

“BALANCING LIBERTY, DISSENT & PUBLIC ORDER IN CONTEMPORARY INDIA” – “RE-DEFINING THE CONSTITUTIONAL PHILOSOPHY OF ARTICLE 19(1)A IN THIS MODERN ERA”

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Abstract

The theme of “Balancing the liberty, dissent & public order” defines the free speech and preserves the social stability. Article 19(1)(a) guarantees freedom of speech & expression. Which is one of the foundational democratic Right of a citizen, The proviso embodies the idea of liberty, accountability and participatory governance. The free speech has been open to various judicial interpretation, through over the year there have been drastic changes regarding the article, various tests are there from reasonable restriction till present day the proportionality test. Article 19(2) defines the reasonable restriction on free speech and freedom of expression. Presently the paper will deal through philosophy of 19(1) with the rising challenges with regards to free speech in this algorithmic era. We will also come various tests which the court has made a foundation to determine what is deemed to be reasonable and unreasonable? the emergence of hate speech and polarized discourse challenges the fine balance between liberty and equality in a plural society. The regulatory measures may lead to overbreadth, which may chill dissent and democratic participation. The main part will deal with the judicial evolution of Article 19(1) and compare it to modern day situation of public order and digital governance. We will see how the dissent is to be protected while applying restriction which are narrow, reasonable, proportionate in this Algorithmic sphere.

Key words: Accountability, Algorithmic, Reasonable, Polarized, restriction, Hate-speech, liberty, equality.

Introduction

The right to freedom of speech and expression is enshrined under Article 19(1)(a). where it is an important fundamental right guaranteed to every citizen of the country. It is an aspect which just guarantees Free speech but it also takes accountability, dissent in consideration. Where earlier before the pre-independence era Britishers had made several attempt to exempt the citizens of the country to exercise the right, by making arbitrary laws such as regarding to sedition in the 1870's, 1910 press act and the 1921 Rowlatt act these were the examples of the laws which exempted Indian's totally to criticize the

government and also the freedom to express opinions and to use the right of expression was also violated due to this and which led to exploitation of the citizen. Another reason for adopting the inalienable right was that the makers of the constitution thought that the citizens should have a right to liberty, freedom of expression, faith, worship, belief which is an essential cause of this democratic society. The right is a safeguard against an authoritarian rule. The idea of this was discussed on 1st and 2nd December 1948 where earlier it was deemed that article should be (13) instead of 19, The right guaranteed freedom of expression with eight certain grounds of restriction inter alia the

security of the state, friendly relations with foreign countries, public order, decency or morality, contempt of court, defamation, incitement of an offence; Indian sovereignty and integrity. Later various arguments and discussion took place among the people in drafting committee such as Dr Br. Ambedkar, A.K Ayyar, K.M Munshi, Shri H.V Kamnath and R.K Sidhva. Dr. Ambedkar pointed out the restriction to be aligning with those of USA and Ireland. He said “No right should be unrestricted and limitless and all rights should be fairly regulated by laws”. Meanwhile other member such as Mr. Ayyar said that the right should not be used to spread hatred and incite violence, meanwhile Munshi ji said it should not be used as political tool to spread casteism, communal hatred and feeling of separatism within the citizens. Meanwhile Shri Sidhva and HV Kamnath opposed the restriction stated them to be vague and undefined. Where Mr. Sidhva said that freedom of expression is natural and inherent in every person and no law should abridge and curtail it” As earlier same situation has arisen in colonial rule¹⁷⁶. In present scenario in this algorithmic age same situation has arisen and there has been a rise in spread of Hate speech, misinformation and polarization due to which there is a tussle among dissent and the restriction which are determined to be court from prior time let’s in paper Further discusses those landmark judicial precedents and analyze the balance between free speech and restriction and connect it to the present situation of the country.

Landmark Judicial Foundation And evolution in restriction

The “Right to freedom of expression” is not mere statutory permission but a fundamental pillar of the India’s democratic republic. Article 19(1)(a) and (b) functions as a “double-helix” of liberty, ensuring that the citizen can both express

dissent and manifest that dissent through physical assembly. However, this tapestry is being unrevealed by a new legislative trend that prioritizes administrative opacity over citizen oversight. Transitioning the Preferred Liberties into the “Common Good” (Public Policy) and Reasonable Restriction of Rights, the Hon’ble Supreme Court of India in case of Romesh Thappar v. State of Madras case (1950), laid the groundwork for arguing that the right to circulate was equally as important as the right to disseminate (publish). However, the first amendment to the Constitution added the “public order” restriction into the constitution in 1951, states the court. As this article shows, the concept of “reasonable restriction” on rights has continued to evolve. What may have started as a narrow exception to the preferred liberties of speech now serves as a narrow exception to the preferred liberties of speech now serves as a much broader executive tool for the government to impose restriction on free expression.¹⁷⁷

