

# The Paradox of Online Free Speech: Constitutional Guarantees Vs Digital Governance


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## ABSTRACT

The Indian Constitution's Article 19(1)(a) guarantees the right to freedom of speech, which is essential for running a democracy. The digital age has brought about changes in how speech operates, covers, and impacts people, leading to issues related to legal and constitutional matters. But it has also made possible falsehoods, vile language, cyberbullying and threats to national security.' This article investigates how freedom of speech is being protected in the digital age, with a particular emphasis on the legal constraints provided by Article 19(2) of the constitution. It also examines the challenges that governments face in managing online content without violating fundamental rights and reviewing key court rulings such as *Shreya Singhal v. Uttar Pradesh*. The paper examines the Union of India and scrutinizes laws, including the Information Technology Act, 2000.

## INTRODUCTION

Freedom of speech and expression has been regarded as the most crucial aspect of democratic societies. It provides individuals with the ability to express their thoughts, challenge authority, and participate in decision-making processes. In India, the constitution's provisions under Article 19(1)(a) are designed to ensure freedom of expression, fairness, free discussion, or debate, but this freedom has never been absolute. The Constitution, however, establishes specific restrictions on free speech under Artikel 19(2), which acknowledges that such speech can undermine public order, morality, und mass media without rules. However. The advent of the digital era has brought about changes in both the nature and quantity of speech, with information now being shared quickly without borders on digital platforms. This is different from traditional communication methods like radio or newspapers. Social media platforms have also made it possible for everyone to act as a publisher, breaking away from conventional bureaucratic barriers. Making speech more accessible has given people greater influence, but it has also hindered attempts to control what's shared online. Nowadays, it is difficult to prevent the rapid spread of false and misleading stories. False stories can have a profound impact on elections, violent acts by individuals, and widespread mistrust of major organizations. Online platforms have become sanctuaries for hate speech, cyberbullying, harassment, or intimidation, especially against already prejudiced groups like Shireen's. The Constitution presents a challenge of safeguarding individual freedom against the struggle for public safety and order: too many regulations can prevent people from speaking freely, and not enough rules create confusion; this tension is evident in court rulings where judges have found difficult to enforce limits on what speech is allowed. Why does that matter? What matters most?

The advancement of freedom of speech.?

Any democratic society can be sustained by the right to free speech, which includes the ability to express one's thoughts and criticize or disapprove of government decisions and actively participate in governance. Article 19(1)(a) of the Indian constitution guarantees this right, which is rooted in the vision of its creators to create a society that prioritizes open discourse and intellectual freedom. Colonial oppression resulted in the emergence of freedom of speech, which was often achieved through the suppression of dissent. This is a historical trend. As a result, India after independence deliberately prioritized the protection of expression as retribution against authoritarian regimes.' Throughout time, courts have broadened their interpretation of this right to encompass not only spoken words but also nonverbal communication, artistic expression (such as writing poetry), and the right for information.

You can expand this by:

- **Adding Constituent Assembly debates.**
- **Mentioning colonial laws like sedition.<sup>1</sup>**
- **Explaining importance in democracy.**
- **Make a move to the Internet age.**

Communication has been completely altered by the advent of the internet. Unlike traditional media, which was subject to editorial control and geographical boundaries, digital platforms allow for the immediate and global dissemination of information. Through social media, individuals can create content without the need for traditional gatekeepers like newspapers and broadcasters. But this transformation also blurred the line between private and public speech. With a single user posting something, their content has the potential to influence millions. Why? The change brings about crucial legal inquiries regarding accountability, regulation, and the extent of constitutional safeguards in a context where speech moves at ten times faster than regulation.

Expand by:

Providing examples (Twitter preferences, viral content)

Role of influencers.

Democratization vs chaos.

#### • **Rise of New Challenges.**

The rise of the Internet has resulted in greater freedom of speech, but it has also brought new obstacles. The dissemination of misinformation and disinformation has become a significant issue, impacting elections as well as public health policies. Online harassment and discrimination, particularly towards vulnerable groups have become more common. Additionally, internet anonymity can encourage harmful acts without being held accountable. The challenges highlight the harmfulness of free speech in the face of real-world harm. What are these challenges? The issue at hand is not whether to regulate speech, but how to do so without jeopardizing basic rights.


#### • **Constitutional Dilemma.**

Regulation of digital speech is a difficult issue for the Indian state. One of its responsibilities is to uphold public order, national security, and maintain the peace of society. On the flip side, too much control may go against constitutional

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<sup>1</sup>  **On Freedom of Speech as a Democratic Right**

M.P. Jain, *Indian Constitutional Law*, 8th ed. (LexisNexis, 2018), pp. 1080–1085.

