

# Freedom Of Speech And Expression In The Digital Age: A Critical Analysis Of Constitutional Rights, Social Media Regulation, And Emerging Technologies

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## Abstract:

Freedom of speech and expression constitutes one of the fundamental pillars of a democratic society. In India, Article 19(1)(a) of the Constitution guarantees every citizen the right to freedom of speech and expression, while Article 19(2) permits reasonable restrictions in the interests of sovereignty, security, public order, decency, morality, contempt of court, defamation, and incitement to an offence. The emergence of digital technologies, social media platforms, artificial intelligence (AI), algorithmic governance, and digital communication has significantly transformed the manner in which individuals create, disseminate, and consume information. These technological developments have expanded opportunities for democratic participation while simultaneously creating challenges such as misinformation, hate speech, cyber harassment, online radicalization, privacy violations, deepfakes, algorithmic censorship, and governmental surveillance.

This research critically examines the constitutional dimensions of freedom of speech and expression in the digital age with particular reference to India. The study analyses constitutional provisions, statutory regulations, landmark judicial decisions, and international legal standards governing online speech. It evaluates the legal framework under the Information Technology Act, 2000, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and recent developments concerning intermediary liability and content moderation. The paper further investigates the impact of emerging technologies such as artificial intelligence, machine learning, blockchain, virtual reality, and generative AI on constitutional freedoms.

**Keywords:** Freedom of Speech, Article 19(1)(a), Constitution of India, Social Media, Digital Rights, Artificial Intelligence, Online Speech.

## Introduction

Freedom of speech and expression remains the cornerstone of constitutional democracy and an indispensable prerequisite for the protection of individual liberty, political participation, and accountable governance. In India, Article 19(1)(a) of the Constitution guarantees this fundamental right, enabling citizens to freely express opinions, exchange ideas, and participate in democratic discourse. However, the unprecedented growth of digital technologies, social media platforms, artificial intelligence (AI), and algorithm-driven communication has fundamentally transformed the manner in which speech is created, disseminated, and regulated. While these technological advancements have democratized access to information and strengthened civic engagement, they have simultaneously introduced complex legal and constitutional challenges relating to misinformation, hate speech, cyber harassment, online radicalization, deepfakes, algorithmic bias, digital surveillance, and privacy violations.

Freedom of speech and expression has long been recognized as the foundation of democratic governance. It enables citizens to communicate ideas, criticize governmental actions, exchange information, participate in public discourse, and contribute to social and political development. The framers of the Constitution of India incorporated this right under Article 19(1)(a), acknowledging that democracy cannot flourish without free and informed discussion. The digital revolution has fundamentally altered the landscape of free expression. Social networking platforms such as X (formerly Twitter), Facebook, Instagram, YouTube, WhatsApp, and emerging AI-powered communication tools have democratized access to information. Every individual today possesses the ability to reach millions of people instantly through digital media. Consequently, digital platforms have become important forums for political participation, public debate, education, journalism, activism, and commercial communication.

However, this transformation has also generated unprecedented constitutional and regulatory challenges. The rapid spread of fake news, hate speech, cyberbullying, online harassment, deepfake videos, algorithmic manipulation, and AI-generated misinformation has raised serious concerns regarding public order, electoral

integrity, national security, and individual dignity. Governments across the world have increasingly introduced legal measures to regulate digital platforms and online speech. In India, the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 seek to regulate intermediaries while balancing constitutional guarantees under Article 19.

The constitutional challenge lies in maintaining an equilibrium between individual liberty and legitimate governmental regulation. Judicial interpretation has consistently emphasized that although freedom of speech is fundamental, it is not absolute and remains subject to reasonable restrictions under Article 19(2). Courts have also recognized that constitutional protections extend to digital communication and internet-based expression. Emerging technologies such as Artificial Intelligence (AI), Generative AI, blockchain, metaverse platforms, and algorithm-driven content recommendation systems further complicate constitutional discourse. AI-generated content blurs the distinction between human and machine expression, while automated moderation raises concerns regarding transparency, accountability, and freedom of expression. This research critically examines these evolving constitutional issues by analysing statutory developments, judicial precedents, comparative jurisprudence, and international human rights principles.

