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CENSORSHIP IN THE TIME OF DIGITAL DEMOCRACY: A PARADOX OF FREE SPEECH AND CONTROL

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ABSTRACT

India's digital democracy sits at a peculiar crossroads—one that raises tough questions about the future of free speech. Article 19(1)(a) of the Constitution guarantees every citizen the right to express, but in practice, that promise is often diluted by sweeping legal provisions like Section 69A and the IT Rules, 2021. These allow online content to be blocked, often without warning or public disclosure. What makes it more concerning is that tech platforms, acting on opaque orders, rarely push back. This paper looks closely at how free speech is being shaped —and sometimes stifled—in the digital space. Through case studies, judicial analysis, and evolving trends in content moderation, it makes the case for a reimagined legal framework—one that balances national interests with civil liberties, and gives citizens a genuine voice in online discourse.

Keywords: Free Speech, Digital Censorship, Section 69A, IT Rules 2021, Platform Regulation, Indian Constitution

INTRODUCTION

In India, the idea of free speech has been protected since the Constitution came into force in 1950. Article 19(1)(a) gives citizens the right to freedom of speech and expression.[1] But this freedom was never absolute. Article 19(2) permits the State to place reasonable restrictions on speech in certain contexts, like security of the State, public order, or morality.[2] Over the years,

[1] INDIA CONST. art. 19(1)(a).

[2] Id.

the courts have tried to maintain a balance between freedom and restriction. What complicates things now is the internet.

The digital space is very different from older forms of communication. A single message or video can be sent to thousands in seconds. Online content is often anonymous and difficult to trace. Unlike traditional media, digital platforms are not regulated through broadcasting laws or press regulations. This has made the government turn to other tools, mainly the Information Technology Act, 2000.[3] Section 69A of this law allows the central government to block access to any information online, if it thinks it is necessary for reasons like public order or national security.[4] This blocking power was upheld by the Supreme Court in *Shreya Singhal v. Union of India*, but concerns remain about its transparency.[5] Users often do not know when content has been blocked, and there is usually no public record of such orders.[6]

In 2021, the government notified new IT Rules.[7] These rules gave the executive more control over social media platforms and digital news. Under these rules, platforms must appoint officers in India, respond quickly to complaints, and even trace where a message came from.[8] Critics say these rules go too far and violate the right to privacy and freedom of speech.[9] There are multiple court cases pending against them.[10]

The situation in India today presents a paradox. On one hand, the internet has become a tool for citizens to speak, protest, and organize. On the other, it is now heavily monitored and censored by the State. There is no clear line between regulation and suppression.

This paper studies how Indian law treats digital censorship. It focuses on the Constitution, IT Act, and court decisions. The aim is to understand whether Indian democracy has room for digital dissent, or whether regulation is outweighing constitutional freedoms.

CONSTITUTIONAL FOUNDATIONS OF FREE SPEECH IN INDIA

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[3] The Information Technology Act, No. 21 of 2000, Acts of Parliament, 2000 (India).
[4] Id. § 69A.
[5] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
[6] SFLC.in, *Website Blocking Orders in India: A Transparency Analysis*, https://sflc.in/website-blocking-orders-under-indian-law
[7] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India, Feb. 25, 2021.
[8] Id. rule 4(2).
[9] Apar Gupta, *The New IT Rules Are Constitutionally Suspect*, THE WIRE (Feb. 26, 2021), https://thewire.in/law/it-rules-2021-constitutionality
[10] *LiveLaw Media Pvt. Ltd. v. Union of India*, W.P.(C) 1354/2021 (Del. HC).

The right to free speech in India has always existed in a complicated space. While Article 19(1)(a) of the Constitution promises every citizen the right to "freedom of speech and expression,"[11] this right is immediately followed by Article 19(2), which gives the State power to impose "reasonable restrictions" in the interest of public order, morality, national security, and a few other grounds.[12] These exceptions make it clear that free speech in India is not absolute, and that the government can limit it under certain conditions.

