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# Balancing Liberty and Control of Freedom of speech- India's Conundrum

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# Balancing Liberty and Control of Freedom of speech- India's Conundrum

## ABSTRACT

*It is well said that, "Freedom of speech is the mother of all liberties." – it is through this right that individuals impart democracy. The freedom of speech and expression is not merely a constitutional right, but an essence of human life with dignity, individuality, and development. It allows one to live and dissent without fear, to question authority without repression, and to Experience unfettered individuality. In a society where ideas clash and opinions vary, freedom of expression acts as the great equalizer henceforth meaning, empowering the weak against the strong, the minority against the majority, and truth against tyranny. The right to freedom of speech and expression is not an absolute right. Article 19(2) permits reasonable restrictions in the interests of public order, morality, security, and integrity. However, contemporary experience shows that these restrictions are often misused -laws of sedition, defamation, and anti-terror provisions have been invoked disproportionately to silence disapproving voices, journalists, comedians, and political critics. Justice Holmes critically stated, liberty cannot extend to "falsely shouting fire in a crowded theatre", but neither should it shrink to the whisper of conformity.<sup>1</sup> The right to speak means the right to be heard; and the right to express complies with the right to exist. A nation that safeguards free expression fosters not only democracy, but also the collective conscience of its people. Just as Voltaire's timeless statement reminds us: "I may not agree with what you say, but I will defend to the death your right to say it." This article will critically deal with the contemporary situations where the restrictions of this freedom have been misused.*

## KEYWORDS

*Freedom of Speech and Expression, Liberty, Democracy,  
Government, Reasonable Restrictions, Public Order, Morality,  
Constitution, Censorship, Public Interest, Article 19,  
Fundamental Rights.*

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<sup>1</sup> William C Dunken, The history behind 'shouting fire in a crowded theater' and other free speech phrases, SUTHERLAND INSTITUTE, (Nov 16,2023)  
<https://sutherlandinstitute.org/the-history-behind-shouting-fire-in-a-crowded-theater-and-other-free-speech-phrases/>.

## INTRODUCTION AND HISTORICAL DEVELOPMENT OF THE CONCEPT OF FREEDOM OF SPEECH AND EXPRESSION

The spirit of any democratic country lies in liberal discourse, open talk and Inter-change of ideas. It is only possible through the liberal communication of thoughts, by which democracy is guided. Without this, it is not possible to build up a democracy as well as be the believer of democracy. But in order to attain this, the civilians must be supplied with the right as well as liberty to communicate freely. The present paper is about the development and historical background of freedom of speech and expression in the world and also in India.

The preamble instills liberty of thought and expression. However, it is subject to 'reasonable restrictions' in Article 19(2) relating to grounds like sovereign integrity and public order. The essence of free speech lies in thinking, talking, and having access to information without fear of government retaliation. This empowers citizens to question their government, criticize policies, and hold the powerful accountable. Ultimately, such public discourse strengthens democracy itself.

Freedom of expression comes with many purposes:

- Realizing self-fulfillment within the individual.
- Enabling the search for truth and knowledge.
- Enhancing the decision-making ability of the individuals.
- Maintaining balance between stability and change in society.
- All members of society are free to form, practice and share their beliefs.

The concept of free speech is as old as hills. The concept of Freedom of speech originates from the Latin phrase *libertatem loquendi et scribendi*<sup>2</sup>, that means freedom of speech and writing. The voice of independence and pronouncement has gone through various stages and finally became this right as a foundational human right in modern times.

Historically the origin of this right could be traced out from ancient Greece. An Athenian statesman (6th Century B.C.) was once asked how the people could preserve their liberties. He gave his opinion that this

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<sup>2</sup> The Recovery of Freedom of Speech in the Culture of Humanists and the Communicative Origins of the Reformation, CAMBRIDGE UNIVERSITY PRESS (17 October 2019) <https://www.cambridge.org/core/journals/traditio/article/recovery-of-freedom-of-speech-in-the-culture-of-humanists-and-the-communicative-origins-of-the-reformation/823362683A5D1C5229FC9EB90C440D1A>

liberty necessarily needs to be linked with the voice of independence as well as pronouncement in today's context. Socrates stated that freedom of expressing one's perspective implies the freedom to teach.

As the civilisations prospered, the power shifted from the individuals (the kings, the monarch of the Pope) to the general public. The role of Freedom of Speech took a more prominent shape in this time. For a civilised society to exist in harmony, free speech became a core principle. From the days of yore till today the great scholars have advocated for free speech as an important right for human existence. In the present-day world it was the United Nations which laid the foundation for international acceptance of Freedom of speech as a human right. The UN's contribution lies in setting legal standards, monitoring state compliance, promoting media freedom and extending free expression rights in the digital age at a global level.

The United Nations has played a very explicit role in strengthening and recognising this right at large. The contribution can be demonstrated by some of these major charters, declarations, and conventions:

**1. *Universal Declaration of Human rights (UDHR),1948:***

Article 19 of UDHR states -"everyone has the right to freedom of opinion and expression and these right holds freedom without interference and to receive and impart information and ideas through any media regardless of frontiers."<sup>3</sup>

**2. *International Covenant and Political rights (ICCPR),1966***

Article 19 (3) of the covenant allows restrictions only if they are provided by law and necessary for respect of rights of others. It is legally binding on member states that have ratified it unlike UDHR.<sup>4</sup>

**3. *United Nations human rights committee (UNHRC)***

This Issues general comments clarifying that: - Free speech protects even information that may "offend, shock, or disturb" and the state must ensure media freedom.

