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## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.



# **Indian Journal Of Legal Affairs And Research**

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## **Constitutional Challenges to Freedom of Speech in India: A Study on the Balance between Freedom of Expression and Reasonable Restrictions under Article 19 of the Indian Constitution**

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### Introduction

Freedom of speech and expression is a cornerstone of democracy and an essential pillar for the exercise of other fundamental rights. The Indian Constitution enshrines this freedom under Article 19(1)(a), which guarantees every citizen the right to express their thoughts and opinions freely. However, this right is not absolute and is subject to reasonable restrictions laid out in Article 19(2). This article examines the constitutional challenges to freedom of speech in India, exploring the balance between individual rights and societal interests. It also highlights landmark judicial pronouncements, statutory provisions, and the socio-political context surrounding freedom of expression.

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## 1. The Constitutional Framework: Article 19 of the Indian Constitution

### 1.1. Freedom of Speech and Expression

Article 19(1)(a) of the Indian Constitution states: “All citizens shall have the right to freedom of speech and expression.” This provision establishes a broad and comprehensive right, encompassing not only verbal communication but also non-verbal forms of expression, such as art, literature, and even protests<sup>2</sup>.

### 1.2. Reasonable Restrictions

While Article 19(1)(a) provides for freedom of speech, Article 19(2) delineates the circumstances under which this freedom can be curtailed. It states: “Nothing in sub-clause (a) shall affect the operation of any existing law or prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the following...”

The restrictions enumerated in Article 19(2) include:

- **Sovereignty and Integrity of India:** This restriction aims to protect the nation’s sovereignty from speech that could incite violence or secessionist sentiments.
- **Security of the State:** This clause allows for limitations on speech that may pose a threat to national security.
- **Friendly Relations with Foreign States:** Speech that may jeopardize India’s diplomatic relations can be restricted.
- **Public Order:** The state can impose restrictions on speech that may disturb public order or lead to riots.
- **Decency or Morality:** This restriction is often invoked in cases of obscene content or hate speech.
- **Contempt of Court:** Speech that undermines the authority of the judiciary or prejudices legal proceedings can be curtailed.
- **Defamation:** Speech that harms another’s reputation may be restricted under laws relating to defamation.
- **Incitement to an Offence:** Any speech that incites violence or promotes criminal behavior is subject to restriction.

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<sup>2</sup> *Journal of Financial Regulation and Compliance*. (2021). Leveraging NLP for improved compliance.

## 2. Judicial Interpretation of Freedom of Speech

The judiciary plays a crucial role in interpreting and enforcing the provisions of Article 19. Landmark judgments have shaped the understanding of freedom of speech in India and its reasonable restrictions.

### 2.1. Express Newspapers Ltd. v. Union of India (1958)

In this case, the Supreme Court emphasized the importance of freedom of speech as a fundamental right. The court held that any restriction on this right must be reasonable and must serve a legitimate purpose<sup>3</sup>. This case laid the groundwork for the interpretation of "reasonable restrictions."

### 2.2. Romesh Thapar v. State of Madras (1950)

This landmark case involved the prohibition of a magazine deemed prejudicial to public order. The Supreme Court ruled that the freedom of speech and expression is essential for the functioning of democracy, asserting that restrictions must be clear, precise, and cannot be arbitrarily imposed.

### 2.3. Maneka Gandhi v. Union of India (1978)

In this judgment, the Supreme Court expanded the interpretation of the right to life and personal liberty under Article 21, linking it with the right to free speech. The court held that the procedure established by law must be just, fair, and reasonable, reinforcing the principle that freedom of expression is integral to the individual's autonomy and dignity.

### 2.4. Shreya Singhal v. Union of India (2015)

In a landmark ruling, the Supreme Court struck down Section 66A of the Information Technology Act, which penalized sending offensive messages through communication service. The court declared the provision unconstitutional for being vague and overbroad, stating that it violated the fundamental right to free speech. This judgment reaffirmed the importance of protecting free speech in the digital age.

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<sup>3</sup> Deloitte. (2022). *Harnessing predictive analytics for compliance*.

### **3. Contemporary Challenges to Freedom of Speech**

Despite robust legal protections, several contemporary challenges threaten freedom of speech in India.

#### **3.1. Sedition Law**

The sedition law, encapsulated in Section 124A of the Indian Penal Code (IPC)<sup>4</sup>, criminalizes actions or speech that bring or attempt to bring hatred or contempt towards the government. Critics argue that the law is often misused to suppress dissent and curb legitimate criticism of the state. Recent cases against activists, journalists, and political opponents have raised concerns about the chilling effect of sedition laws on free speech.