Since independence, Indian courts have developed a body of decisions explaining what counts as a reasonable restriction. In the early years, the judiciary seemed to lean toward protecting speech. For example, in *Sakal Papers v. Union of India*, the Court struck down a law that controlled the number of pages a newspaper could print, saying it violated press freedom.[13] But that approach hasn't been consistent across all forms of media. In *K.A. Abbas v. Union of India*, the Court upheld film censorship, reasoning that movies have a more immediate impact on the public and can be regulated more strictly than newspapers.[14] So, even though the Constitution gives the same protection to all forms of speech, courts have treated different types of media differently.

The framework becomes even more complicated in the digital age. Online speech moves faster and reaches further than anything print or film could manage. That has made courts rethink how they look at restrictions. In *Anuradha Bhasin v. Union of India*, after the internet shutdown in Jammu and Kashmir, the Court held that access to the internet is protected under free speech rights, although not a fundamental right on its own.[15] The Court introduced the idea that restrictions should be temporary and subject to review, which wasn't a part of earlier decisions.

Still, legal protections don't always translate well into actual practice. While the Constitution talks about freedom, State authorities often use vague laws—like those relating to sedition or obscenity—to stifle dissent. The courts sometimes push back, but often uphold these laws, adding conditions instead of striking them down. The result is a legal landscape where free speech exists, but in a tightly monitored and often unpredictable environment.

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[11] INDIA CONST. art. 19(1)(a).
[12] INDIA CONST. art. 19(1)(2).
[13] *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305.
[14] *K.A. Abbas v. Union of India*, AIR 1971 SC 481.
[15] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

India's constitutional model allows speech, but with built-in caution. And now, with online spaces becoming the primary platform for expression, it's not yet clear whether existing legal tests are enough. As the next section will show, new mechanisms like Section 69A of the IT Act raise further questions about how constitutional protections are being applied in practice.

SECTION 69A AND HOW IT SHAPES ONLINE CENSORSHIP IN INDIA

Section 69A of the Information Technology Act, 2000 gives the Central Government the power to block access to online content.[16] The grounds mentioned are serious — things like threats to sovereignty, public order, or inciting a crime. But how the government uses this power is where a lot of debate comes in. The law doesn't work alone. It's backed by the IT Rules from 2009 that explain how blocking should be done.[17] Ideally, there's supposed to be a committee that examines requests and gives content creators a chance to respond. But in many cases, this process happens behind closed doors.

There's no requirement to make these orders public. The person whose content gets blocked might never know why. And since platforms like YouTube or Twitter are intermediaries, they usually just follow the instructions without any explanation to users.

Judiciary: In *Shreya Singhal v. Union of India*, the Supreme Court kept Section 69A alive, even while striking down Section 66A of the same Act.[18] The judges said the blocking process had enough checks in place. But that view has been criticised, especially because those checks often aren't visible. Even if the government is following the rules on paper, the secrecy makes it hard for anyone to challenge a blocking order unless they have the resources to go to court.

Judicial review is technically possible, but not easy to access. For most people, especially those without legal help or money, getting a blocking order reversed is next to impossible.

What Happens in Practice: In reality, the government has used Section 69A often — to block websites, Twitter accounts, or YouTube videos. According to civil society organisations like SFLC.in, thousands of such requests have been made, but hardly any are made public. Platforms often remove content quietly, which means users don't even know whether their post was taken down due to a complaint, an algorithm, or a government order.

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[16] IT Act, *supra* note 3, § 69A.

[17] Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009, G.S.R. 781(E), Gazette of India (Oct. 27, 2009).

[18] SFLC.in, *supra* note 6.

This creates a kind of invisible censorship. People may not be told that content was removed due to state action, which makes it even harder to hold the government accountable. Over time, this kind of environment can make people hesitant to post controversial opinions at all.