**4. *United Nations General and security council (UNGA)***

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<sup>3</sup> Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>4</sup> United Nations General Assembly resolution 2200A (XXI), International Covenant on Civil and Political Rights, UNITED NATIONS HUMANS RIGHT COMMISSION (Dec 16,1966) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

The committee has passed multiple resolutions condemning attacks on journalists. The Security Council Resolution 1738 specifically protects conflict zone journalism.

### 5. *Internet and Digital rights.*

In 2016, the UNHRC adopted the Resolution 69/166 which declared that "the same rights that people have offline must also be protected online".

India, like all other colonies of the British, witnessed suppression of their right to speak. Indians had to face brutal punishments for raising voices against injustice in their own motherland but sadly there was no way out of such trouble up until independence. The Freedom of Speech and expression was formally recognised after Independence through the adoption of the Indian Constitution which bestowed Freedom of Speech and expression as a Fundamental Right under Article 19(1)(a) to its citizen and the Supreme Court as the guardian of the Constitution has over the years worked tirelessly to protect and expand the scope of this right to meet the changing needs of the society.

## JUDICIAL INTERPRETATIONS

Freedom of speech as we know has a vast connotation. The means of expression under the purview of Freedom of speech at the time of adoption of the constitution have evolved and expanded manifold in the last 75 years. As the means of speech and expression changed with time, the ambit widened and the old interpretation of Article 19(1)(a) fell short to accommodate the changes, frequent questions were raised to decide what would or would not be included in the meaning of the provision. The Hon'ble Courts of our country have stepped up to answer all queries and bring the necessary amendments in the Constitution to adjust to the changing dynamics of free speech. The first major judicial pronouncement led to the adoption of liberal approach in favor of free speech in *Romesh Thapar v. State of Madras (1950)* where the court struck down restrictions on press freedom and mentioning that grounds like pre-censorship were unconstitutional. This judgement was followed by the First Constitutional amendments, 1951, that expanded the scope of permissible restrictions by adding new grounds such as 'public orders' or 'friendly relations with state' as a reasonable restriction under Article 19(2). In 1962, a private newspaper company and two readers approached the Hon'ble Supreme court with a question regarding the Newspaper (Price and Page) Act, 1956 and the Daily Newspapers (Price and Page) Order, 1960 which restricted the page count and content of newspapers (*Sakal Papers (P) Ltd. v. Union of India, 1962*<sup>5</sup>). The Supreme

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<sup>5</sup> AIR 1962 SC 305.

Court declared that the Newspaper (Price and Page) Act, 1956 and the Daily Newspapers (Price and Page) Order, 1960 are unconstitutional for violating the right to free speech. The Act and Order set forth a criterion to determine the prices which the publishers could charge for newspapers based on page count and the amount of content. The Court found that said enactments would either increase prices or reduce the number of pages to balance demand and supply, both of which could hinder free dissemination of ideas, a fundamental aspect of the right to free speech.

The Supreme Court in *SP Gupta v Union of India*<sup>6</sup> stated that Article 19(1)(a) also encompasses the Right to Know as a cardinal aspect in the ambit of fundamental right. This was a significant precursor for the enactment of The Right to Information Act, 2005.

With technological advancement internet space became a prominent space to express thoughts and ideas. Thus, it was necessary to regulate the digital space to preserve Freedom of Speech. *Shreya Singhal v Union of India*<sup>7</sup> and *Anuradha Bhasin v Union of India*<sup>8</sup> are two landmark judgments which extended the protection under Article 19(1)(a) to the digital space.

Thus, judicial interpretation has been important in preserving freedom of speech and helping in adapting to the new changes. The Judiciary has been very vigilant and has carried out its duties with due diligence.

## **RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION**

There is no iota of doubt that Fundamental Rights form the core of the Indian Constitution. However, Dr. B.R. Ambedkar in his opening speech of the Constituent Assembly made a clear statement that Fundamental Rights are not absolute. Article 19 talks about the Fundamental Right to Freedom wherein clause 1 talks about the freedoms of citizens and in the subsequent clauses 2 to 6 contain the necessary restrictions. Questions were raised on the reasoning and the probable consequences of imposing such restrictions on the Fundamental Rights keeping in mind the fact that we had just attained independence. The idea of Restrictions on Rights was not in contention, The American Constitution also had the same provisions but unlike America where the Supreme Court was responsible to regulate the restrictions, Under the Indian Constitution it was the Legislature who were assigned the role. Hukam Singh in the Assembly raised the following point-

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<sup>6</sup> AIR 1982 SC 149.

<sup>7</sup> (2015) 5 SCC 1.

<sup>8</sup> (2020) 3 SCC 637.

