¹See generally D.D. Basu, *Commentary on the Constitution of India*, Vol. 3 (9th ed., LexisNexis 2014); M.P. Jain, *Indian Constitutional Law* (8th ed., LexisNexis 2018).

- The right to communicate one's ideas and opinions through any media – print, broadcast or digital.
- Freedom of press and media to publish and propagate information.
- Right to silence and right not to speak or salute, recognised in *Bijoe Emmanuel v. State of Kerala*.²
- Right to access information and ideas, including the right to access the internet, as declared in *Anuradha Bhasin v. Union of India*.³
- Commercial speech and advertisements, as held in *Tata Press Ltd. v. MTNL*.⁴
- Freedom of artistic expression, which includes freedom of cinema, literature and art, subject to reasonable regulation.

Importantly, Article 19 is available only to citizens of India and not to foreign nationals or corporations. However, corporations incorporated in India with majority Indian ownership have in some cases been granted a derivative right through their citizen shareholders.

Reasonable Restrictions Under Article 19(2): The Eight Grounds

The framers of the Constitution did not give Article 19(1)(a) an absolute, unrestricted form. Article 19(2) permits the State to impose “reasonable restrictions” on the exercise of free speech in the interests of eight enumerated grounds. These categories were carefully selected, and any law that restricts speech must fall in one or more of these categories in order to pass constitutional muster.

1. India's integrity and sovereignty

This ground was added by the Sixteenth Amendment Act, 1963,⁵ against the background of the activities of separatist movements in some parts of the country. Speech which questions or undermines the territorial integrity of India, or the sovereignty of India, may be restricted. Laws

²*Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

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

⁴*Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139.

⁵*The Constitution (Sixteenth Amendment) Act*, 1963.

like Section 153A of the Indian Penal Code (IPC), which criminalises promoting enmity between groups,⁶ partially work under this ground. The courts have interpreted this restriction strictly, holding that legitimate political dissent or advocacy for constitutional reform cannot be suppressed under the guise of national integrity.

2. Security of the State

The State may restrict speech which poses a clear and present danger to the security of the State. This is not an ordinary law-and-order disturbance. In the landmark case of *Romesh Thappar v. State of Madras*,⁷ the Supreme Court invalidated a law that restricted publications on the basis of “public order” that were wider than what Article 19(2) then permitted. The Court drew a clear distinction between threats to the security of the State (serious and existential) and mere disturbances to public order (lesser) an important line of demarcation.

3. Friendly relations with foreign states

This ground, also inserted by the Sixteenth Amendment, allows the State to impose restrictions on speech which adversely affects India’s diplomatic relations. The Foreign Relations Act, 1932⁸ is a legislative manifestation. It may restrict speech which publicly denigrates friendly foreign nations or their leaders in a manner that jeopardises bilateral relations. But usually, this exception does not extend to journalistic accounts of foreign policy, criticism of foreign governments’ conduct at home, or academic commentary.

4. Public order

The Constitution (First Amendment) Act, 1951⁹ added ‘public order’ as a ground following the Supreme Court’s decision in *Romesh Thappar*. It refers to limitations intended to restrict speech that has a direct and immediate tendency to incite public disorder. The definitive test was laid down in *Superintendent, Central Prison v. Ram Manohar Lohia*,¹⁰ where the Court held that there must be a proximate nexus between the speech and the public disorder a remote possibility is not enough to justify restriction. On several occasions, Section 144 of the Code

⁶Indian Penal Code, 1860, s. 153A.

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

⁸The Foreign Relations Act, 1932 (Act XII of 1932).

⁹The Constitution (First Amendment) Act, 1951.

¹⁰*Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633.

of Criminal Procedure (CrPC)¹¹ has been imposed to prevent protests and gatherings; courts have consistently examined its use to ensure it is not turned into a tool of oppression.

5. Decency and morality

The State may regulate obscene speech and speech that is offensive to decency and morality. This ground underlies the constitutional validity of Sections 292–294 of the IPC.¹² Indian courts have adapted the American “Roth test”, asking whether the material, taken as a whole, appeals to prurient interests and lacks serious literary, artistic or educational value. In *Aveek Sarkar v. State of West Bengal*,¹³ the Supreme Court abandoned the conservative Hicklin test in favour of a more liberal community-standards test, bringing Indian law into line with modern sensibilities.

