

A Critical Analysis of Freedom of Speech and Expression in India

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Abstract

This paper presents a critical analysis of the concept and practice of freedom of speech and expression in India. The study delves into the historical evolution, constitutional provisions, and legal interpretations surrounding this fundamental right. It examines landmark Supreme Court judgments that have shaped the discourse on free speech, alongside the impact of statutory restrictions and censorship laws. The analysis also highlights contemporary challenges posed by digital media, hate speech, and sedition laws. Furthermore, the paper discusses the balance between national security, public order, and individual liberties, underscoring the tension between freedom and responsibility. By critically evaluating the dynamics of freedom of speech and expression in India, the paper aims to contribute to the ongoing debate on protecting civil liberties in a democratic society.

Keywords: Freedom of speech, expression, constitutional provisions, Supreme Court judgments, censorship

1. Introduction

Freedom of speech and expression is one of the most cherished rights in a democratic society, serving as a cornerstone for the protection of all other rights. In India, this right is enshrined in Article 19(1)(a) of the Constitution, affirming the nation's commitment to fostering an environment where ideas and opinions can be freely expressed and debated. However, the exercise of this freedom is not absolute and is subject to reasonable restrictions as outlined in Article 19(2), which addresses concerns related to national security, public order, decency, and morality, among others.

The historical roots of free speech in India can be traced back to the pre-independence era, where the struggle against colonial rule emphasized the need for an unrestricted flow of ideas and dissent. Post-independence, the framers of the Constitution sought to preserve this ethos by embedding free speech within the constitutional framework. Over the decades, the Indian judiciary, particularly the Supreme Court, has played a pivotal role in interpreting and expanding the contours of this right, often grappling with the delicate balance between individual liberty and societal interests.

Despite the constitutional safeguards, the right to freedom of speech and expression in India faces numerous challenges. The rise of digital media has transformed the landscape of communication, bringing with it issues such as online hate speech, misinformation, and the regulation of digital platforms. Additionally, laws related to sedition, defamation, and censorship continue to stir debate over their implications for free expression. High-profile cases and legal battles have underscored the ongoing tension between state authority and individual freedoms, reflecting the complex dynamics at play.

This paper seeks to critically analyze the various dimensions of freedom of speech and expression in India. By examining constitutional provisions, key Supreme Court judgments, and contemporary challenges, it aims to provide a comprehensive understanding of how this fundamental right is upheld and contested in the Indian context. Through this analysis, the paper contributes to the broader discourse on the protection and promotion of civil liberties in a vibrant and diverse democratic society.

Freedom of speech and expression is one of the most significant fundamental rights guaranteed by the Indian Constitution. Recognized as an essential pillar of democracy, this right allows

individuals to express their thoughts, ideas, and opinions freely, thereby fostering an environment conducive to dialogue, debate, and dissent. Enshrined in Article 19(1)(a) of the Constitution, the right to freedom of speech and expression is pivotal to the functioning of a vibrant democracy like India.

The framers of the Indian Constitution, drawing inspiration from global democratic principles and the country's own struggle for independence, ensured that this right was safeguarded. They understood that the ability to speak freely is crucial not only for individual development but also for the collective progress of society. This right enables citizens to participate actively in the democratic process, hold the government accountable, and contribute to social and political discourse.

However, this right is not absolute and is subject to reasonable restrictions as outlined in Article 19(2) of the Constitution. These restrictions are intended to balance individual freedoms with the broader interests of the state and society. They include considerations such as the sovereignty and integrity of India, the security of the state, public order, decency, morality, contempt of court, defamation, and incitement to an offense. The challenge lies in ensuring that these restrictions are applied judiciously and do not become tools for suppressing legitimate expression.

The judiciary, particularly the Supreme Court of India, has played a crucial role in interpreting and defining the scope of this right. Through various landmark judgments, the Court has expanded the horizons of free speech while delineating its boundaries to prevent misuse. These judicial interventions have been instrumental in protecting this right against arbitrary state actions and ensuring that it adapts to changing societal contexts.

In the contemporary digital age, the landscape of free speech is continually evolving, presenting new challenges and opportunities. The proliferation of social media, digital communication platforms, and online content has transformed how speech is exercised and regulated. Issues such as online hate speech, misinformation, and digital censorship are now at the forefront of the debate on free expression.