*“The right to freedom of speech is given in article 13(1)(a), but it has been restricted by allowing the legislature to enact any measure under 13(2), relating to matters which undermine the authority or foundation of the State; the right to assembly seems guaranteed under 13(1)(b), but it has been made subject to the qualification that legislation may be adopted in the interest of public order—13(3). Further under 13(4) to 13(6), any legislation restricting these liberties can be enacted “in the interest of the general public”. Now who is to judge whether any measure adopted or legislation enacted is “in the interest of the general public” or “in the interest of public order”, or whether it relates to “any matter which undermines the authority or foundation of the State”? The sphere of the Supreme Court will be very limited.”<sup>9</sup>*

T.T. Krishnamachari put forth a good explanation to deal with the dilemma-

*“As a student of politics, I have to realise that there can be no absolute right and every right has got to be abridged in some manner or other under certain circumstances, as it is possible that no right could be used absolutely and to the fullest extent that the words conveying that right indicate. It is merely a matter of compromise between two extreme views. Having got our freedom only recently, it is possible that we want all the rights that are possible for the individual to exercise, unfettered. That is one point of view. The other view is that having got our freedom, the State that has been brought into existence is an infant State which has to pass through various kinds of travail, and what we could do to ensure that the State continues to function un-impaired should be assured even if it entails an abridgment of the rights conferred by this article. I have no doubt in my mind that, though I have had to say something perhaps harsh on certain occasions in regard to what the Drafting Committee has done generally, in this article, the Drafting Committee has chosen the golden mean of providing a proper enumeration of those rights that are considered essential for the individual, and at the same time, putting such checks on them as will ensure that the State and the Constitution which we are trying to bring into being today will continue unhampered and flourish.”<sup>10</sup>*

Article 19(2) in particular deals with the restrictions on Article 19(1)(a) i.e. Freedom of Speech and Expression. The constitution allows the state to impose these “RESTRICTIONS” but the restrictions must be: -

- REASONABLE, meaning they cannot be arbitrary or excessive.
- BY LAW, means only legislation can curtail these freedoms

Under Article 19(2), the State may impose restrictions with respect to:

<sup>9</sup> VOLUME 7, CONSTITUTIONAL ASSEMBLY DEBATES, Dec 01, 1948 Para 176.  
<https://www.constitutionofindia.net/debates/01-dec-1948/#92464>.

<sup>10</sup> VOLUME 7, CONSTITUTIONAL ASSEMBLY DEBATES, Dec 02, 1948 Para 126.  
<https://www.constitutionofindia.net/debates/02-dec-1948/#92728>.

- Sovereignty and integrity of India i.e. preventing secessionist or anti-national propaganda.
- Security of the State means that restrictions may apply when speech gives rise to rebellion, war, or undermines national security.
- Friendly relations with foreign States i.e. speech that damages diplomatic relations can be restricted.
- Decency along with morality – obscenity in books, films, or media can be subject to restrictions.
- Contempt of court ensures that freedom of expression should not interfere with the administration of justice.
- Public order includes hate speech, incitement to violence, and communal disharmony.
- Defamation i.e. to protect the reputation of individuals against false statements.

Restrictions on the Right to free speech is a key aspect in ensuring freedom of expression in our country. In a country so diversified in cultural, ideological and linguistic domain, disparity in thoughts is obvious, but under certain circumstances if such differences are expressed it may impact the harmony of the society. Thus, in the interest of the peace and stability of the masses certain limits are a necessary measure.

However, India today is in a bit of a quandary. The restrictions which were inserted to ensure a balance between individuals in exercise of their free speech in the larger interest of the public, has become a hurdle itself for free speech. The State, the government, the elected representatives, the newspapers, the journalists and protectors and propagators of free speech have put personal interest above public welfare. Individual's right of freedom of speech is being sacrificed for the power struggle between politicians to attain power. News houses have lost their path by choosing profit motives. India has noticed a constant decline in its rank in Press Freedom over the years. The misuse of restrictions to curb public criticism, dissent and opinion is not just a violation of fundamental rights under the Constitution but also a violation of global Human rights and it is also an attack on the democratic structure of the country.

## POLITICAL AND DEMOCRATIC EXPRESSION UNDER STATE RADAR

Abraham Lincoln in his Gettysburg Address defined democracy in a simple phrase- *“a government of the people, by the people, for the people”*. Democracy is a system of governance where the common man elects their representatives to run the state machinery on their behalf. Freedom of speech and expression is a core principle of a functional democracy. The common man’s voice is the sole guide of a democracy. *“Freedom of speech and expression in different forms is the élan vital of sustenance of all other rights and is the very seed for germinating the growth of democratic views”*<sup>11</sup>.

India being one of the largest democracies in the world with such a huge population, ensuring freedom of speech cannot be easy. Freedom of Speech and Expression covers a vast aspect within its scope; Freedom of Political and Democratic Expression is one specific aspect which has had a pivotal role in bringing out the *‘government for the people’* aspect of democracy by giving to the citizens the power to ask accountability from their elected representatives. The freedom of Political and democratic expression was recognized as a part of Fundamental Right under Article 19(1)(a) in the case of *Romesh Thappar v. State of Madras*<sup>12</sup> where the court observed *“Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Governments, is possible”*

The adoption of Political and Democratic Expression as a part of Fundamental Right within freedom of Speech and Expression has empowered the citizens to communicate their needs to the government and also to voice any objection against state action which is against public interest. All in all, the underlying idea behind freedom of Political expression is to keep government action in check and balance.

### *How does the Government actually respond to public criticism?*

Criticism plays an important role in acknowledging areas of improvements, growth and induce introspection promoting better outcomes. Public opinion and criticism are essential to lead state actions on the right path which is in conformity with public welfare. As the elected representative of citizens, the primary goal of the government is to give thorough consideration to public needs, opinion and criticism in policy making. Sadly, the governments are at times seen disregarding public views and demands in their policy and action.

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<sup>11</sup> Tehseen S. Poonawalla v. Union of India (2018) 9 SCC 501.

<sup>12</sup> 150 SCC Online 19.