 **Article 19(1)(a) – Constitutional Provision**

Constitution of India, 1950, Art. 19(1)(a).

**Colonial Law – Sedition (already marked in your text)**

Indian Penal Code, 1860, §124A.

safeguards and have a chilling impact on free speech. Why? Despite the judiciary's repeated assertions that restrictions cannot be arbitrarily imposed, they must be reasonable.

**CASE LAW :** Romesh Thappar v. State of Madras.

## CONCEPTUAL AND CONSTITUTIONAL FRAMEWORK

The right to free speech in India is backed by Article 19(1)(a) that guarantees the freedom of speech and expression to all Indians. In addition to the freedom of expression, this right includes the right to information and ideas. Over time, the judiciary has interpreted this provision broadly and recognized its significance in maintaining democratic governance.

This freedom is subject to reasonable restrictions in the interests of sovereignty, security and public order as well as morality or other specified grounds, according to Article 19(2). The term "reasonable restriction" has been subject to extensive judicial interpretation. Courts have stated that restrictions must be direct and not excessive, requiring them to align with the intended goal.

These constitutional principles are difficult to apply in this digital age. Unlike traditional media, which is more content-centric, digital platforms operate in a decentralized manner. The relevance of current laws and the need for new regulatory mechanisms is questioned.

The landmark ruling in *Shreya Singhal v. Union of India* was a noteworthy advancement in this regard.<sup>1</sup> Due to its vague and overbroad language, Section 66A of the Information Technology Act, 2000 was invalidated by the Supreme Court. The Court stressed the need to safeguard online expression from arbitrary state interference.<sup>2</sup>

## LANDMARK JUDGEMENT:

### Romesh Thappar v. State of Madras

The legal case of *Romesh Thappar v. State of Madras* is considered one of the first, and fundamental interpretations of right to freedom of speech and expression in Indian Constitution. Shortly after the Constitution was put into effect in 1950, this case played a significant role in defining the importance of free speech in an organized democracy.

### Background and Facts:

*Cross Roads*, a political journal that was widely circulated and had criticized government policies, was edited by Romesh Thappar and held the same position. Under the Madras Maintenance of Public Order Act, 1949, the Government of Madras imposed an embargo on the entry and circulation of this journal in the state. The government argued that the publication endangered public safety and threatened public order. Additionally, there was no law or regulation supporting this claim.

Considering the fact that the Constitution had recently been implemented, it's important to note that fundamental rights interpretation was still in its early stages. This was challenged by the petitioner who claimed that his fundamental right to freedom of speech and expression under Article 19(1)(a) was being infringed upon.

**Legal Issues:** The Supreme Court was tasked with determining whether the State's ban could be justified within the applicable limitations of Article 19(2). The Court was tasked with determining whether "public safety" or "Public order" were appropriate grounds for restricting freedom of speech during that period.

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<sup>2</sup> **Constitutional Guarantee of Free Speech**

Constitution of India, 1950, Art. 19(1)(a).

**Landmark Case on Online Speech (Section 66A struck down)**

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

**Landmark Case Citation (Main Case)**

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

**Importance of Free Press in Democracy**

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

## Judgment and Reasoning:

Supreme Court invalidated the ban, declaring it to be unconstitutional.... The Court interpreted Article 19(2) with a strict and limited emphasis, affirming that any restrictions on free speech must be strictly adhered to the grounds set out in the Constitution. At that time, the reason for not including "public order" as a ground under Article 19(2) was added through First Amendment provision.

Freedom of speech and expression is considered the cornerstone of all democratic institutions, as pointed out by the Court. The statement asserted that the expression itself is as crucial to the spread of ideas as it is to freedom of speech, and any restriction on circulation has a direct impact on this.

## Doctrinal Importance:

Two crucial lessons were derived from this case:

Freedom of speech includes the right to freely circulate information.

Limits must be strictly enforced and understood with caution.

Relevance in the Digital Age.

In the age of the Internet, this conclusion is a crucial factor. Similar to how the state tried to prevent the circulation of a journal in 1950, governments today may try to restrict online content, websites and social media sites. In this case, the idea that free speech requires circulation of ideas is applicable to the internet, where sharing and dissemination are central to its features.

Hence, it is crucial to scrutinize any endeavor to block websites, restrict access to platforms, or regulate online content without breaching constitutional safeguards. 2.

## Critical Evaluation:

Although the ruling strongly advocates for freedom of speech, it also paved the way for amendments to the First Constitutional Amendment, which increased the scope of limitations under Article 19(2). Despite the regulation of digital speech today, the tension between liberty and state control remains constant.