2. Historical Development of Freedom of Speech and Expression in India

The concept of freedom of speech and expression in India has evolved significantly over time, shaped by historical events, socio-political movements, and legal developments. Its roots can be traced back to the colonial era, where the struggle for independence played a crucial role in fostering a culture of dissent and debate.

3. Colonial Era and Early Struggles:

During British colonial rule, freedom of speech and expression was severely restricted. The British government enacted several draconian laws to curb dissent and suppress nationalist movements. Notable among these were the Vernacular Press Act of 1878 and the Indian Press Act of 1910, which imposed stringent controls on the Indian press and stifled freedom of expression. Nationalist leaders and freedom fighters, however, continued to challenge these repressive measures, advocating for greater civil liberties and the right to free speech as essential components of their struggle for independence.

4. Constitutional Provisions Post-Independence:

With India's independence in 1947 and the subsequent adoption of the Constitution in 1950, the right to freedom of speech and expression was constitutionally guaranteed under Article 19(1)(a). The framers of the Constitution recognized the importance of this right in a democratic society, ensuring that it was included as a fundamental right. However, they also acknowledged the need for reasonable restrictions, which were incorporated under Article 19(2) to address concerns related to the sovereignty and integrity of India, security of the state, public order, decency, morality, and other important considerations.

5. Judicial Interpretations and Landmark Judgments:

The Indian judiciary, particularly the Supreme Court, has played a pivotal role in interpreting and expanding the scope of freedom of speech and expression. Landmark judgments have shaped the legal landscape, thereby

balancing individual rights with societal interests.

One of the earliest and most significant cases was *Romesh Thappar v. State of Madras* (1950), where the Supreme Court struck down a state law imposing restrictions on the press, emphasizing the paramount importance of free speech in a democracy. In *Brij Bhushan v. State of Delhi* (1950), the Court reiterated the necessity of safeguarding free speech, ruling against pre-censorship of a publication.

In *Kedar Nath Singh v. State of Bihar* (1962), the Supreme Court upheld the constitutionality of sedition laws but clarified that only speech inciting violence or posing a tangible threat to public order could be penalized. This judgment sought to strike a balance between state security and individual freedoms.

6. Contemporary Challenges and Digital Age:

The advent of the digital age has introduced new dimensions to the discourse on freedom of speech and expression in India. The proliferation of social media platforms and digital communication has amplified voices but also led to challenges such as online hate speech, misinformation, and the regulation of content.

Recent legal battles and legislative measures have highlighted the complexities of balancing free speech with the need to maintain public order and national security. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, for instance, have sparked debates over their implications for free expression in the digital realm.

7. Challenges Faced by the Government Regarding Freedom of Speech and Expression in India

The Indian government grapples with a complex array of challenges in balancing the right to freedom of speech and expression with other critical concerns such as national security, public order, and societal harmony. These challenges are multifaceted and reflect the dynamic interplay between individual liberties and collective interests in a diverse and vibrant democracy.

1. National Security Concerns:

One of the primary challenges faced by the government is ensuring national security while upholding freedom of speech. Incidents of terrorism, insurgency, and cross-border conflicts necessitate stringent measures to prevent the spread of seditious and inflammatory content. The government often resorts to laws such as the Unlawful Activities (Prevention) Act (UAPA) and

the sedition law under Section 124A of the Indian Penal Code to curb activities deemed harmful to national security. However, these measures are frequently criticized for being misused to stifle dissent and target political opponents, raising concerns about their impact on free speech.

2. Public Order and Communal Harmony:

Maintaining public order and communal harmony in a diverse and pluralistic society like India is a significant challenge. Hate speech, incitement to violence, and communal propaganda can disrupt societal peace and lead to violence. The government employs various laws, including the Indian Penal Code (Sections 153A and 295A) and the Representation of the People Act 1951, to address such issues. Balancing the enforcement of these laws without encroaching upon legitimate free expression remains a delicate task.

3. Regulation of Digital Media and Social Platforms:

The rise of digital media and social platforms has revolutionized communication but also poses unique challenges. The spread of fake news, cyberbullying, and online hate speech are major concerns for the government. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, were introduced to regulate digital content and hold social media platforms accountable. These rules have sparked debates over potential overreach, privacy violations, and the chilling effect on free speech.