Sedition- Post Independence, up until the recent, Section 124A of the Indian Penal Code, 1860 which talks about sedition was used as a tool by the ruling governments, to suppress any voice of dissatisfaction or disapproval against the government action by initiating criminal proceedings under the said provision which suppresses the freedom of speech of individuals. However, the state authorities have justified their restrictions to be in the interest of the public to preserve and maintain the peace and stability of society. Such reasoning has no legal basis as the question of inclusion of sedition as a ground of restriction under Article 19(2) was purposely excluded by the drafting committee as they were aware of the probable repercussions. The unreasonable actions initiated under the sedition laws are arbitrary use of powers by the state and misuse of the law. The conditions became so dire that the courts had to come to the rescue of the citizens. Overtime the Supreme Court in different cases<sup>13</sup> specified the domain of Sedition Law so as to restrict its violative misuse. Recently the Supreme Court dealt with the matter in *S.G. Vombatkere v. Union of India*<sup>14</sup> where they passed the following order-

**“8.2.** We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124-AIPC while the aforesaid provision of law is under consideration.

**8.3.** If any fresh case is registered under Section 124-AIPC, the affected parties are at liberty to approach the courts concerned for appropriate relief. The courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

**8.4.** All pending trials, appeals and proceedings with respect to the charge framed under Section 124-AIPC be kept in abeyance. Adjudication with respect to other sections, if any, could proceed if the courts are of the opinion that no prejudice would be caused to the accused.”

Emergency – The Emergency declared in 1975 saw a brutal attempt of the government to suppress public voice. All fundamental rights were suspended, mass arrests of journalists, leaders, people were made under the Maintenance of Internal Security Act<sup>15</sup> (MISA), sedition proceedings were initiated, state controlled the press. This was a strike at the root of

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<sup>13</sup> Romesh Thappar v. State of Madras (supra.), Kedar Nath Singh v. State of Bihar (1962 SCC Online SC 6), Balwant Singh v. State of Punjab (1995 Supreme Court Cases (Cri) 432), Disha A Ravi v. State (NCT of Delhi) 2023 SCC OnLine Del 6051.

<sup>14</sup> (2022) 7 SCC 433.

<sup>15</sup> Maintenance of Internal Security Act, 1971 ; Act 26 of 1971, Acts of Parliament, 1971 India.

## Freedom of Speech.

In contemporary times, the means to curb free speech has shifted away from the old means. With advancing technological landscape access to information is reaching the masses, social media has emerged as an important platform for the ordinary man to raise voices, convey their demands, and express opinions. Deep information penetration has brought awareness which invites heavy criticism against the government for its failures and inefficiencies. To restrict this new age means of democratic expression governments try either to control the data circulation or curb the individual access.

### **GOVERNMENT CONTROL OVER INTERNET SPACE TO LIMIT POLITICAL AND DEMOCRATIC SPEECH**

Seeing the impact of technological development in shaping public conscience, the governments took control of the online content through various legislation like The Information Technology Act, 2000. Certain provisions of the said Act like Section 66A, 69A or the IT Rules 2021 and IT Rules 2023 which have been a recent addition, have allowed government unbridled control in regulating the digital space. The governments have been banning media houses, social media handles, arresting and initiating criminal proceedings against individuals as a routine activity in the recent past. This not only violates freedom of speech but also raises questions on the privacy and powers of the governments

However, censorship in India is not new but has rather always been in place. The ban imposed on Yahoo group in 2003 was the first such ban in India. In 2006 post the Mumbai Train Blasts, several domains like logspot.com, typepad.com, geocities.com were banned without reasonable explanation.

India's Ministry of Information and Broadcasting (MIB) directed The Caravan magazine, one of India's oldest journals of politics and culture, to take down a story titled 'Screams from the Army Post' it published in its February issue alleging torture and murder of civilians by the army in Jammu. The order was made under Section 69A of the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. It reportedly threatened the Caravan magazine with a complete website shutdown if it refused to remove the contested article within 24 hours.<sup>16</sup>

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<sup>16</sup> Suvrat Arora, Silenced Voices: The Battle for Free Expression Amid India's Farmer's Protest ALJAZEERA MEDIA INSTITUTE (17 Mar, 2024) <https://institute.aljazeera.net/en/ajr/article/2593>.

During the Farmers protest many media houses and activists faced a big shock when X accounts of around 800 people were banned on government order. Although the government stated violation of IT Act, 2000 the means to get this done raises questions of honesty as the platform was forced to implement these orders against their policy even after disagreement. X (Formerly twitter), through its Global Government Affairs Account even said, "In compliance with the orders we will withhold these accounts and posts in India alone. However, we disagree with these actions and maintain that freedom of expression should extend to these posts."<sup>17</sup>

Such acts always raise questions on transparency and highlight the arbitrariness of governments. But this is where the separation of powers and the independent judiciary have come to the rescue of democracy. The Supreme court in *Shreya Singhal v. Union of India*<sup>18</sup> upheld the constitutional validity of Section 69A highlighting the procedural safeguards specified in the Act which prevents arbitrary use, the court declared Section 66A of the Act as unconstitutional.

Internet shutdowns have been the recent addition to the government's armory controlling public opinions and criticism online.