**Research Objectives:** The objectives of this research are:

1. To examine the constitutional framework governing freedom of speech and expression in India.
2. To analyse the impact of digital technologies on constitutional rights.
3. To evaluate the legal framework regulating social media platforms in India.
4. To critically examine judicial interpretations concerning online speech. .
5. To recommend legal reforms for balancing digital freedom and responsible regulation.

**Research Questions:** The study seeks to answer the following questions:

1. What is the constitutional scope of freedom of speech and expression in the digital era?
2. How has digital technology transformed constitutional free speech?
3. Whether existing Indian laws adequately regulate social media without violating constitutional rights?
4. What role has the judiciary played in balancing free speech and public interest?
5. What reforms are necessary for ensuring constitutional protection in the digital ecosystem?

**Hypothesis:** The research is based upon the following hypothesis:

**H0 (Null Hypothesis):** The existing constitutional and statutory framework adequately protects freedom of speech and expression in the digital environment.

**H1 (Alternative Hypothesis):** The existing legal framework requires significant constitutional and legislative reforms to effectively balance freedom of speech, technological innovation, digital governance, and public interest in the era of artificial intelligence and social media.

## Research Methodology

The present study adopts a doctrinal and analytical research methodology. The study employs constitutional analysis, comparative legal research, case law analysis, statutory interpretation, and policy evaluation. The study adopts a doctrinal and analytical research methodology based on constitutional interpretation, statutory analysis, judicial precedents, scholarly literature, and comparative legal approaches. It argues that while regulation of digital platforms is essential for protecting public interest, excessive governmental or private control may undermine constitutional liberties. There should be a balanced regulatory framework that safeguards democratic values while ensuring responsible digital governance in India.

## Literature Review

Scholars have extensively examined the constitutional importance of freedom of speech. Constitutional experts such as H.M. Seervai, M.P. Jain, and V.N. Shukla have emphasized that Article 19(1)(a) forms the cornerstone of democratic governance.

Recent scholarship focuses on digital constitutionalism, intermediary liability, content moderation, online censorship, AI regulation, and platform governance. Despite growing literature, limited research comprehensively examines constitutional free speech alongside AI governance and emerging technologies. This study seeks to bridge that gap.

Researchers focus on the technological developments that have shifted constitutional debates from governmental censorship toward platform-based regulation and algorithmic governance. Recent analyses also highlight that India's regulatory framework, including the IT Rules, 2021, seeks to address online harms but continues to generate constitutional debates regarding proportionality, transparency, and judicial oversight.

**Scope of Article 19(1)(a):** Article 19(1)(a) guarantees: "All citizens shall have the right to freedom of speech and expression." The expression "speech and expression" has received liberal judicial interpretation and includes:

- Oral communication
- Written communication
- Electronic communication
- Internet speech
- Artistic expression
- Commercial speech
- Political criticism
- Academic discussion
- Digital communication
- Social media participation

The Supreme Court has consistently interpreted Article 19(1)(a) broadly, while recognizing that any restriction must satisfy the constitutional test under Article 19(2).

**Reasonable Restrictions under Article 19(2):** Unlike absolute rights, freedom of speech is subject to reasonable restrictions. The Constitution permits restrictions in the interests of:

- Sovereignty and integrity of India
- Security of the State
- Friendly relations with foreign States
- Public order
- Decency
- Morality
- Contempt of court
- Defamation
- Incitement to an offence

The doctrine of proportionality requires that such restrictions be lawful, necessary, and proportionate to the legitimate objective pursued. The constitutional guarantee of freedom of speech is not absolute and must be balanced against the reasonable restrictions prescribed under Article 19(2), including the interests of sovereignty, security of the State, public order, decency, morality, defamation, and incitement to offences. Nevertheless, any restriction on online expression must satisfy the constitutional tests of legality, necessity, proportionality, and procedural fairness. The rapid evolution of digital communication technologies requires that these constitutional principles be interpreted dynamically so that individual liberties are preserved without compromising legitimate public interests.

**Freedom of Speech in the Digital Environment:** Digital communication has significantly expanded constitutional freedoms through:

- Social media
- Online journalism
- Citizen journalism
- Blogs
- Podcasts

- Video sharing platforms
- AI-assisted communication
- Virtual communities

However, digital platforms have also amplified misinformation, coordinated disinformation campaigns, hate speech, cyber harassment, deepfakes, and algorithmic manipulation, creating new constitutional challenges for lawmakers and courts.