Why It Matters: When censorship is done quietly, it becomes hard to question it. Section 69A might have legal backing, but without transparency, it risks being used in ways that silence legitimate speech. In a democracy, even unpopular opinions deserve space. If digital platforms are today's public square, then blocking orders without proper notice or appeal start to look like backdoor censorship. Reforming this law to include more openness and clearer safeguards could make a real difference.

The IT Rules, 2021 and the Expansion of Executive Power: When the Government of India introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 under the IT Act, 2000, the stated aim was to make online spaces safer and more responsible.[19] But the manner in which these rules restructure the responsibilities of digital platforms has raised serious concerns among legal scholars, journalists, and civil society actors.

One major point of contention is the obligation imposed on "significant social media intermediaries"—such as WhatsApp, Facebook, and Twitter—to enable identification of the "first originator" of a message.[20] This, in effect, undermines the very architecture of end-to-end encryption. Although the government maintains that such a provision is necessary to curb the spread of harmful misinformation and illegal content, critics argue that the rule fails the test of proportionality under Article 21. Since the Supreme Court's decision in *K.S. Puttaswamy v. Union of India*, the right to privacy has been firmly rooted in Indian constitutional law.[21] There is little evidence that the IT Rules were drafted with this right in mind.

Part III of the Rules goes a step further by bringing digital news platforms and OTT content under direct executive oversight.[22] Unlike traditional print media, where regulatory mechanisms such as the Press Council of India operate at arm's length from the government, the new rules allow bureaucrats from the Ministry of Information and Broadcasting to issue final decisions on content-related complaints. The absence of an independent appellate authority is particularly troubling in a democracy that has long prided itself on a free press.

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[19] IT Act, *supra* note 7.
[20] IT Act, *supra* note 3, § 69A.
[21] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
[22] IT Rules, 2021, supra note 7, at Part III.

Several news portals and digital media publishers, including The Wire and The News Minute, have publicly criticised these changes, arguing that the structure enables politically motivated content control.[23] The government, on the other hand, maintains that the grievance redressal mechanism is merely intended to ensure ethical standards.

Unsurprisingly, these rules have been challenged before multiple High Courts. The Bombay High Court, in *Agij Promotion of Nineteenonea Media Pvt. Ltd. v. Union of India*, stayed the enforcement of Part III of the Rules, observing that the oversight mechanism lacked statutory backing and posed a potential threat to press freedom.[24] The judgment did not strike down the rules entirely but questioned the necessity and scope of executive involvement in editorial content regulation.

The cases are still pending, and the Supreme Court has not yet ruled on the matter. Until that happens, there remains a grey zone around the extent to which these rules can be enforced. Meanwhile, digital platforms operate under both legal uncertainty and political pressure, often erring on the side of compliance rather than contesting governmental directives.

GROUND-LEVEL CASE STUDIES OF DIGITAL CENSORSHIP IN INDIA

a. X vs. the State: Blocking Accounts at Scale

In 2021–22, India ordered X (formerly Twitter) to block over 1,400 accounts related to farmers' protests and COVID-19 criticism.[25] X initially resisted but later complied, citing statutory obligations under Section 69A. When X challenged the government's orders in the Karnataka High Court, the court dismissed the suit. The judge endorsed the government's view, calling the blocked content "outrageous" and firmly within statutory grounds. X had also objected to being forced into a government-first platform called "Sahyog," which it described as an extra-legal censorship portal outside due procedure. The case illustrates how state narratives can prevail through legal authority and implicit pressure—even when platforms push back.

b. The Case of Mohammed Zubair

Journalist and fact-checker Mohammed Zubair had tweets withheld after law enforcement flagged them under intermediary rules. The withheld posts—critical of religious leaders—were

[23] See e.g., The Wire, Editorial, "Why We Reject the IT Rules, 2021," *The Wire* (Mar. 11, 2021), https://thewire.in/media/why-we-reject-the-it-rules-2021.
[24] *Agij Promotion of Nineteenonea Media Pvt. Ltd. v. Union of India*, W.P. No. 14172 of 2021, Bombay High Court (Aug. 14, 2021).
[25]

invisible to Indian users yet accessible internationally. Zubair challenged an FIR in the Allahabad High Court, which refused to quash charges, pushing him to seek relief from the Supreme Court. His case highlights the combination of takedown orders under IT law and criminal proceedings under IPC, resulting in digital suppression of dissent under legal cover.