The other cases where there were several tests regarding obscenity, decency and morality where court through various test emphasized that what can be deemed to be of reasonable nature while taking care of artistic freedom of individuals. The case of Ranjit D. Udeshi vs UOI (1964), where the author had published book named Lady Chatterley’s lover whether such publication was made to corrupt the mind of people was a question where court had held through R VS Hicklin test that to the effect that the tendency of the matter charged as obscene must be to deprave and corrupt those, whose minds are open to such immoral influences¹⁷⁸ and into whose hands a publication of the sort may fall, so far followed in India, is the right test. The court held that there should be a balance between the obscenity as an artistic freedom and “Public decency and morality”. The court held that the obscenity may be overlooked

¹⁷⁶ BR Ambedkar. Speech on Draft Article 13 (Free speech). 7 CONST. ASSEMBLY DEBATES 38 (December 17, 1948). 13 Alladi Krishnaswami Ayyar, Speech on Draft Article 13 (Free speech), 7 CONST ASSEMBLY DEBATES 39 (December 17, 1948). 14 K.M. Munshi, Speech on Draft Article 13 (Free speech), 7 CONST. ASSEMBLY DEBATES 40 (December 17, 1948). 15 Pandit Thakur Das Bhargava. Speech on Draft Article 13 (Free

speech). 7 CONST. ASSEMBLY DEBATES 41 (December 17, 1948). Shri H.V. Kamath. Speech on Draft Article 13 (Free speech), 7 CONST. ASSEMBLY DEBATES 42 (December 17, 1948).

¹⁷⁷ Romesh Thappar v. State of Madras, AIR 1950 SC 124.

¹⁷⁸ Ranjit D. Udeshi vs Union of India AIR (1965) SC 881

in such a scenario where there is preponderating social cause or profit. Court held that after going through the community standard test that there was no profit and therefore appeal was dismissed by the court.¹⁷⁹

¹⁸⁰In *Anuradha Bhasin v. Union of India* (2020), the Hon'ble Supreme Court laid down the legal "golden standard" for state intervention in constitutional rights as the "Principle of Proportionality". The principle requires that any restriction on constitutional rights, such as governmental shutdowns of the internet or the inability to hold a protest, must meet three basic criteria. The first is "Legitimacy," which requires that the governmental restriction be legitimate and that the government has a proper legal purpose for imposing the restriction. The second is "Suitability", which requires that the government's restriction is suitable to meet the objective for which it is imposed. The third is "Necessity", which requires that the government use the "least restrictive" means of achieving its regulatory objective. The final T element is "Proportionality", which means that the benefits to the government must outweigh any harm caused to the individual by the imposition of the government regulation.

Recently, In January 2026 the hon'ble Supreme Court of India denied bail to Umar Khalid and Shajeel Immam, fails to show a clear logical connection regarding how a person in custody could "conspire" to commit a riot simply by stating their beliefs about how they will fight back against tyranny through democratic means. ¹⁸¹*Chakka Jam* was held to be an act which endangered and was deemed to be a threat for the security of the nation which is one of the aspects of restriction with regard to sovereignty and integrity of the nation.

Therefore, we can see the evolution of various sectors where the court has given its interpretation in terms of reasonable restriction and over the period of time same has been

changing. Such restriction also defined through time through these tests and therefore, in the democratic set up what is reasonable and till what limit it can be deemed to be reasonable is changing as per the time. Where societal and cultural aspect is also taken in consideration to determine what is reasonable and what is not.

Rising challenges with Free speech in algorithmic age

In modern era, there is a basic challenge between freedom of speech which is AI algorithm mechanism has become a regulator of information and also has access and shape a communicative autonomy. These play an important role and have become de facto regulators, are playing important role most of in Shaping the accountability within the citizen. The It rules of 2021 are requires to stuck down the unlawful content. Absence of transparency is one of the major problems, due to inadequate procedural safeguards it is one of the concerns. In present day scenario the creators are not even aware why their content got removed. The courts have earlier, criticised these loopholes. Whole scenario mainly focuses on controlling the content deemed to be a threat within the platform and it is a serious question regarding the repressing nature against fundamental right guaranteed under the constitution of India.

The comparative analysis by Dencik et al. (2022) and Richards and Hartzog (2021) notesthatalgorithmicdecision-makingisusuallynotexplanatory,andprioritizes marginalized voices,whichstrengthensthestructuralbiasesinonlinecommunication.Alltheseworksshare the recommendation of the integration of human rights norms into AI-based moderation systemsII.Irrespective of these contributions, there is a clear research gap in the literature about bridging the constitutional free speech guarantees to the obligation to have algorithmic transparency in the Indian context.

¹⁷⁹ *Id* ¶ 3.