*"296 Internet shutdowns happened globally in 2024, the report found, and India's cumulative 84 curbs accounted for 28% of these."*<sup>19</sup>

Since the last five years a common pattern has emerged wherein the Central as well as the State governments have ordered immediate internet shutdown in any area of possible conflict as soon as any sign of slight protest, unrest appears. The Kashmir valley was under internet restrictions for 18 months from August 2019 to February 2021, Darjeeling was under a 100-day blackout in 2018, Manipur became a recent victim. There was extreme violence happening in Manipur, a huge number of deaths and yet no-one had any information about the same. The severity of the matter came to light when a video of a raped Kuki woman being stripped naked in public came on the internet. The people raised questions of the atrocities being hurled at the people. The government justified this internet ban to be in public interest to maintain peace and prevent violence but the evidence shows otherwise. Prateek Waghre, policy director at the Internet Freedom foundation said that the lack of

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<sup>17</sup> Global Government Affairs, TWITTER, INC. (Feb 22, 2024) <https://x.com/GlobalAffairs/status/1760387644608192560>.

<sup>18</sup> Supra.8.

<sup>19</sup> Aroon Deep, Number of Internet shutdowns highest in 2024 globally, India tops in govt-ordered curbs, THE HINDU (Feb 25, 2025), <https://www.thehindu.com/sci-tech/technology/internet/number-of-internet-shutdowns-highest-in-2024-globally-india-tops-in-govt-ordered-curbs/article69257573.ece>.

accountability and transparency in how internet shutdowns are ordered and who by, both at state and national level, was also highly problematic.<sup>20</sup>

So, it can be deduced that the internet bans which are used by the Government in the interest of the public is merely a political tool to restrict freedom of expression. After arresting individuals under sedition and controlling press freedom the governments have brought the online platforms and social media under their regulations which directly is an attack on freedom of political and democratic expression. Without proper means to express dissent to government actions or communicate demands there cannot be any accountability or transparency in state actions. Such a situation strikes at the root of a democracy which is alarming

### **MEDIA HOUSE'S INEFFICIENCY IN REALIZING THE OBJECTIVES OF PRESS FREEDOM**

An independent Press is considered to be the fourth Pillar of Democracy. It is the medium through which the plight of the oppressed and unheard can be brought to public light. A common household is highly reliant on newspapers and news channels for their information about latest events happening in our country and globally. A common belief is that a common man to be verified, unbiased and true believes a news reported by any of the media houses irrespective of the medium. With advancements Press has also occupied online platforms to circulate news.

The Freedom of Press forms the core of Freedom of Speech and expression. Press freedom in India was brutally suppressed during British Rule. As the reporting of the oppression hurled at Indians in different parts of the country was prevented from publication, this helped the British escape any accountability for the damage and atrocities they caused to India. So, it was a common consensus that Press Freedom ought to have a mention in the Constitution of India. But, unlike the American Constitution, Freedom of Press is not explicitly mentioned as a Fundamental Right under Article 19(1). K.T. even raised this question Shah in the constituent Assembly debate where Dr. B.R. Ambedkar provided the following reasoning "*The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual*

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<sup>20</sup> Hannah Ellis-Petersen and Aakash Hasan, A tool of political control 'How India became world leader in internet blackouts, THE GUARDIAN (Sept 25, 2023).

<https://www.thehindu.com/sci-tech/technology/internet/number-of-internet-shutdowns-highest-in-2024-globally-india-tops-in-govt-ordered-curbs/article69257573.ece>.

*capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.”<sup>21</sup>*

The Supreme Court of India recognized Press Freedom as an important part of Freedom of Speech and Expression under Article 19(1)(a) in the landmark judgement of *Romesh Thappar v. State of Madras*<sup>22</sup> and subsequently in *Brij Bhushan v. State of Delhi*.<sup>23</sup>

Today, the Press which is considered the voice of the people, which was given full freedom from any control of the government to allow unbiased reporting of public issues, is facing serious allegations on its authenticity. According to some people, the fourth pillar of democracy is disintegrating. The press which once provided an accessible platform to the public for conveying grievances towards government policy, seek transparency in government activities or spread awareness and provide information about major issues, today they seem to have taken sides. The media houses are being labelled as biased, partisan and influenced. The news platforms which were the primary source of common man for any small or big event happening in any part of the country, are unable to meet public standards. Such dissatisfaction and disbelief in the news platforms have forced the common man to turn to other alternatives which generally are unverified sources and as a result there is misinformation circulating around.

### WHY THIS LOSS IN CONFIDENCE?

This dissatisfaction in the press was not a one-day incident, it has been coming into public's notice for a prolonged time. There were regular calls out of such actions but once the system looked to have completely dissolved, the people gave up. To name a few incidents-

NDTV Takeover by Adani group- In August 2022, Adani Group through its acquisition of Vishvapradhan Commercial Private Limited (VCPL), announced indirect acquisition of 29% stake in NDTV group since its founders Pranay Roy and his wife Radhika Roy resigned. This is seen as a hostile takeover. The matter raised concerns over such acquisition as it was India's last major independent TV broadcaster. New Delhi Television (NDTV) after the takeover saw numerous journalists parting their ways with the channel. Reporters Without Border (RSF) regarded such frequent takeovers of media houses by Oligarchs as “clearly

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<sup>21</sup> VOLUME 7, Constitutional Assembly Debates, 02 Dec 1948 para. 168  
[02 Dec 1948 Archives - Constitution of India.](#)

<sup>22</sup> 150 SCC online 19.

<sup>23</sup> AIR 1950 SC 129.

*endangering pluralistic public debate in India.*"<sup>24</sup> Similarly, the Reliance group has stakes in many major media and press houses and likewise other big firms control many news centers, the only issue with control is the deep-rooted relationship between corporate giants and political parties in India. All these factors pose a big question mark on the legitimacy of the news provided by today's news channels and newspapers.