Certain utterances that scandalise the judiciary or pre-judge pending proceedings are prohibited under the Contempt of Courts Act, 1971.¹⁴ This ground has been steadily upheld, but it has also proved divisive. In the contempt proceedings against Prashant Bhushan,¹⁵ the Supreme Court held that critical tweets against the Chief Justice amounted to contempt a Suo Motu proceeding that sparked debate in academic and civil society circles over the line between legitimate criticism and contemptuous speech. Courts have also recognised that fair criticism of judicial decisions, as opposed to scurrilous personal attacks, remains protected expression.

6. Defamation

This ground underlies the constitutional status of the law of defamation, both civil and criminal. In *Subramanian Swamy v. Union of India*,¹⁶ a five-judge Constitution Bench upheld the constitutionality of Sections 499 and 500 of the IPC¹⁷ criminalising defamation. The Court held that the right to reputation is a fundamental right under Article 21, so that the State can validly curtail speech which impinges upon it. Critics say criminal defamation is disproportionate and chills legitimate criticism, particularly of public figures an area of law that remains controversial as many countries decriminalise defamation.

¹¹Code of Criminal Procedure, 1973, s. 144.

¹²Indian Penal Code, 1860, ss. 292-294.

¹³*Aveek Sarkar v. State of West Bengal*, (2014) 4 SCC 257.

¹⁴Contempt of Courts Act, 1971.

¹⁵In re: Prashant Bhushan, 2020 SCC OnLine SC 588 and 2020 SCC OnLine SC 698 (sentencing order).

¹⁶*Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

¹⁷Indian Penal Code, 1860, ss. 499-500.

7. Incitement to an offence

Speech may be restricted where it directly incites the commission of a criminal offence. This is not merely arguing for an idea it has to cross the line into encouragement. Indian jurisprudence draws on principles of international law under which speech becomes incitement when it is aimed at producing imminent lawless action and is likely to produce such action. Cases have accordingly been registered against provocative speeches during communal riots or calls for violence at political rallies.

The Standard of “Reasonableness”: What Constitutes a Reasonable Restriction?

Not all restrictions on speech that fall within the eight grounds are ipso facto valid the restriction must also be “reasonable”. This constitutional requirement enables courts to review the proportionality and necessity of speech-restricting legislation.

Over the decades, The Supreme Court has over the years laid down some principles to be borne in mind when deciding what is a reasonable restriction:

- Proportionality: The restriction should not be beyond the limit required to achieve the legitimate aim – the State cannot use a sledgehammer where a scalpel would do.
- Close nexus: the restriction on speech must be closely and clearly linked to the harm it seeks to prevent, not remote or speculative.
- Procedural safeguards: The law imposing the restriction must be just, fair and not arbitrary Laws that give the executive unbridled discretion to suppress speech are invalid.
- Least restrictive alternative. Courts are increasingly asking whether the State could have achieved the same result in a less restrictive manner. If so, the more restrictive measure fails the test of reasonableness.

In *Chintaman Rao v. State of Madhya Pradesh*,¹⁸ the Supreme Court was the first to hold that reasonableness is to be judged from two points of view (a) on the substance (is the substance of the restriction justified?) and (b) on the procedure (is there sufficient protection in the law?).

¹⁸*Chintaman Rao v. State of Madhya Pradesh*, AIR 1951 SC 118.

This double standard has continued in the free speech jurisprudence.

Judicial Development: Landmark Cases Shaping Free Speech in India

- ***Romesh Thappar v. State of Madras*:¹⁹**

This case, one of the first free speech cases after the implementation of the Constitution, was about Romesh Thappar challenging the restriction laid on his journal “Crossroads” by the Madras government. The Supreme Court struck down the restriction holding that ‘public order’ was not a ground for restriction at the relevant point of time and an enactment which seeks only to prevent public disorder is not justifiable. This verdict directly resulted in the First Constitutional Amendment of 1951, which brought ‘public order’ and other restrictions in Article 19(2). It is a prime example of the dynamic interaction between judicial interpretation and constitutional amendment in India.

- ***Kedar Nath Singh v. State of Bihar*:²⁰**

This is the last word on sedition under section 124A IPC. The Supreme Court upheld the constitutionality of sedition but significantly limited its scope, ruling that Section 124A had to be read down to apply only to speech which had the tendency to incite violence or public disorder mere criticism of the government, however strong or sharp, cannot be sedition. The decision drew a bright line between disloyalty to the Government (permitted) and disloyalty to the State (possibly forbidden). But in practice, this nuanced reading has often been lost and journalists, students and activists have been charged with sedition for expressions far removed from incitement to violence.