¹⁸⁰ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

¹⁸¹ *Umar Khalid v. State of NCT of Delhi*, CrI. A. No.-002826-002826/2023 (Supreme Court of India) (Feb 14, 2024)

Global scholarship focuses its attention on digital governance in general, but little is considered the ways of how India can aligns constitutional principles with the new standards of AI moderation. It is the aim of this article to fill that gap by providing a doctrines land comparative discussion of algorithmic censorship based on a rights-based legal approach, formulating a model of accountability, transparency and due process in regulation of digital expression.¹⁸²

The algorithmic speech has a constitutional guarantee of free speech, both the bodies which are stakeholders and policy framers need to work together to balance the free speech. In the case of K.S Puttuswamy Vs Union of India, where it was stated to be a primary tenet of, digital democracy. ¹⁸³Their lack of transparency, their practice of being cautious about what can be posted, and their lack of procedural fairness threaten to override constitutional protections as private digital platforms become more and more actors of determinations on what kind of speech is permissible.

To maintain democratic discourse, it is crucial to ensure the transparency of algorithms, create redressal measures based on the interests of users, and apply moderation principles proportionally. According to the final, the future of free expression in the digital era in India lies in the reconciliation of innovation with constitutionalism keeping the right to speak, dissent, and interact freely in a more algorithm-controlled public sphere.

Evolving Aspect and change in Definition of Reasonable restriction

In the present Day as we have seen that the tests have been changing over the period of time where the reasonable restriction has been changing with stipulating time. Where we can see in growing age of AI content generated through it can also be deemed to be artistic freedom and the question lies till what limit is it a

reasonable content as there are speculation regarding the same whether who should be liable for any content which is defaming other person, as the content may be spreading misinformation regarding that person. Presently we are seeing many celebrities who are seen to move in court to protect their image through requesting court to struck down any content which is defaming them.

Recently, we have seen surge in such case as many actors have approached court for as we can see in the case of Where Indian cricketer Suryakumar Yadav has filed a 100 crore Defamation case for making false and derogatory remarks on him made by influencer Khushi Mukherjee.

Before this we have seen Javed Akhtar had filed defamation suit against Kangana Ranaut in the year 2020 for making defamatory statements against him on TV¹⁸⁴. Were later they have settled the issue amicably through mediation. In such scenario we can see that there is a use of free speech breaking the restriction defined in article 19(2). Therefore, in present scenario the test to determine the same is there within this clause the determination of same has been changing over the time.

In the case of Subramaniam Swamy Vs Union of India The Court relied on the judgments of other countries and reaffirmed the right to reputation as a part of the right to life under [Article 21](#). Using the principle of 'balancing of fundamental rights', the court held that the right to freedom and speech and expression cannot be "allowed so much room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area".¹⁸⁵

Further, the Court held that Sections 499 and 500 IPC are not vaguely worded or ambiguous. Using the [Constituent Assembly Debates](#) to understand what the framers of the Constitution meant by the word "defamation" in Article 19(2), the Court held that the word is its own

¹⁸² Dencik, L., Hintz, A., & Carey, Z. (2022). Data Justice and Algorithmic Bias: Power and Inequality in the Digital Age. Policy Press.

¹⁸³ KS Puttuswamy v. Union of India (2017) 10 SCC 1.

¹⁸⁴ Javed Akhtar vs Kangana Ranaut MANU/OT/0186/2021.

¹⁸⁵ Subramaniam Swamy Vs Union of India AIR (2016) SC 2728.

independent identity. It stands alone and defamation laws have to be understood as they were when the Constitution came into force.

Conclusion

The constitutional principles of Article 19(1)(a) of the Constitution of India remain fundamental to India's democratic structure, protecting the individual's right to express, question, and dissent. Nevertheless, this liberty has never been unconditional. Under Article 19(2) of the Indian Constitution, the need for reasonable restrictions is acknowledged to uphold public order, safeguard national security, and protect the rights and dignity of others. Judicial interpretation—ranging from early cases like *Romesh Thappar v. State of Madras* (1950) to contemporary decisions such as *Anuradha Bhasin v. Union of India* (2020)—shows the judiciary's ongoing attempt to harmonize individual freedom with public interests.

In today's digital and algorithmic age, the difficulty has grown more intricate. Social media sites, automated content moderation tools, and the proliferation of false information have changed the essence of public conversation. Although regulation might be essential to limit hate speech and safeguard social cohesion, overly stringent or unclear restrictions could hinder genuine dissent and democratic involvement. Hence, the future of free expression in India depends on implementing a rights-centered regulatory system that guarantees transparency, accountability, and proportionality. In the end, a democratic society must maintain the capacity for dissent while ensuring that limitations are specifically defined, constitutionally valid, and consistent with the core principles of freedom, equality, and constitutional governance.