c. The ANI–Wikipedia Incident

In a defamation suit filed by ANI, the Delhi High Court ordered removal of a Wikipedia article related to the litigation.[26] Initially, the article was blocked, raising alarms over judicial interference in knowledge platforms. But on May 9, 2025, the Supreme Court overturned the order, stressing the importance of open media and warning against overreach This episode demonstrates how courts, too, can be both a mechanism of, and check on, digital censorship, balancing sub-judice constraints with free speech.

d. YouTube Takedowns and Copyright Abuse

A case involving Newslaundry—a watchdog media site—also provides insights. Aaj Tak accused the Newslaundry YouTube channel of copyright infringement, seeking to remove their videos.[27] YouTube's automated strike system forced Newslaundry's channel into a disputed legal limbo, even though the clips were used critically and arguably fair use. The threat of content striking and channel suspension illustrates how even legitimate analysis can be arbitrarily hidden under copyright enforcement—a kind of censorship beyond direct government orders.

These real-world stories show how censorship in India often operates through a mix of legal frameworks and private compliance.

CONSTITUTIONAL ANALYSIS: ARTICLE 19(1)(A) AND 19(2)

A. Digital Speech and Article 19: A New Battlefield

Article 19(1)(a) of the Indian Constitution protects the right to free speech and expression. This protection isn't confined to books or speeches—it also applies to tweets, blogs, livestreams, and every other form of digital expression. But the same Constitution also gives the state power under Article 19(2) to impose "reasonable restrictions" for things like national security or public order. These two parts of the same Article have always had to coexist, but the internet has made the tension between them much more visible. With so much speech now happening

[26] *Asian News International v. Wikimedia Foundation*, CS(OS) 524/2024, Delhi High Court.
[27]

online, and with the speed and reach of that speech growing exponentially, the courts are being forced to rethink old rules.

B. When the Court Intervenes—and When It Doesn't

The turning point came in *Shreya Singhal v. Union of India*, where the Supreme Court struck down Section 66A of the IT Act.[28] The law criminalised "offensive" or "annoying" online content, and the Court rightly saw how that could be used to silence dissent. But in the same case, the Court upheld Section 69A, which gives the government the power to block online content, provided a set procedure is followed. The Court believed that procedural safeguards —like giving reasons for takedown or offering a hearing—would be enough to prevent abuse.

However, those safeguards mostly exist on paper. In practice, most blocking orders remain secret. Platforms like Twitter or YouTube are told to take content down, but the users involved are rarely notified or allowed to respond.[29] That kind of censorship is invisible and unaccountable. You don't even know your rights are being restricted until it's too late.

Some of these practices are now being challenged. In *Internet Freedom Foundation v. Union of India*, currently pending in the Delhi High Court, petitioners argue that secret takedown orders violate constitutional principles.[30] Courts have started to acknowledge the issue. For instance, in the *Agij Promotion* case, the Bombay High Court raised questions about why an online news portal was blocked without a fair hearing.[31] Still, the judiciary tends to give the executive a wide berth whenever the words "national security" are used.

The problem is, once the government uses those broad terms, courts often step back. As a result, people are forced to prove that their rights were violated, while the government just has to say it acted for "public order." That imbalance makes it easier for censorship to slip through under the radar.