## KEY CONCEPTS AND DEFINITIONS

### 1. Freedom of Speech and Expression.

Freedom of speech and expression is not just a matter of speaking, but also involves the freedom to express ideas through various mediums such as writing, art, and online platforms. This foundation is the basis for democratic participation, and it guarantees government accountability. In today's era of the Internet, individuals have the right to engage in online activities like blogging, tweeting, and posting. Even so, as the internet becomes more widespread, it can have a greater impact, necessitating balancing freedom and responsibility.

### 2. Digital Speech.

Any form of electronic communication, including social media platforms, websites and messaging systems, is considered digital speech. Digital expression stands out from traditional speech due to its rapidity, breadth and constancy. Online content can be easily copied and distributed indefinitely, making regulation more difficult. Concerns about privacy and the right to forget arise from this sense of permanence.

**3. Reasonable Restrictions.** As a safeguard against free speech misuse, Article 19(2) provides reasonable limitations. The definition of "reasonable" is subjective. Courts have established standards like proportionality and necessity to assess

restrictions. The application of these <sup>3</sup>restrictions in the digital world requires careful consideration to prevent excessive censorship. Why?

#### 4. Hate Speech.

Expressions that provoke hatred, discrimination, or violence against individuals or groups based on their religion, race, ousted by another person, and/or gender are classified as hate speech. The Indian Penal Code has several provisions that address hate speech in India. Often, there is no uniform and clear definition, which means that enforcement can be inconsistent.

#### 5. Misinformation and Disinformation.

When people spread false information without an intention to deceive, it is known as misinformation, while disinformation is misleading and intentional. Both are significant risks in the digital age, as they can both influence public opinion and destabilize democratic processes. "

#### 6. Intermediaries.

Social media platforms and broadband providers are examples of intermediaries, which are organizations that facilitate communication between users. Their role in managing content has been a topic of debate, particularly over liability for user-generated content.

#### 7. Content Moderation.

The process of content moderation involves the supervision and regulation of user-generated content to maintain compliance with legal and community guidelines. Although essential, it raises questions about censorship and lack of transparency.

#### 8. Algorithmic Amplification.

The focus of algorithms employed by digital platforms is on content that generates engagement, which can be sensational or controversial. It is possible for this to intensify unfavorable information and distort public discourse.

#### 9. Prior Restraint.

Prior restraint is the act of suppressing speech before it is made public. In democratic societies, it is generally discouraged as it hinders the free flow of ideas. Nonetheless, there are exceptional cases where specific types of prior restraint may be warranted.

#### 10. Chilling Effect.

Fear of legal consequences causes people to avoid speaking out, which is a chilling effect. Why?

### LANDMARK JUDGEMENT

#### Bennett Coleman & Co. v. Union of India

By stating that even seemingly insignificant restrictions on freedom of speech can result in constitutional rights being violated, the Bennett Coleman decision is a groundbreaking ruling.

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<sup>3</sup> Constitution of India, 1950, Art. 19(1)(a)

Jack Balkin, "Free Speech in the Algorithmic Society" (2018) 51 UC Davis Law Review 1149.

Constitution of India, 1950, Art. 19(2).

Indian Penal Code, 1860, §§ 153A, 295A, 505.

UNESCO, *Journalism, 'Fake News' and Disinformation Handbook* (2018).

Information Technology Act, 2000 (India), §79.

Tarleton Gillespie, *Custodians of the Internet* (Yale University Press 2018).

**Background and Facts:** The case was a result of the Newsprint Policy implemented by the Indian government to regulate newspaper usage of newsprint. The rule enforced limitations on the page count of a newspaper and limited newsprint allocations to major publications.

The government rationalized this policy by promoting fair allocation of resources and the elimination or non-monopoly nature of the newspaper industry. Despite this, prominent media organizations like Bennett Coleman & Co. challenged the policy, claiming that it had a direct impact on their ability to publish and disseminate information.

### **Legal Issues:**

Despite being presented as an economic regulation, the Court was first to consider whether restrictions on the amount of newsprint and number of pages could infringe upon freedom of speech and expression.

### **Judgment and Reasoning:**

Despite this, the Supreme Court invalidated the policy on the grounds that "freedom of speech" encompasses the freedom to express and distribute ideas without restriction. Despite the government's assertion that the policy was solely economic, it was dismissed by the Court.

The statement stated that any restriction that affects the circulation or content of a newspaper, directly or indirectly, is in violation of Article 19(1)(a). Although not explicitly stated in the Constitution, the Court argued that freedom of speech is closely tied to the importance of free speech.

### **Key Principle Established:**

Most important in this case:

Free speech can be harmed by indirect restrictions, which are also unconstitutional.

Relevance in the Digital Age:

In the present age of the Internet, this principle holds great significance. Governments have the ability to censor content indirectly through regulations on platforms, algorithms, or infrastructure. For example:

Limiting internet access.