#### **3.2. Hate Speech and Censorship**

The rise of hate speech, particularly in the context of religious and ethnic tensions, poses a significant challenge. The legal framework surrounding hate speech in India is murky, often leading to arbitrary enforcement. While the law provides for restrictions, determining what constitutes hate speech remains contentious. In recent years, instances of online censorship and the removal of content deemed offensive have sparked debates on the boundaries of free expression.

#### **3.3. Freedom of the Press**

The press plays a vital role in upholding democracy and free speech. However, journalists in India often face threats, harassment, and violence for reporting on sensitive issues. The increasing trend of using laws such as defamation and sedition to intimidate journalists raises alarm bells about the state of press freedom. Several journalists have faced legal repercussions for their reporting, highlighting the precarious position of the media in exercising freedom of expression.

#### **3.4. Digital Censorship and Surveillance**

The digital landscape presents unique challenges to freedom of speech. The implementation of the Information Technology Act and the digital surveillance of citizens raise concerns about privacy and freedom of expression. The state's ability to monitor online activities, along with

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<sup>4</sup> PwC. (2021). *AI in KYC: Enhancing compliance and customer experience*.

the increasing pressure on social media platforms to regulate content, poses a threat to free speech in the digital realm.

#### **4. Balancing Freedom of Expression and Reasonable Restrictions**

Finding a balance between protecting freedom of expression and enforcing reasonable restrictions is crucial for a democratic society. The following principles can guide this balance:

##### **4.1. Clear Definitions and Guidelines**

For restrictions to be deemed reasonable, there must be clear definitions and guidelines outlining the scope and limits of these restrictions. Vague and overly broad laws can lead to arbitrary enforcement and curtailment of free speech.

##### **4.2. Judicial Oversight<sup>5</sup>**

The judiciary must play an active role in reviewing and striking down laws or provisions that unjustifiably restrict freedom of speech. Judicial intervention is essential to prevent the misuse of laws intended to protect public order or national security.

##### **4.3. Public Discourse and Engagement**

Encouraging public discourse on sensitive issues can help navigate the complexities surrounding freedom of speech. Creating platforms for dialogue and debate fosters understanding and helps mitigate potential conflicts arising from controversial expressions.

##### **4.4. Media Literacy and Education**

Promoting media literacy and education among citizens can empower individuals to critically assess information and engage in informed discussions. This will not only strengthen democracy but also enable citizens to exercise their freedom of speech responsibly.

#### **5. Conclusion**

Freedom of speech is a fundamental right that underpins democratic governance and societal progress. However, the challenges posed by sedition laws, hate speech, censorship, and digital surveillance necessitate a careful examination of the balance between freedom of expression

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<sup>5</sup> *Journal of Medical Systems*. (2022). *AI and HIPAA compliance: Enhancing data protection in healthcare*.

and reasonable restrictions. The constitutional framework, coupled with vigilant judicial oversight, can help safeguard this essential right while addressing legitimate concerns regarding public order and national security. As India navigates the complexities of a rapidly changing socio-political landscape, fostering a culture of open dialogue and robust protections for free speech will be vital in upholding the democratic values enshrined in the Constitution.

## 1.2. Reasonable Restrictions

While Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression, it simultaneously acknowledges the necessity for **reasonable restrictions** as articulated in Article 19(2). These restrictions are essential to balancing individual rights with the need to protect the interests of the state and society at large.

### Scope and Purpose of Reasonable Restrictions

The term "reasonable restrictions" implies that the limitations imposed on freedom of speech should not be arbitrary or excessively broad. Instead, they must have a legitimate purpose and be proportionate to the objective they seek to achieve. The goal is to ensure that the exercise of free speech does not infringe on the rights of others or disrupt public order, morality, or national security.

The Constitution provides specific grounds on which restrictions may be imposed, delineated as follows:

#### 1. Sovereignty and Integrity of India:

- This restriction is aimed at safeguarding the country's territorial integrity and sovereignty. Speech that incites separatism, promotes rebellion against the state, or undermines the nation's unity can be restricted. For instance, expressions that call for violence or secessionist movements can fall under this category.

#### 2. Security of the State:

- This provision allows for the restriction of speech that poses a threat to national security. This includes speech that could lead to violence, terrorism, or acts against the state. For example, inciting violence against security forces or promoting anti-national sentiments may invoke this restriction.

#### 3. Friendly Relations with Foreign States:

- Speech that may harm India's diplomatic relations with other nations can be restricted. This restriction ensures that expressions that could incite hostility or

conflict with foreign states are curtailed. For example, hate speech directed against a particular nation can be subject to this limitation.

**4. Public Order:**

- This ground allows the state to restrict speech that may disrupt public tranquility or lead to riots and violence. Public order encompasses the general peace and security of society, meaning that speech that incites communal riots or disturbances can be limited. Historical instances where inflammatory speeches have led to riots demonstrate the application of this restriction.