**Privacy, Data Protection, and Free Speech:** The digital age has transformed the exercise of freedom of speech and expression by enabling instantaneous communication through social media, online platforms, blogs, and digital news media. While these technological advancements have enhanced democratic participation and the exchange of ideas, they have also raised significant concerns regarding privacy and data protection. The widespread collection, processing, and commercialization of personal data by governments, corporations, and digital platforms have created a complex relationship between the right to privacy and the right to freedom of speech and expression. Both rights are essential components of a constitutional democracy and are recognized as fundamental human rights under international and domestic legal frameworks.

In India, the right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution, while the right to privacy has been recognized as a fundamental right under Article 21 by the Supreme Court. The challenge lies in balancing these rights in situations where the exercise of one may interfere with the enjoyment of the other. Excessive surveillance, data breaches, unauthorized profiling, and algorithmic monitoring can have a chilling effect on free speech, whereas unrestricted expression may sometimes infringe an individual's privacy and reputation.

**Privacy as a Constitutional Right:** Privacy refers to an individual's ability to control personal information, make autonomous decisions, and remain free from unwarranted intrusion by the State or private entities. Although the Constitution does not expressly mention the right to privacy, the Supreme Court has interpreted Article 21 to include privacy as an essential aspect of the right to life and personal liberty. Privacy encompasses several dimensions, including:

- Informational privacy
- Bodily privacy
- Decisional autonomy
- Communication privacy
- Digital privacy

In the digital environment, informational privacy has gained particular importance because personal data such as browsing history, location information, financial records, biometric identifiers, and communication records are routinely collected and processed by digital platforms.

**Data Protection and Digital Governance:** The rapid expansion of digital services has significantly increased concerns regarding personal data protection. Social media companies, search engines, e-commerce platforms, and mobile applications continuously collect vast quantities of user information for commercial purposes, targeted advertising, and algorithmic personalization. While such data processing facilitates innovation and economic growth, it also increases the risk of unauthorized surveillance, identity theft, profiling, and misuse of personal information.

India has taken important legislative steps to strengthen data privacy through the Digital Personal Data Protection Act, 2023 (DPDP Act). The Act establishes a legal framework governing the collection, storage, processing, and transfer of personal digital data. It recognizes the rights of individuals (Data Principals) while imposing obligations upon organizations (Data Fiduciaries) handling personal data. The Act seeks to ensure that personal information is processed lawfully, fairly, and transparently while promoting accountability among data processors. However, concerns remain regarding broad governmental exemptions, surveillance powers, and the balance between national security and individual privacy.

**Relationship Between Privacy and Freedom of Speech:** Privacy and freedom of speech are complementary constitutional rights. Privacy enables individuals to think freely, communicate confidentially, and participate in

democratic discourse without fear of surveillance or retaliation. At the same time, freedom of expression allows citizens to criticize governmental actions, share opinions, and disseminate information. However, conflicts frequently arise between these rights. For example:

- Publication of private personal information may violate privacy rights.
- Investigative journalism may involve disclosure of confidential information in the public interest.
- Social media users may reveal sensitive personal data without consent.
- Artificial intelligence systems may generate or distribute private information without authorization.
- Government surveillance programs may discourage citizens from expressing dissenting opinions.

Constitutional adjudication therefore requires balancing both rights through the principles of legality, necessity, proportionality, and procedural safeguards.

**Privacy Challenges in the Digital Age:** The digital ecosystem presents numerous challenges affecting both privacy and free speech:

**1. Mass Surveillance:** Governments increasingly use digital surveillance technologies for national security and law enforcement. Although surveillance may be justified in certain circumstances, indiscriminate monitoring of online communications may discourage citizens from freely expressing their views.

**2. Data Profiling:** Artificial intelligence and machine learning enable digital platforms to analyse users' behaviour, preferences, political opinions, and social relationships. Such profiling may influence political campaigns, elections, and consumer behaviour while limiting individual autonomy.