Regulating platform visibility.

Imposing compliance burdens.

By applying this principle, every such measure can be tested.

### **Critical Analysis:**

This ruling is commonly acknowledged for its positive impact on press freedom. Nevertheless, opponents contend that it curtails the government's power to regulate economic aspects of media industries. This tension is especially acute in the digital age where governments try hard to regulate big tech companies without encroaching on free speech.

## **CHALLENGES OF ONLINE REGULATION**

Regulatory challenges in online speech are not common among traditional regulation. Why? National laws are unable to effectively regulate content on the internet due to its lack of borders. A post in one country may be reflected in another, leading to questions about jurisdiction and enforcement.[A].

A major obstacle to overcome is the abundance of content produced ежедневно. With millions of posts uploaded every minute, it is almost impossible for authorities to keep track of everything online. This has resulted in a greater dependence on automated systems, which are frequently flawed and biased.

Private platform usage presents an additional level of complexity.... The visibility of content is heavily influenced by social media platforms, which serve as authoritative speech processors.

## LANDMARK JUDGEMENT

### Shreya Singhal v. Union of India

It is the most important case for your topic and should be discussed in the largest possible way<sup>4</sup>

#### Background and Facts:

The Information Technology Act, 2000's Section 66A made electronic communication messages that were considered "grossly offensive," "menacing," or "inconvenient." A number of people were apprehended for posting content on social media platforms, including political criticism.

The provision's ambiguity and broadness were widely criticized, leading to its invalidation by the Supreme Court.

#### Legal Issues:

Article 19(1)(a)'s right to freedom of speech and expression was the primary concern, as was whether Section 66A could be justified by the reasonable limitations in Article 19.

#### Judgment:

Section 66A was invalidated in its entirety by the Supreme Court, who declared it unconstitutional.

#### Reasoning:

The detailed analysis of the Court's reasoning forms a foundation for digital free speech jurisprudence in India.

#### Vagueness Doctrine:

According to the Court, phrases like "annoying," which caused inconvenience and discomfort, as well as those with strong offensive connotations, were not clearly defined. This lack of clarity prevented people from determining the types of speech that were off-limits.

#### Chilling Effect:

Due to the law's uncertainty, individuals would avoid speaking their minds freely due to concerns about potential prosecution. This alarming influence had been deemed unlawful.<sup>5</sup>

Difference Between Discussion, Advocacy and Incitement?!

A significant separation was rendered by the Court:

Discussion → Protected.

Advocacy → Protected.

Incitement → Can be restricted.

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<sup>4</sup> Jack Goldsmith & Tim Wu, *Who Controls the Internet? Illusions of a Borderless World* (Oxford University Press 2006).

<sup>5</sup> United Nations Human Rights Council, *Report on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/HRC/17/27 (2011).

<sup>6</sup> Jack Balkin, "Free Speech in the Algorithmic Society" (2018) 51 UC Davis Law Review 1149.

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

<sup>8</sup> Information Technology Act, 2000 (India), §66A (struck down).

<sup>9</sup> Constitution of India, 1950, Art. 19(1)(a).

<sup>10</sup> Constitution of India, 1950, Art. 19(2).

Overbreadth.

This was an over-the-top provision, covering both "injurious" speech and "safety" speeches.

Significance.

**This case is a landmark because:**

It protects online speech explicitly.

It curtails the government's authority over e-commerce.

It introduces modern constitutional principles.

Relevance to Your Topic.

By highlighting the challenge of controlling online space, this case illustrates how laws intended to regulate digital spaces can violate constitutional rights.

**Critical Evaluation:**

The verdict has been met with fervor, but there are still worries that indirect mechanisms like new laws (such as IT Rules 2021) may bring back comparable problems.

## **SOLUTIONS AND REFORMS**

A balanced management of digital speech requires the use of legal, technological, and societal resources. However, Constitutional principles must be adhered to while updating laws to address emerging issues. Protecting fundamental rights and curbing power misuse requires judicial oversight.

Digital literacy is essential in dealing with misinformation. Users can learn to engage in responsible online behavior, which can help prevent the spread of harmful content. Why? In addition to this, international cooperation is needed to develop worldwide regulations for online conduct.

## **CONCLUSION**

Freedom of speech has been fundamentally altered by the emergence of digital technology, creating opportunities and obstacles. Technology has given people greater opportunities to participate in elections, but it also posed risks that must be taken into account. While the constitutional structure is a robust foundation, it must change to meet the challenges of the digital age.

An approach that balances the protection of individual freedom and accountability is necessary. The task demands the amalgamation of governments, the judiciary, private platforms, and citizens. Finally, the objective should be to create a digital space that allows free speech and promotes public welfare.

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