4. Defamation and Libel:

Defamation laws in India, both civil and criminal, are often used by individuals and entities to protect their reputations. However, the criminalization of defamation under Section 499 of the Indian Penal Code is seen by many as a tool to suppress critical voices and investigative journalism. The challenge lies in ensuring that defamation laws protect against genuine harm without being exploited to curtail free expression.

5. Censorship and Content Regulation:

Censorship and content regulation are persistent challenges for the government. Films, books, and artistic expressions often face scrutiny and bans under the pretext of protecting public morality, decency, or preventing religious and cultural offenses. The role of bodies like the

Central Board of Film Certification (CBFC) and various state-level censorship boards in regulating content is frequently contested, with calls for more transparent and liberal standards.

6. Balancing Free Speech and Privacy:

The interplay between freedom of speech and the right to privacy is another significant challenge. The Supreme Court's landmark judgment in *K.S. Puttaswamy v. Union of India* (2017) recognized privacy as a fundamental right. This has implications for regulating surveillance, data collection, and the dissemination of personal information. Ensuring that measures to protect privacy do not unduly restrict free expression is a complex balancing act for the government.

8. Judicial Contribution Regarding Freedom of Speech and Expression in India

The judiciary, particularly the Supreme Court of India, has played a pivotal role in defining and protecting the contours of freedom of speech and expression. Through various landmark judgments, the judiciary has not only upheld this fundamental right but also delineated its boundaries, balancing it with other competing interests such as national security, public order, and individual dignity. Here are some key contributions of the judiciary in this regard:

1. Romesh Thappar v. State of Madras (1950):

In one of the earliest cases post-independence, the Supreme Court struck down a law that imposed pre-censorship on a leftist magazine, emphasizing that freedom of speech and expression is essential for the functioning of a democratic society. This case set a precedent for the stringent scrutiny of laws that seek to curtail free speech.

2. Brij Bhushan v. State of Delhi (1950):

Similar to the *Romesh Thappar* case, this judgment reinforced the stance against pre-censorship, ruling that any system of prior restraint on the press is a violation of the freedom of speech and expression.

3. Kedar Nath Singh v. State of Bihar (1962):

This landmark judgment addressed the contentious issue of sedition under Section 124A of the Indian Penal Code. The Supreme Court upheld the constitutionality of the sedition law but

clarified that only speech or actions that incite violence or have the tendency to create public disorder would fall within its ambit. This case is crucial in balancing the need for state security with individual freedoms.

4. Bennett Coleman & Co. v. Union of India (1973):

In this case, the Supreme Court struck down government-imposed restrictions on the number of pages that newspapers could publish. The Court ruled that such restrictions were an infringement on the freedom of the press, which is an essential part of the freedom of speech and expression.

5. Shreya Singhal v. Union of India (2015):

A landmark case in the digital age, the Supreme Court struck down Section 66A of the Information Technology Act, which criminalized offensive or annoying messages sent online. The Court held that the provision was vague and overly broad, leading to arbitrary and excessive restrictions on free speech. This judgment underscored the importance of protecting online expression.

6. Subramanian Swamy v. Union of India (2016):

In this case, the Supreme Court upheld the constitutionality of criminal defamation laws, arguing that the right to free speech does not mean that a citizen can defame another. However, the Court emphasized that the defamation law should not be used to stifle free speech and should be applied in a manner that protects the reputation of individuals while allowing for robust debate.

7. Puttaswamy v. Union of India (2017):

While primarily a case about the right to privacy, the Supreme Court's judgment in this case has significant implications for freedom of speech and expression. The Court recognized that privacy is essential for the free exercise of speech and that any restrictions on privacy must pass the test of proportionality and necessity.

8. Anuradha Bhasin v. Union of India (2020):

In the context of internet shutdowns in Jammu and Kashmir, the Supreme Court ruled that freedom of speech and expression through the internet is a fundamental right. The Court emphasized that indefinite suspension of internet services is impermissible and directed the government to review such restrictions regularly.

9. Loopholes in the Law Regarding Freedom of Speech and Expression in India

Despite robust constitutional safeguards and progressive judicial interpretations, the legal framework governing freedom of speech and expression in India has several loopholes that can potentially undermine this fundamental right. These gaps in the law often lead to arbitrary implementation, misuse, and conflicts with other rights and interests. Here are some notable loopholes:

1. Vagueness and Ambiguity in Laws:

Many laws that restrict speech in India are criticized for their vague and broad language, which can lead to arbitrary and subjective interpretations. For instance, terms like "decency," "morality," "public order," and "national security" in Article 19(2) of the Constitution are not clearly defined, leaving significant room for interpretation and misuse by authorities.