Prioritizing profits over truth - The press has completely diverted from its primary duty of scrutinizing events happening all of the nationally as well as internationally and report factually verified information which has relevance for the public. They have turned into profit making entities, hungry for TRP treating news as business transactions. Such an environment is not conducive for fair reporting. In the recent past itself, certain incidents that transpired which required immediate reporting but the press failed to streamline these events. The violent riots that broke out in Manipur were unreported by the press; the public did not have even the slightest knowledge of the level of cruelty being hurled at the people. Similarly, environmentalist Sonam Wangchuk who carried out protests to safeguard the natural habitat of Ladakh under Schedule VI of the Indian Constitution during his hunger strike called out the media houses for lack of coverage given to such a concerning matter, through a video posted on X (formerly Twitter) handle of *Martyr's Memorial Park*, he said, *"Today is the fourth day of my fast under open skies with temperature plummeting to minus 16 and we are observing fast under such hostile weather. However, I am surprised over complete silence being maintained by mainstream media (news channels) of India, which has not mentioned anything about the ongoing upheavals in Ladakh."*<sup>25</sup>

News Channels or PR agency? In the recent past the media houses are seen to not only have taken sides but have also accepted a role to publicize for a particular group in quid pro quo relation. "Multiple parliamentary reports have recorded the practice of accepting payment in exchange for positive coverage. What was once whispered about is now brazen. From fixing interviews to planting stories, journalists are increasingly seen as fixers or middlemen."<sup>26</sup>

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<sup>24</sup> NDTV takeover signals end of pluralism in India's leading media, REPORTERS WITHOUT BORDERS

<https://rsf.org/en/ndtv-takeover-signals-end-pluralism-india-s-leading-media>.

<sup>25</sup> Ravi Krishnan Khajuria, Ladakh statehood demand: Wangchuk flays media for 'lack of coverage, THE HINDUSTAN TIMES (Mar. 10,2024)

<https://www.hindustantimes.com/cities/chandigarh-news/ladakh-statehood-demand-wangchuk-flays-media-for-lack-of-coverage-101710009277725.html>.

<sup>26</sup> From watchdog to lapdog: How Indian media lost the plot,

Policy Circle Bureau (May 13, 2025) <https://www.policycircle.org/society/indian-media-credibility-crisis/>.

For the record, these are not just baseless allegations but there have been cases which have come to light which contributed in shaking the foundation of trust on news. The Niira Radia tapes scandal of 2010 not just highlighted the shortcomings of the government but also brought into question journalism ethics. Recorded between 2007-2009, these tapes included around 5,000 conversations between lobbyist-cum-entrepreneur Niira Radia and her clients – that included top-notch businessmen and politicians – as well as gossip with senior journalists who also seemed to be a conduit of information in the chain of events<sup>27</sup>, all these directly related to the 2G Scam.

The means of control has changed, from censorship in the pre-emergency era to soft co-options today. But governments have not backed down in taming these media houses, but the motives are still the same. The newsrooms are becoming advertisers, editors are executive managers, editorial teams running according to the interests of the political investors. The recent India-Pakistan stand-off after the pahalgam terror attack was the last nail in the coffin for public trust in the press. The television coverage of the conflict wasn't reportage—it was theatre. Prime-time debates turned into shouting matches. Newsrooms abandoned facts for frenzy. Anchors behaved like generals, issuing war cries instead of asking questions. The editorial voice of reason was sadly missing. The crisis exposed the decadence that has crept into Indian media institutions, and an absolute abdication of editorial responsibility<sup>28</sup>.

It would not be wrong to say that the media which was once a guardian of democracy has surrendered itself before power and profit. To expect confidence in the press is difficult when the editorial autonomy has succumbed to political pressure. To re-ignite a feeling of trust amongst the people for news platforms, the media houses need to pledge to honestly carry out their duties with sincerity and without bias, only then can the system be changed.

### **STATE SUPERVISION ON FREEDOM OF SPEECH IN THE DIGITAL AGE.**

The social sphere is no more restricted to physical surroundings but has extended, through ease of internet access, to digital space. The world is interacting every second instantaneously through digitalization and it is for this reason we refer to today's time as the 'Digital age'. But this digital

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<sup>27</sup> Akanksha Kumar, Radia Tapes: How One Woman's Influence Peddling Led to a Snake Pit, THE QUINT (Feb 02, 2018) <https://www.thequint.com/explainers/what-are-niira-radia-tapes-explained>.

<sup>28</sup> Supra. 14.

environment has complicated the State's role in regulating freedom of speech and expression. The Internet is a vast space, with a heavy traffic, to ensure and monitor freedom of speech and expression becomes challenging. As a result, in the shadow of the advantages certain unregulated, mischievous and illegal activities are being practiced in the online space.

Social media has emerged as the epochal by-product of digitalization, which has connected the world together. Social media has provided people across the globe with a common space to interact, discuss and share thoughts and information. In short, we can say that in the digital era, every information is just a few clicks away. But there is a big downside to it, every information circulated online is not necessarily true, verified or in good faith. Misinformation has emerged as the biggest obstacle for all governments because of the wide reach and limited control of online accessibility. Misinformation is a common term used to comprise disinformation and mal-information under its ambit. With the growth of AI this misinformation has become a more serious threat. In 2024, the World Economic Forum's annual *Global Risks Report* found misinformation powered by artificial intelligence (AI) to be the most severe threat facing the world over the next two years - greater than even active wars or threats of war, climate and weather events, or economic volatility<sup>29</sup>.