- ***S. Rangarajan v. P. Jagjivan Ram*:²¹**

The Madras High Court had cancelled the “U” certificate of a film on the basis of protests. The Supreme Court reversed the decision in a strong statement of artistic freedom, holding that the State cannot act as a ‘censorship board’ simply because a group of people objects to the content. The touchstone for whether speech harms public order or decency is the “reasonable, strong-minded, firm and courageous man” not the most susceptible member of society. The Court

¹⁹*Romesh Thappar v. state of Madaras*, supra note 7.

²⁰*Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

²¹*S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

also articulated the “clear and present danger” test, asking whether the danger posed by speech was so imminent and close as to justify restriction.

- ***Shreya Singhal v. Union of India***:²²

This judgment that struck down in Section 66A of the Information Technology Act, 2000 is probably the most important free speech judgment of the 21st century in India.²³ The section had criminalised sending online messages that were ‘grossly offensive’ or ‘menacing’ terms so vague and overbroad that they had been used to arrest people for Facebook posts, WhatsApp messages and Twitter commentary criticising politicians. The Supreme Court struck down Section 66A on two grounds: it fell outside the grounds provided in Article 19(2), and it was unconstitutionally vague, violating the rule against void-for-vagueness laws. The ruling also drew an important distinction between discussion and advocacy, which are protected, and incitement, which can be restricted.

- ***Anuradha Bhasin v. Union of India***:²⁴

In this landmark judgement, the Supreme Court held that freedom of speech and expression and the freedom to practise any profession or to carry on any trade, business or occupation over the medium of internet are fundamental rights guaranteed under Articles 19(1)(a) and 19(1)(g). The judgement came in the background of an unprecedented communication blackout in Jammu and Kashmir after abrogation of Article 370. The Court held that internet shutdowns are permissible only in exceptional circumstances, must be tested on the touchstone of proportionality and cannot be indefinite. Restriction orders have to be published so that they can be challenged. The ruling essentially made access to the internet a constitutional right, not a privilege.

The Sedition Law Under Section 124A IPC: The Most Controversial Restriction

Section 124A of the Indian Penal Code, 1860 is a colonial-era provision that criminalises speech which excites or attempts to excite “disaffection” towards the Government of India, and provides for punishment of up to life imprisonment. It has been the most debated and attacked

²²*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

²³Information Technology Act, 2000, s. 66A (since struck down).

²⁴*Anuradha Bhasin v. Union of India*, supra note 3.

restriction on free speech in India for decades.

What is most troubling about sedition is the gap between the law as interpreted by the Supreme Court (narrow, requiring incitement to violence) and the law as applied in practice (broad, targeting dissent and criticism). In recent years, journalists, activists, students and farmers'-protest organisers have been charged with sedition for expressions that the Kedar Nath Singh judgment expressly said were protected speech.

In *S.G. Vombatkere v. Union of India*,²⁵ the Supreme Court took the extraordinary step of staying all ongoing trials under Section 124A and ordering a re-examination of the law, acknowledging that it had been grossly misused. The case is emblematic of the deepening constitutional crisis over the sedition law and raises the fundamental question of whether a provision inherited from colonial rule designed by the British to suppress the independence movement has any place in a free, democratic republic.

Freedom of the Press: An Integral Facet of Article 19(1)(a)

The freedom of the press is not separately mentioned in Article 19 but has always been held by the Supreme Court to be included within freedom of speech and expression under Article 19(1)(a). In *Indian Express Newspapers v. Union of India*,²⁶ the Court held that the press is a watchdog of democracy and that its freedom is therefore of the highest constitutional importance; pre-censorship of the press has been struck down as unconstitutional.

But press freedom has come under increasing attack in India, which lags behind other democracies on indices of press freedom. The use of defamation suits, tax raids, sedition charges and the National Security Act against journalists, editors and media organisations raises serious constitutional concerns. Sustained legal and regulatory pressure on media institutions is just as dangerous as outright censorship, given the chilling effect it produces journalists self-censor out of fear.