2. Misuse of Sedition Law (Section 124A of IPC):

The sedition law is intended to penalize acts that incite violence against the government. However, its broad and vague language has often been used to target dissenting voices, political opponents, and activists, thereby chilling free speech. The lack of a clear definition of what constitutes seditious speech allows for its arbitrary application.

3. Criminal Defamation (Section 499 of IPC):

Criminal defamation laws are often used to stifle criticism and silence journalists, activists, and political opponents. The criminalization of defamation, despite its civil law alternatives, poses a significant threat to free speech as it can be misused to harass individuals through prolonged legal battles.

4. Information Technology Act, 2000:

Certain provisions of the Information Technology Act, such as Section 69A (which allows the government to

block online content) and Section 79 (which provides immunity to intermediaries), have been criticized for lack of transparency and potential misuse. The process for blocking content lacks clear guidelines and due process, leading to concerns about arbitrary censorship.

5. Hate Speech Laws:

Sections 153A and 295A of the Indian Penal Code, which deal with promoting enmity between different groups and hurting religious sentiments, respectively, are often invoked in a manner that curtails free speech. The subjective nature of what constitutes hate speech or offense to religious sentiments allows for selective and arbitrary enforcement, impacting artistic and literary expression.

6. Lack of Protections for Whistleblowers:

While the Whistleblowers Protection Act, 2014, aims to safeguard individuals who expose corruption and wrongdoing, its implementation has been weak. The absence of robust protections for whistleblowers discourages individuals from speaking out against corruption and misconduct, impacting transparency and accountability.

7. Pre-censorship and Censorship Boards:

The Central Board of Film Certification (CBFC) and other censorship authorities have the power to pre-censor films and other media content. The criteria used by these boards are often seen as outdated and arbitrary, leading to censorship that stifles creative freedom and expression.

8. Internet Shutdowns:

The lack of clear guidelines and accountability mechanisms for internet shutdowns has led to frequent and often prolonged disruptions, impacting free speech and access to information. The procedural safeguards for imposing internet shutdowns are weak, and there is insufficient judicial oversight.

9. National Security and Anti-Terrorism Laws:

Laws such as the Unlawful Activities (Prevention) Act (UAPA) are often invoked to curb activities deemed threatening to national security. However, the broad definitions and stringent provisions of these laws can be misused to suppress dissent and target minority communities.

10. Judicial Overreach and Inconsistent Interpretations:

While the judiciary has generally protected free speech, there have been instances of judicial overreach and inconsistent interpretations that create legal uncertainty. Differing judgments and lack of uniformity in applying the principles of free speech can lead to confusion and inconsistent enforcement.

10. Conclusion

The right to freedom of speech and expression is a cornerstone of democratic values and a vital component of individual liberty in India. This critical analysis reveals that while the Indian Constitution robustly protects this right, it is subject to several limitations and challenges. Historical evolution, judicial interpretations, and legislative frameworks have collectively shaped the landscape of free speech in India.

India's judiciary, particularly the Supreme Court, has played an instrumental role in safeguarding this right through landmark judgments that balance individual freedoms with societal and state interests. Cases such as *Romesh Thappar v. State of Madras*, *Kedar Nath Singh v. State of Bihar*, and *Shreya Singhal v. Union of India* highlight the judiciary's commitment to protecting free speech while recognizing necessary restrictions.

However, the legal framework is not without its flaws. Vague and broad legal provisions, the misuse of sedition and defamation laws, and the lack of clear guidelines for content regulation and internet shutdowns pose

significant challenges. The rise of digital media further complicates these issues, introducing new dynamics and potential for misuse.

The government faces a delicate balancing act in upholding national security, public order, and communal harmony without infringing on free speech. This requires nuanced policymaking, transparent regulations, and consistent judicial oversight. Legislative reforms and clearer definitions of restrictive provisions are necessary to prevent arbitrary enforcement and misuse.

In conclusion, while India has made substantial progress in protecting freedom of speech and expression, ongoing vigilance and reforms are crucial. Ensuring that this fundamental right is upheld in the face of evolving challenges is vital for the health of India's democracy. A balanced approach that respects both individual liberties and collective interests will help foster a more open, tolerant, and democratic society.

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