The unrestricted access of the social space has allowed uncensored content, misinformation or propaganda to spread like wildfire over the internet space which creates a serious obstacle for masses to access true information, invades privacy and restricts a common man's freedom of expression. It also threatens any country's sovereignty, internal peace and security. Thus, to curb the misuse of the internet space many nations have shown urgency to regulate the freedom of speech and expression exercised online, especially in India this is covered by the Article 19(2) of the Constitution which talks about reasonable restrictions on Freedom of speech and expression.

### State Misusing Censoring Powers

The state is responsible for the welfare of the people; thus, it becomes a duty of the state to prevent any harmful, disturbing content from reaching the people. State control of online content is a necessity. The first step taken to regulate online content was by enacting the Information Technology Act, 2000. From social media accounts to online news channels, blogs, OTT platforms, and other such digital sites everything

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<sup>29</sup> David Inserra, *The Misleading Panic over Misinformation and Why Government Solutions Won't Work*, JSTOR ORG (June 11, 2025)  
<https://www.jstor.org/stable/resrep71237>.

has been under state surveillance. However, over a period of time it is seen that the governments have tried to overstep their domain in restricting the content online. As the social media and online network has become the primary source of information exchange, a major issue that arises is that there is a thin line between honest opinions in public interest and propaganda peddling through digital platforms. The State being entrusted with the responsibility to restrict any harmful, offensive content from circulating, they do so by order ban of accounts or take down of the contents and ultimately this becomes the area of conflict. The Governments are often blamed to be misusing their censorship powers to restrict certain opinions made in public interest which hinders their plan of action. Such allegations raise questions of legality and strike at the core of fundamental freedom of speech and expression. The provisions under Article 19(1)(a) of the Constitution extend to cover free speech in the digital space. The freedom of speech and expression in the digital space was recognized by the Supreme Court in the landmark judgement of *Anuradha Bhasin v. Union of India*<sup>30</sup>

“We declare that the freedom of speech and expression over the medium of internet enjoys constitutional protection under Article 19(1)(a). The restriction upon such fundamental rights should be in consonance with the mandate under Articles 19(2) of the Constitution, inclusive of the test of proportionality.”

Restriction on social media- social media has provided individuals an accessible space where they freely express their thoughts and opinions. It also provides a medium to communicate grievances and demands to the authorities directly. At times what has come to light is that an opinion in the interest of the public which deals with a sensitive topic or contradicts the state's line of action, arbitrary measures are taken against such individuals without justifiable cause. All digital platforms have a structured policy to regulate content which impose the necessary restrictions to curb misuse in consonance with the general human rights principles of free speech. Recently a new controversy which has come into public light is that our governments have forcefully tried to make certain digital platforms impose further restrictions on the content shared by individuals on their platforms without providing reasonable justification. This has been condemned by the intermediaries as being violative of citizen's freedom of speech and expression. In 2025 itself, the government purportedly made an order for banning certain X handles. Through a tweet on July 8, 2025 X (Formerly Twitter), made a statement that the Indian government on July 3 ordered it to block 2,355 accounts in India under Section 69A of the Information Technology (IT) Act which

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<sup>30</sup> SUPRA. 9.

also included the official handle of Reuters and Reuters World.

*“On July 3, 2025, the Indian government ordered X to block 2,355 accounts in India, including international news outlets like @Reuters and @ReutersWorld under Section 69A of the IT Act. Non-compliance risked criminal liability. The Ministry of Electronics and Information Technology demanded immediate action- within one hour- without providing justification, and required the accounts to remain blocked until further notice.”<sup>31</sup>*

One important thing which needs to be kept in mind is that there is no one government opting for such tactics nor is one country adopting such mal-practices of selectively imposing arbitrary restrictions on the content. Nepal is a recent example, where the government imposed unreasonable restrictions on free speech by banning social media to suppress the agitation against corruption. As a result, the people took the streets and forced the resignation of the government.

In India as well there have been events which raise an iota of doubt on the government's intentions with regards to the censorship of social media content. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 (IT Rules 2023) came under radar for certain provisions. One such provision is Rule 3(1)(b)(v) which direct social media intermediaries such as Facebook to remove any news regarding the “business of the Central Government” that is deemed “fake, false, or misleading” by a fact-checking unit established by the Union Government. The major concern with this provision is that “this introduces vague grounds for blocking content hosted by intermediaries, and violates both the Shreya Singhal v Union of India, 2013 judgement and the spirit of Section 69A of the IT Act, 2000.”<sup>32</sup> Following the notification of the rules, on 10 April 2023, comedian and political satirist Kunal Kamra challenged the Rules in the Bombay High Court. “Kamra claimed that the formation of a fact-check unit is in conflict with Section 79 of the Information Technology Act, 2000 (IT Act) which is a safe harbour provision for social media intermediaries. It protects them from liability for user-generated content. According to Section 79(3), intermediaries must remove content upon receiving a notification from the Union Government. Under Rule 7, of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, a social media intermediary can lose its safe

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<sup>31</sup> Global Government Affairs, TWITTER INC.

<https://x.com/GlobalAffairs/status/1942534153297084907>;

<https://www.aljazeera.com/news/2025/7/8/deeply-concerned-over-india-press-censorship-says-x-as-accounts-blocked>.