**3. Data Breaches:** Unauthorized access to personal information exposes individuals to financial fraud, identity theft, reputational harm, and psychological distress.

**4. Algorithmic Decision-Making:** Social media algorithms determine the visibility of online content, influencing public discourse and potentially creating filter bubbles or ideological polarization.

**5. Deepfakes and Synthetic Media:** AI-generated images, videos, and audio recordings may violate personal privacy, spread misinformation, damage reputations, and interfere with democratic processes

**Need for Balancing Privacy and Free Speech :** A constitutional democracy must simultaneously protect:

- Individual autonomy
- Transparency
- Public accountability
- National security
- Press freedom
- Digital innovation
- Human dignity

The principle of proportionality requires that restrictions on either privacy or speech should be narrowly tailored, necessary, reasonable, and supported by adequate procedural safeguards. Emerging technologies, particularly artificial intelligence, generative AI, machine learning, blockchain, virtual reality, and deepfake technologies, present both unprecedented opportunities and significant constitutional risks. AI can facilitate innovation, improve access to information, and enhance democratic participation; however, it also raises concerns regarding algorithmic discrimination, misinformation, automated censorship, digital profiling, and unauthorized processing of personal data. Existing legal frameworks were largely designed for conventional forms of communication and are often inadequate to address the constitutional implications arising from rapidly evolving digital ecosystems. Consequently, future legislative reforms must adopt a technology-neutral, rights-based, and future-oriented approach capable of responding to emerging technological developments while preserving constitutional values.

**Judicial Responses in India:** The Indian judiciary has played a transformative role in protecting freedom of speech, privacy, and digital rights. Through constitutional interpretation, the Supreme Court and various High Courts have expanded the scope of Article 19(1)(a) and Article 21 to address challenges posed by technological advancements.

**Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1:** The landmark nine-judge Constitution Bench unanimously recognized the right to privacy as a fundamental right under Article 21 and other constitutional provisions. The Court held that:

- Privacy is intrinsic to life and personal liberty.
- Informational privacy is an essential constitutional value.
- Individuals have the right to control their personal information.
- Any restriction on privacy must satisfy the tests of legality, necessity, proportionality, and procedural safeguards.

The judgment established the constitutional foundation for digital privacy and later influenced India's data protection legislation.

**Shreya Singhal v. Union of India (2015) 5 SCC 1:** The Supreme Court struck down Section 66A of the Information Technology Act, 2000, holding it unconstitutional for violating Article 19(1)(a). The Court observed that:

- Vague restrictions create a chilling effect on free speech.
- Online speech deserves the same constitutional protection as offline speech.
- Freedom of expression cannot be curtailed merely because opinions are unpopular or offensive.
- Restrictions must strictly fall within Article 19(2).

This judgment remains one of the most significant decisions safeguarding digital freedom of expression in India.

**Anuradha Bhasin v. Union of India (2020) 3 SCC 637:** The Supreme Court examined internet shutdowns imposed in Jammu and Kashmir. The Court held:

- Freedom of speech through the internet enjoys constitutional protection.
- Access to the internet has become an important medium for exercising constitutional rights.
- Internet restrictions must satisfy the test of proportionality.
- Indefinite suspension of internet services is unconstitutional.
- Government orders restricting internet access are subject to judicial review.

The judgment strengthened constitutional safeguards against arbitrary restrictions on digital communication.

**Faheema Shirin v. State of Kerala (2019):** The Kerala High Court recognized internet access as an essential component of the rights to education and privacy. The Court observed that:

- Access to the internet facilitates freedom of expression and access to information.
- Restrictions on internet usage must be reasonable and proportionate.
- Digital connectivity has become indispensable for education and personal development
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**People's Union for Civil Liberties (PUCL) v. Union of India (1997) 1 SCC 301:** Although decided before the digital revolution, this case laid down important safeguards against unauthorized telephone interception. The Supreme Court held that:

- Telephone conversations are protected under the right to privacy.
- Surveillance must follow fair, just, and reasonable procedures.
- Executive authorities cannot exercise unrestricted interception powers.

These principles continue to guide judicial scrutiny of electronic surveillance.