Hate Speech: The Unlegislated Border

One of the biggest lacunae in India's free speech architecture is the absence of a coherent law on hate speech. India lacks a standalone hate speech statute even as communally inflammatory

²⁵*S.G. Vombatkere v. Union of India*, Writ Petition (Civil) No. 682 of 2021, order dated 11 May 2022.

²⁶*Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 SCC 641.

speech, targeted rhetoric against religious minorities, and dehumanising language directed at marginalised communities have been on the rise. Existing provisions Sections 153A, 153B and 505 of the IPC²⁷ are scattered and not adequately enforced.

In its 267th Report (2017),²⁸ the Law Commission of India recommended the enactment of specific hate speech provisions targeting speech that incites discrimination or violence against groups defined by ethnicity, religion, caste, gender or sexual orientation. Hate speech, the Commission said, is not protected free speech, and limits should be based on the likelihood of harm rather than mere offensiveness. Parliament has not acted on these recommendations to date, leaving victims of communal hate speech without adequate legal remedies and the existing provisions applied selectively.

Free Speech in the Digital Age: New Challenges, New Frontiers

The digital revolution has fundamentally altered the landscape of free speech in ways the framers of the Constitution could not have conceived. Social media, messaging apps and online publications have democratised speech, giving a voice to millions who had none before. But they have also given rise to new vectors for misinformation, targeted harassment, incitement to violence and the organised manipulation of public discourse.

Much of this debate has been triggered by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.²⁹ These rules impose burdensome obligations on large social media intermediaries, including a traceability requirement the obligation to identify the ‘first originator’ of messages on end-to-end encrypted platforms. Critics, including technology experts and civil society organisations, argue that traceability fatally compromises encrypted communication and effectively dismantles privacy as a right, thereby chilling free speech. These rules are being challenged before several High Courts in ongoing constitutional proceedings.

The other pressing issue is internet shutdowns India has some of the worst in the world. Safeguards were laid down by the Supreme Court in *Anuradha Bhasin*, but the proportionality, transparency and accountability of how these shutdowns are actually implemented remains

²⁷Indian Penal Code, 1860, ss. 153A, 153B and 505.

²⁸Law Commission of India, Report No. 267: Hate Speech (2017).

²⁹Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

constitutionally questionable.

Implementation Problems

The constitutional guarantee and the strong judicial framework are in place, but the practice of free speech protections in India faces several structural challenges:

- **Misuse of penal provisions:** Sedition, criminal defamation and the IT Act continue to be used beyond their constitutionally permissible scope, producing a chilling effect on legitimate speech.
- **Vagueness in law:** Many restrictions use vague and open-textured language (“grossly offensive”, “disaffection”, “menacing”) that invites arbitrary and selective enforcement.
- **Chilling effect:** The threat of prosecution alone, without conviction, can silence voices. When journalists, activists or academics face years of proceedings for what they say, others learn to self-censor.
- **Delays in the judicial system:** Courts remain burdened with pendency despite a strong jurisprudence on free speech, so the damage from a speech restriction is often done long before its judicial challenge concludes.
- **Deficit in digital literacy:** The large sections of the population lack online literacy and this makes it difficult to responsibly exercise free speech in an age of viral misinformation and algorithmic amplification of divisive content.

Conclusion

Article 19(1)(a) is not merely a law – it is a promise that India makes to its citizens: the promise that one can think freely, speak one’s mind, question authority, express oneself artistically, and participate in public discourse without fear. The reasonable restrictions imposed by Article 19(2) do not negate this promise but qualify it necessarily an acceptance that freedom cannot be used to destroy the freedoms of others.

The judicial edifice built over seven decades has given India a rich and nuanced free speech jurisprudence from Romesh Thappar to Shreya Singhal, from Kedar Nath Singh to Anuradha

Bhasin as courts have tried, with varying degrees of success, to protect the core of free expression while acknowledging the State's legitimate interest in preventing harm. But jurisprudence in the books is only as good as its enforcement on the ground.

As India faces the challenges of the digital age, increasing political polarisation and rising pressure on dissent, the protection of free speech under Article 19 needs strong courts, a politically independent media, a vibrant civil society and an educated citizenry that values and cherishes its constitutional rights. A democracy that does not defend freedom of speech, and especially freedom of dissent, is a democracy in name only.

The balance between free speech and reasonable restriction is never finally settled – it has to be renegotiated by each generation in the light of its own challenges. What is constant is the constitutional promise: that the right to speak, to question and to dissent, is not a gift from the State but the birthright of every citizen.