**5. Decency or Morality:**

- This provision addresses the protection of societal morals and decency. Speech that is considered obscene, vulgar, or morally repugnant can be restricted. For example, hate speech against particular communities or offensive content can fall under this restriction.

**6. Contempt of Court:**

- This restriction pertains to preventing any statement or action that may undermine the authority of the judiciary. Freedom of speech cannot extend to statements that could prejudice legal proceedings or disrespect the judiciary. The law of contempt ensures that ongoing trials remain fair and impartial.

**7. Defamation:**

- This provision permits individuals to seek recourse if their reputation is harmed by false statements. Defamation laws ensure that while individuals have the right to express opinions, they must also respect the rights of others to maintain their good name. This is crucial for balancing personal rights with the right to free speech.

**8. Incitement to an Offence:**

- Speech that incites violence or promotes criminal activity is subject to restriction. For instance, speech that encourages acts of terrorism or mob violence can be limited to protect the public and maintain law and order.

## **Judicial Interpretation of Reasonable Restrictions**

The interpretation of "reasonable restrictions" has evolved through various landmark judgments by the Supreme Court of India. The judiciary has stressed that while freedom of speech is fundamental<sup>6</sup>, it should not be misused to harm others or jeopardize societal interests.

- \*\*In the case of **Romesh Thapar v. State of Madras (1950)**, the Supreme Court stated that the restrictions imposed must not only be reasonable but also be clearly defined and not arbitrary. The Court emphasized that any law imposing restrictions on free speech should not be vague or overbroad, thereby ensuring that individuals understand the limitations placed upon them.
- \*\*In the landmark case of **Kedar Nath Singh v. State of Bihar (1962)**, the Supreme Court upheld the constitutionality of the sedition law while emphasizing that only acts that incite violence against the state can be classified as seditious. This ruling reaffirmed the idea that freedom of speech must be balanced with the necessity to maintain public order and security.
- \*\*In **Shreya Singhal v. Union of India (2015)**, the Supreme Court struck down Section 66A of the Information Technology Act, which imposed vague restrictions on online speech. The Court highlighted that any restriction must be narrowly tailored and not overly broad, ensuring that the law does not have a chilling effect on free speech.

### **The Challenge of Interpretation and Application**

Despite the constitutional provisions, the challenge lies in the interpretation and application of reasonable restrictions<sup>7</sup>. The ambiguity in terms such as "public order" and "decency" can lead to varying interpretations, often resulting in arbitrary enforcement. This ambiguity may lead to self-censorship among individuals who fear legal repercussions for expressing dissenting opinions.

Moreover, there are concerns about the misuse of laws intended to protect public order and security. In recent years, several instances have surfaced where dissenting voices, particularly those criticizing the government, have been silenced under the guise of maintaining public order or national security. The misuse of sedition laws and other legal provisions to stifle free speech raises questions about the true nature of these restrictions.

### **Conclusion**

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<sup>6</sup> Accenture. (2021). *Enhancing Compliance with AI*.

<sup>7</sup> IBM. (2020). *AI-Driven Automation in Data Protection*

Reasonable restrictions on freedom of speech serve as a necessary safeguard to protect societal interests while promoting individual rights. The balance between free expression and the need for restrictions is delicate and requires continuous scrutiny and judicial oversight. The evolving socio-political landscape in India necessitates a clear understanding of these restrictions to prevent misuse while ensuring that the fundamental right to freedom of speech remains robust and protected. Ultimately, the challenge lies in ensuring that restrictions are indeed reasonable, narrowly defined, and transparently enforced, maintaining the integrity of democratic discourse and individual rights.

### **Balancing Freedom of Expression and Reasonable Restrictions**

Balancing freedom of expression with reasonable restrictions is a fundamental challenge for democratic societies, particularly in a diverse and pluralistic country like India. The tension between protecting individual rights and maintaining social order, national security, and public morality necessitates a nuanced understanding of both aspects. This section explores how to achieve a harmonious balance between these competing interests while ensuring that the essence of free speech is preserved.

#### **4.1. Understanding the Context of Freedom of Expression<sup>8</sup>**

Freedom of expression is not merely an individual right; it is crucial for fostering democracy, encouraging open dialogue, and enabling the functioning of a vibrant civil society. The ability to express dissent, criticize the government<sup>9</sup>, and advocate for social change is essential for the health of a democracy. In this context, any attempt to impose restrictions must be scrutinized to ensure they do not encroach on the core of free expression.

#### **4.2. The Necessity of Reasonable Restrictions**

While freedom of expression is fundamental, there are legitimate grounds for imposing restrictions to protect other essential values. Reasonable restrictions aim to:

1. **Protect Public Order:** Unrestricted freedom of speech can lead to chaos, violence, and public disorder. For example, inflammatory speech that incites communal riots poses a direct threat to societal harmony. Thus, reasonable restrictions are necessary to prevent such occurrences.