**Justice K.S. Puttaswamy (Aadhaar) v. Union of India (2018) 1 SCC 809:** The Supreme Court upheld the constitutional validity of the Aadhaar scheme with significant safeguards. The Court emphasized:

- Data collection must be proportionate.
- Personal information must be adequately protected.
- Privacy and legitimate state interests must be carefully balanced.
- Excessive data retention and unrestricted sharing violate constitutional principles.

Indian constitutional jurisprudence reflects a progressive approach toward safeguarding both privacy and freedom of speech in the digital age. The Supreme Court has affirmed that these rights are interdependent and indispensable to a democratic society. While acknowledging the State's legitimate interest in regulating digital platforms, maintaining public order, and protecting national security, the judiciary has consistently insisted that any limitation on constitutional freedoms must satisfy the principles of legality, necessity, proportionality, and procedural fairness. As emerging technologies such as artificial intelligence, biometric surveillance, and



algorithmic decision-making continue to evolve, the judiciary will play a crucial role in ensuring that technological advancement does not erode the fundamental rights guaranteed by the Constitution of India.

## Conclusion:

This study demonstrates that the constitutional guarantee of freedom of speech is not absolute and must be balanced against the reasonable restrictions prescribed under Article 19(2), including the interests of sovereignty, security of the State, public order, decency, morality, defamation, and incitement to offences. Nevertheless, any restriction on online expression must satisfy the constitutional tests of legality, necessity, proportionality, and procedural fairness. The rapid evolution of digital communication technologies requires that these constitutional principles be interpreted dynamically so that individual liberties are preserved without compromising legitimate public interests.

The research further reveals that the Indian judiciary has played a transformative role in protecting digital constitutionalism. Landmark decisions such as *Shreya Singhal v. Union of India*, *Justice K.S. Puttaswamy (Retd.) v. Union of India*, *Anuradha Bhasin v. Union of India*, and *Faheema Shirin v. State of Kerala* have significantly expanded the scope of constitutional protections by recognizing internet-based communication, informational privacy, and access to the internet as integral components of fundamental rights. These judicial pronouncements reaffirm that constitutional freedoms extend equally to the digital sphere and that arbitrary censorship, excessive surveillance, and vague legislative restrictions are incompatible with democratic governance.

The study also highlights that the increasing influence of private digital platforms has fundamentally altered the traditional understanding of freedom of expression. Social media companies, search engines, and AI-driven platforms now exercise considerable control over public discourse through content moderation policies, automated recommendation systems, and algorithmic filtering. Although platform regulation is necessary to combat unlawful content and protect users from online harms, excessive governmental intervention or opaque private moderation mechanisms may undermine constitutional guarantees by producing a chilling effect on legitimate speech. Therefore, greater transparency, accountability, due process, and independent oversight are essential in regulating digital intermediaries.

Furthermore, comparative legal analysis indicates that jurisdictions across the world are increasingly attempting to balance freedom of expression with platform accountability, privacy, and digital safety. India's regulatory framework, including the Information Technology Act, 2000, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and the Digital Personal Data Protection Act, 2023, represents important steps toward regulating the digital environment. However, these laws must continue to evolve in accordance with constitutional principles, international human rights standards, and judicial oversight to ensure that regulatory measures do not disproportionately restrict legitimate expression or compromise individual privacy.

Ultimately, the future of freedom of speech and expression in the digital age depends upon achieving a careful constitutional balance between liberty and regulation. Democratic societies must ensure that technological innovation does not become a tool for censorship, surveillance, or suppression of dissent. Instead, legal frameworks should encourage responsible digital governance while protecting fundamental rights, promoting transparency in algorithmic decision-making, safeguarding privacy, and ensuring accountability of both State authorities and private technology companies.

In conclusion, freedom of speech and expression in the digital age is no longer confined to traditional constitutional debates concerning State censorship; it has evolved into a broader discourse encompassing digital rights, data protection, artificial intelligence, platform governance, and emerging technologies. The Constitution of India provides a robust normative framework capable of addressing these challenges, provided that its principles are interpreted progressively in light of technological advancements. A balanced constitutional approach—one that harmonizes freedom of expression, privacy, technological innovation, and public interest—will be essential for preserving democratic values, protecting individual dignity, and ensuring that the digital future remains consistent with the ideals of constitutionalism, the rule of law, and human rights.

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