C. Rethinking Proportionality in a Digital Context

There's already a legal standard to test how far a restriction can go—the principle of proportionality, as laid down in *Modern Dental College v. State of M.P.*[32] It requires that any restriction on fundamental rights must pursue a legitimate aim, be necessary, and use the least

[28] Shreya Singhal, supra note 5.
[29] Id. at ¶¶ 108–11
[30] *Internet Freedom Foundation v. Union of India*, W.P.(C) No. 10755/2022 (Delhi High Court, pending).
[31] *Agij Promotion of Nineteenonea Media Pvt. Ltd. v. Union of India*, W.P. No. 14172 of 2021 (Bombay HC).
[32] *Modern Dental College and Research Centre v. State of M.P.*, (2016) 7 SCC 353.

restrictive method. But it's not clear whether this standard is being applied rigorously in the context of online censorship. Mass takedowns, blanket orders, and automated content filtering don't always meet that test.

The internet is changing how power operates. Instead of courtroom hearings, many speech-related decisions are now happening inside government offices or at tech company headquarters. To protect constitutional rights in this new landscape, courts must go beyond just reviewing laws—they must also examine how those laws are actually being used.

- **Government directives under Section 69A or intermediary laws** often result in sweeping takedowns, without notice or transparency.
- **Platforms typically comply quietly**, placing burden on affected individuals to seek judicial redress, which is often slow and expensive.
- **Courts sometimes support executive authority** sweepingly, as seen in X's suit dismissal, but can also push back, as in the ANI–Wikipedia judgment.

Together, these patterns reveal a **digital ecosystem where speech is regulated not just by law, but by opacity, pressure, and private-platform cooperation**. Legal rights may exist on paper—but enforcement and resistance remain difficult for most citizens.

TECHNOLOGY, ALGORITHMS, AND PRIVATE POWER

A. Platform Control over Expression

While state censorship has grown more opaque, another quieter but equally significant development is the rise of platform-led moderation. Companies like Meta, Google, and X (formerly Twitter) now make daily decisions that determine what content stays online and what gets removed. Their content moderation policies often reflect their own corporate values or community guidelines, which may or may not align with Indian constitutional principles.[33] This creates a parallel legal order, where speech may be curtailed not by law but by policy.

B. Algorithmic Amplification and Suppression

Beyond takedowns, algorithms also control what users see—or don't see. Platform algorithms decide which posts trend, which disappear into obscurity, and which are flagged or

[33] Tarunabh Khaitan, **Freedom of Expression and the Role of Private Platforms**, 16 *Nat'l L. Sch. India Rev.* 42, 44 (2021).

demonetised.[34] These are not neutral decisions. Studies have shown that content critical of government policy or discussing minority issues may receive less visibility due to algorithmic downranking. This invisible influence over public discourse—amplifying some voices while silencing others—poses a new challenge for the constitutional ideal of a vibrant, informed citizenry.

C. Accountability of Private Actors

Unlike the state, private platforms are not directly bound by the Constitution. Courts in India have yet to decisively resolve whether platforms performing quasi-public functions—like hosting political debate or news—should be held to higher constitutional standards.[35] The lack of a statutory framework governing algorithmic decision-making or requiring transparency reports in India adds to the accountability vacuum.[36]

D. The Need for a Rights-Based Framework

The emerging dominance of platforms in shaping public discourse demands legal attention. Countries like the EU have begun adopting digital services legislation that requires transparency, notice-and-appeal mechanisms, and algorithmic audits.[37] India, while formulating laws like the proposed **Digital India Act**,[38] must ensure that constitutional rights do not get lost in corporate terms of service. If both state and private censorship go unchecked, the internet risks becoming a space where speech is no longer free but merely permitted.

REIMAGINING THE LEGAL ARCHITECTURE FOR DIGITAL SPEECH

A. Demystifying Government Takedown Orders

In the Indian legal system, content blocked under Section 69A of the IT Act is rarely made public. This not only strips affected users of a chance to respond but also removes broader public oversight. Content creators, at times, discover takedowns through platform notifications —if at all. In contrast, the European Union's Digital Services Act requires platforms to provide

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[34] *Platform Accountability and Algorithmic Transparency in India*, Internet Democracy Project (2021), https://internetdemocracy.in/reports/platform-accountability/.