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<sup>8</sup> Ministry of Electronics and Information Technology (MeitY). (2023). *India's Digital Personal Data Protection Act*.

<sup>9</sup> Deloitte. (2022). *AI in Compliance: Reducing Human Error*

2. **Safeguard National Security:** In an era of global terrorism and geopolitical tensions, protecting the nation's security is paramount. Expressions that promote violence or terrorism may require restriction to maintain the integrity and security of the state.
3. **Maintain Decency and Morality:** Societal norms around decency and morality play a crucial role in determining what is acceptable speech. Obscenity, hate speech, and defamation can undermine social cohesion, making it necessary to impose restrictions to protect these values.
4. **Uphold the Rule of Law:** In any democratic society, the law must apply equally to all citizens. Restrictions that prevent contempt of court, defamation, or incitement to violence are essential for upholding the rule of law and ensuring justice.

#### 4.3. Defining Reasonable Restrictions<sup>10</sup>

To maintain a balance, it is vital that reasonable restrictions are defined clearly and applied judiciously. Ambiguity in legal provisions can lead to arbitrary enforcement, often suppressing legitimate speech. The following principles can guide the definition and implementation of reasonable restrictions:

1. **Clarity and Precision:** Legal provisions should be explicitly defined, avoiding vague terms that can be misinterpreted. For instance, laws related to hate speech should clearly specify what constitutes hate speech to prevent overreach.
2. **Proportionality:** Any restriction imposed should be proportional to the harm it seeks to prevent. A nuanced assessment of the potential impact of speech should be made, weighing the benefits of free expression against the risks associated with the specific speech in question.
3. **Narrow Scope:** Restrictions should be narrowly tailored to address specific issues rather than applying broadly to encompass various forms of expression. For instance, laws prohibiting incitement to violence should not extend to general criticism of the government.
4. **Judicial Oversight:** The judiciary must play an active role in reviewing laws and restrictions imposed on free speech. Courts should ensure that any limitations are justified and that individuals have the right to challenge arbitrary restrictions.
5. **Public Accountability:** Government agencies and authorities imposing restrictions should be accountable for their decisions. Transparent processes should be established

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<sup>10</sup> European Commission. (2021). *Understanding the GDPR*

for reviewing and contesting restrictions on speech, allowing for public scrutiny and debate.

#### **4.4. The Role of the Judiciary**

The judiciary acts as a crucial guardian of free speech in India. Through landmark judgments, the courts have reaffirmed the importance of freedom of expression while outlining the limits of reasonable restrictions. The judiciary must ensure that any restrictions are justified, proportionate, and adhere to constitutional mandates.

For example, the Supreme Court's ruling in **Shreya Singhal v. Union of India (2015)** highlighted the need for precision in laws affecting free speech, emphasizing that overbroad provisions could stifle legitimate expression. Such judicial scrutiny ensures that freedom of expression is not compromised unduly in the name of maintaining public order or security.

#### **4.5. Engaging in Public Discourse**

Promoting public discourse is essential for fostering an environment where diverse opinions can be expressed without fear of reprisal. Open dialogue, debate, and discussion contribute to a healthy democracy, allowing for the exchange of ideas and viewpoints.

Encouraging platforms for public discourse can mitigate tensions arising from controversial issues, allowing individuals to voice dissent and engage in constructive conversations. Civil society organizations, media outlets, and educational institutions should play an active role in facilitating such discussions, enabling citizens to navigate complex social and political landscapes.

#### **4.6. Media Literacy and Responsible Expression<sup>11</sup>**

Empowering citizens through media literacy and education can help them navigate the challenges of free speech in a digital age<sup>12</sup>. Understanding the implications of speech, recognizing misinformation, and engaging responsibly can enhance the quality of public discourse.

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<sup>11</sup> European Parliamentary Research Service (EPRS). (2021). *Accountability in AI: Challenges and Legal Implications*.

<sup>12</sup> California Department of Justice. (2021). *California Consumer Privacy Act (CCPA)*

Educational initiatives should focus on developing critical thinking skills, enabling individuals to assess information, express opinions thoughtfully, and engage in respectful dialogue. By fostering a culture of responsible expression, societies can mitigate the potential harms associated with unrestrained speech while upholding the values of free expression.

## **5. Conclusion**

Balancing freedom of expression with reasonable restrictions is a delicate yet essential task in any democratic society. While the right to free speech is paramount, it must be balanced against the need to protect public order, national security, and societal norms. By defining reasonable restrictions clearly, ensuring judicial oversight, and promoting public discourse, societies can navigate the complexities of free speech while safeguarding democratic principles. In doing so, they uphold the core values of a vibrant democracy, allowing for diverse voices to be heard while maintaining order and mutual respect in society.