<sup>32</sup> Tejasi Panjiar and Prateek Waghre IT Amendment Rules, 2023 are a nightmare, dressed like a fact checking daydream, INTERNET FREEDOM FOUNDATION (Apr 21 2023) <https://internetfreedom.in/public-brief-it-amendment-rules-2023/>.

harbour if it does not comply with the IT Rules.”<sup>33</sup>

Finally, on 21 March 2024, the Supreme Court put a stay on the Union’s notification establishing the fact check unit.<sup>34</sup>

In yet another matter, *The Kashmir Walla*, one of the leading investigative media outlets in the Jammu and Kashmir region was banned without providing proper reasons under the IT Rules, 2021.

Social Media account ban, content take down or criminal action against the creators by state has become another common occurrence. The major question raised by the public is that on what basis do states actually exercise their power to restrict social media content?

During the Second wave of covid-19 pandemic there was a surge in actions against people who took over the internet to express grievances against lack of facilities or government inaction. There were FIRs registered under IPC or Epidemic Disease Act etc. As a consequence, the Supreme Court in May 2021 intervened and issued a direction to clampdown this arbitrary action of governments against genuine grievances. It ordered: "The Central Government and State Governments shall notify all Chief Secretaries/Directors General of Police/Commissioners of Police that any clampdown on information on social media or harassment caused to individuals seeking/delivering help on any platform will attract a coercive exercise of jurisdiction by this Court.”<sup>35</sup>

2021 saw some very controversial matters of tussle between free speech over digital space and government restrictions. From the new IT Rules, 2021 to the farmer’s protest. A serious event which became a global issue was the Union Government’s action against Twitter where the bone of contention was the compliance of new IT rules. The Government alleged that Twitter Inc had deliberately shown non-compliance with the new IT rules whereas Twitter raised questions on the violative nature of the rules.

Even when the whole nation was shocked after the horrifying RG Kar Hospital Rape case there were serious allegations on the West Bengal Government for forcefully restricting legitimate content speaking against the government lapses and inefficiencies in the investigation of the case,

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<sup>33</sup> Challenge to IT rules ,2023, THE SCC OBSERVER, <https://www.scoobserver.in/cases/challenge-to-the-it-rules-2023/>.

<sup>34</sup> Supra 23.

<sup>35</sup> Madabhushi Sridhar, Clampdown on social media is contempt of court, Hans News India (4 May 2021) <https://www.thehansindia.com/hans/opinion/news-analysis/clampdown-on-social-media-is-contempt-of-court-684679>.

actions was initiated against those protesting even the students were not spared.

Use of social media for self-interest- The control of social media is not only to restrict the usage or regulate the content but it has extended to promoting political views. The ruling parties as well as the opposition is using social media as a mode of election campaign. However, one must not think that the democratisation of social media for political communication means professionalisation as an information-sharing one. The political parties are actually using social media to run a divisive campaign of religion and caste base politics. For instance, a report by the Oxford Internet Institute identified India as one of the 10 major countries of organised social media manipulation (Bradshaw and Howard 2018).<sup>36</sup> A large chunk of misinformation related to national issues circulated online have a politically induced source of origin.

The restrictions, regulation and control are not limited to social media but it expands to cover art, literature, movies, music among others. As a matter of fact, with the expansion of social media and internet access the role and responsibilities of the authorities to control and supervise circulation of illicit, unwanted content in the digital space have put extra pressure. To decide what is important and what is unwanted, what is required to be heard by the people and what could hurt the public sentiments is a juggernaut task. There is a very fine line of disparity between right and wrong content and when the population is so huge certain restrictions might be hailed as good by one group, maybe called blatantly oppressive by another. Thus, to take up such a role is no cake walk. But at times governments have negligently exceeded their powers and violated the right of free speech of individuals. As responsible citizens of the world's largest democracy it is our right to call out the government for any act which infringes basic rights of the citizens.

## CONCLUSION

Justice Louis Brandeis rightly stated, "Sunlight is said to be the best of disinfectants", recalling that the open exchange of ideas is the foundation of transparency and accountability.

There is no denying the fact that restrictions on Freedoms are as important a part of the constitution as the freedoms itself. The framework of restrictions under article 19 makes the Indian Constitution one of its kind wherein, on one hand, it bestows upon the citizens the fundamental

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<sup>36</sup>Author(s): Sangeeta Mahapatra and Johannes Plagemann, Polarisation and Politicisation: The Social Media Strategies of Indian Political Parties, JSTOR ORG (Mar 19,2019)

<https://www.jstor.org/stable/resrep24806>

freedoms crucial for personal growth, independence and democratic supervision over the government and on the other hand, it equips the state with the ability to regulate these freedoms in the interest of the public at large. The creators of the Constitution have beautifully balanced freedom with necessary restrictions to keep a check on the misuse of such provisions.

Being the authority responsible for public welfare, the State is obligated to protect the freedom of speech and expression of the citizens. Free speech protections also include the necessary restrictions. Sadly, what we are witnessing is the misuse of the restrictions as a tool to casually suppress free speech. Freedom of speech and expression as we know is not just a fundamental right in India but a human right recognised by the United Nations. India is the largest Democracy in the world thus, any mal-practice of suppression of free speech draws attention of Global media, international organisations etc. Indian governments have also been at times called out by the international forums, foreign nations for many such acts against the freedom of speech as well. The impact of such criticism is that the country's credibility and stance is weakening in the global sphere. The governments need to realise the adverse effects of this arbitrary denial of freedom of speech and expression. India's reputation could take a blow which would directly impact the growth and development in the long run. The need of the hour is that the government and its bodies must realise their duties as the representative of the citizens and focus on promoting prosperity instead of using the powers in personal interest.