[35] Apar Gupta, *Free Speech and Private Platforms in India*, *Ind. Const. L. Rev.* (ICLR), Vol. 7, 2020.

[36] Usha Ramanathan, *Invisible Regulations and Infrastructures of Censorship*, 13 *Socio-Legal Rev.* 87, 92 (2017).

[37] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), art. 14, 2022 O.J. (L 277).

[38] Ministry of Electronics and Information Technology, *Digital India Act 2023 – Stakeholder Consultation*, https://www.meity.gov.in (last visited July 19, 2025).

users with explanations for content removals and ensure avenues for appeal.[39] India's legal approach doesn't currently impose such duties. A legal mandate to publish blocking orders and inform users could help democratise the censorship process, offering at least basic procedural fairness.

B. Why Review Mechanisms Cannot Be an Afterthought

Right now, all censorship-related decisions flow through a government committee under the Ministry of Electronics and IT.[40] No external body scrutinises whether the takedown was justified or proportionate. Scholars and policy experts have long pushed for the creation of a Digital Rights Tribunal—an independent body with powers akin to TDSAT.[41] Such a forum could not only review blocking orders but also hear cases involving private algorithmic moderation. Though the Supreme Court has often spoken of procedural fairness and the need for reasoned decisions, the enforcement of these standards in digital censorship remains inconsistent.

C. Are Platforms Public Actors in Disguise?

Private tech companies, despite controlling online discourse, often evade direct constitutional accountability. Their moderation systems rely on vague terms of service, rather than Indian constitutional principles. However, in *Justice K.S. Puttaswamy v. Union of India*, the Court suggested that private entities carrying out public functions must not violate constitutional values.[42] The South African case *Media24* went a step further, declaring that even media outlets must act within constitutional limits when operating in the public domain.[43] There is scope for Indian jurisprudence to recognise that platforms performing quasi-sovereign functions—like managing digital speech—should face similar scrutiny.

D. Laying the Groundwork for Digital Rights

The upcoming Digital India Act may offer the first real chance to legislate user rights online. Instead of reactive enforcement, a rights-forward approach is needed—one that outlines user entitlements like being notified before content takedown, appealing moderation decisions, and

[39] Regulation (EU) 2022/2065 (Digital Services Act).
[40] Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.
[41] Chinmayi Arun, "Hate Laws in the Time of Free Speech," Indian Journal of Law and Technology, Vol. 14 (2018).
[42] *Justice K.S. Puttaswamy*, supra note 21.
[43] *Media24 (Pty) Ltd v. SA Taxi Securitisation (Pty) Ltd*, [2011] ZASCA 117.

accessing algorithmic explanations. The principle of proportionality, laid down in *Modern Dental College*,[44] could be a yardstick to assess all restrictions—whether imposed by state orders or private platforms. Lawmakers may also consider making platform audits and annual transparency reports mandatory, and in plain language rather than legal or technical jargon.

As gatekeepers of expression shift from elected governments to unaccountable algorithms, India must create a digital rights regime that anticipates future challenges rather than merely reacting to crises.

CONCLUSION

Digital India was supposed to open doors—to information, to connection, and to democratic debate. But those same doors now risk being quietly closed. While the Constitution speaks of freedom, laws like Section 69A and the 2021 IT Rules operate in secrecy, empowering the government to act without much explanation. Even worse, private platforms, once hailed as liberators of speech, have turned into silent gatekeepers, often complying without question.

What's missing from the picture is accountability—not just from the State, but from tech giants who shape what we see, share, and say. Court decisions like *Shreya Singhal* showed promise, but enforcement on the ground tells a different story.

If India wants its digital democracy to thrive, it must build guardrails that center the rights of its people. That means transparent takedown procedures, independent reviews, and a legal recognition that online spaces are more than just commercial—they're civic. We're not just moderating content; we're moderating democracy. The longer we delay reform, the more the gap between law and lived reality will widen. And that's a risk a constitutional democracy shouldn't be willing to take.

[44] *Modern Dental College and Research Centre*, supra note 32.