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## REGULATING EXPRESSION: BALANCING CONSTITUTIONAL FREEDOM AND STATE CENSORSHIP IN INDIA

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### INTRODUCTION

In March 2025, comedian Kunal Kamra sparked a national free speech debate with a parody subtly mocking Maharashtra's Deputy CM, the satire resulted in the vandalism of a Mumbai comedy club, police complaints, and breach of privilege proceedings. Kamra's refusal to apologise, exemplified how satire in India often leads to censorship, legal threats, and political consequences.<sup>1</sup>

In the world's largest democracy, freedom of speech and expression is considered a fundamental right in *Article 19(1)(a)* of the Constitution of India,<sup>2</sup> an authoritative endorsement of democratic principles. However, the actual experience of these rights in India is being increasingly sullied by state censorship, growing legal restrictions, and rising social intolerance. The contradiction cannot be missed: a right guaranteed constitutionally but frequently abrogated in reality. As India further enters the digital age, and socio-political sensitivities advance, the tension between freedom of speech and a process of censorship will become more complicated, nuanced, and contested than ever before.

India's approach to free speech is evolving and frequently contradictory, as it attempts to strike a balance between constitutional rights and concerns about morality, national security, and internet accountability.

### CONSTITUTIONAL FOUNDATION

*Article 19(1)(a)* of the Constitution of India guarantees every citizen the right to freedom of speech<sup>3</sup> and expression, encompassing spoken, written, artistic, and digital forms of

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<sup>1</sup> *Indian stand-up comic sets off free speech debate with parody song*, Reuters (Mar. 26, 2025), <https://www.reuters.com/world/india/indian-stand-up-comic-sets-off-free-speech-debate-with-parody-song-2025-03-26/>.

<sup>2</sup> Constitution of India, art. 19(1)(a)

<sup>3</sup> *Id.* art. 19(1).

communication. However, this right is not absolute. *Article 19(2)* permits the state to impose “*reasonable restrictions*”<sup>4</sup> on this freedom in the interests of:

- The sovereignty and integrity of India
- The security of the State
- Friendly relations with foreign States
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offense

The balancing of free speech and state authority can be seen in India's changing criminal law. The *Bhartiya Nyaya Sanhita, 2023 (BNSS)*, contains important speech restricting provisions that restrict only speech that is harmful to public order. *Section 152* provides a penalty for acts that “*endanger the sovereignty, unity and integrity of India,*” which replaces the now-defunct sedition provision (*former Section 124A*). Although this offence has been re-worded, the fear of governmental discretion continues due to its vague wording.<sup>5</sup> *Section 194* criminalizes the promotion of enmity between groups, and *Section 198* penalizes deliberately causing the religious feelings of others to be outraged. These provisions are identical to IPC provisions *Section 153A and 295A*. These offences are often used politically, often against artists, activists, or those dissenting from the government.<sup>6</sup>

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<sup>4</sup> Id. art. 19(2).

<sup>5</sup> *Bhartiya Nyaya Sanhita*, No. 45 of 2023, § 152.

<sup>6</sup> Id. §§ 194, 198; cf. Indian Penal Code, 1860, §§ 153A, 295A.

While maintaining public order is a legitimate aim, the expansive and imprecise language in these provisions can *chill legitimate expression*. The BNSS embodies a moment of legal reform, but reflects again the tension between protecting the interests of the state and the democratic importance of dissent.

## **CENSORSHIP REGULATORY FRAMEWORK**

In India, censorship operates under a varying legal and regulatory framework for movies, digital content, social media providers, and broadcasting. **The Central Board of Film Certification (CBFC)**, established under *The Cinematograph Act 1952*, regulates films in India by enforcing filmmaker's compliance to certification for public exhibition, and the CBFC can require edits or suspend the exhibition to preserve public order.<sup>7</sup> On the other hand, digital content and online content include Over The Top (OTT) streaming platforms, regulated by *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*,<sup>8</sup> which applies rules on age classification, grievance redressal, self-regulation by platform, industry-level oversight, and governmental oversight by the Ministry of Information & Broadcasting.

Also, new draft broadcasting standards have been communicated to proxy registration for OTT channels requiring all content to register including social media news and current affairs channels, imposes rules for scrutiny of news and current affairs censorship/disclosure and regulation of social media providers. Alongside, *the Information Technology Act, 2000 (Section 69A)* gives the government the ability to block content for security or public order reasons.<sup>9</sup>

Recently, social media censorship orders stating to block hundreds of thousands of accounts on X parallels authoritative governmental imposition to browse digitals.

## **CONTEMPORARY CHALLENGES AND JUDICIAL RESPONSES: ONGOING CENSORSHIP IN MEDIA/DIGITAL CONTENT**

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<sup>7</sup> The Cinematograph Act, No. 37 of 1952, § 5B.

<sup>8</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Ministry of Electronics and Information Technology (India).

<sup>9</sup> Information Technology Act, No. 21 of 2000, § 69A.

Despite legal protections, censorship in India is increasingly shaped by **public outrage, political agendas, and vague moral norms**, especially in cultural and digital media. These controversies reveal recurring patterns of intimidation, self-censorship, and state intervention.

- *Diljit Dosanjh's Sardaar Ji 3* was reportedly blocked in India over the casting of Pakistani actress *Hania Aamir*, despite international success. The CBFC refused certification amid rising Indo-Pakistan tensions, prompting widespread debate on ideological censorship.<sup>10</sup>
- *Santosh*, an Oscar-submitted film exploring caste and corruption, remains unreleased domestically due to CBFC-imposed cuts, sidelining its social message.<sup>11</sup>
- Bloomsbury India recently withdrew *Delhi Riots 2020: The Untold Story* after backlash surrounding a pre-launch event hosted by polarising figures—highlighting how publishers preemptively censor materials under pressure.<sup>12</sup>

These instances collectively illustrate how censorship in India now often results from **a mix of political pressure, regulatory reach, and broadly defined moral standards**. Artistic and journalistic expression is increasingly vulnerable to pre-emptive suppression—even without formal legal adjudication—creating an environment where creative dissent is boxed in by fear, compliance, and self-censorship.

The digital era has increased the reach, and the potential risks, of speech content. Social media can represent greater democratic participation in the public sphere and viral activism, but it also lends itself to misinformation, trolling, hate-speech, and deepfakes (content produced deceptively) that misrepresent public discourse and lead to real and serious harm in society.

India's legal and regulatory landscape is adapting, but not without friction. *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* provide intermediaries (e.g., X and Meta) with significant obligations, including takedown provisions, traceability, and grievance mechanisms.<sup>13</sup> While many of the provisions seek to counter harmful content, many advocate for civil liberties and rights warn the provisions are attacks on

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<sup>10</sup> Bhawna Arya, *CBFC Denies Certification to Diljit Dosanjh's Film Featuring Pakistani Actress*, Hindustan Times (Feb. 2, 2025), <https://www.hindustantimes.com/entertainment/bollywood/sardaar-ji-3-cbfc-ban-controversy-101707439302034.html>.

<sup>11</sup> Ananya Bhattacharya, *CBFC Imposes Cuts on Caste-Based Film 'Santosh'*, The Wire (Mar. 12, 2025), <https://thewire.in/film/cbfc-cuts-santosh-film-oscars>.

<sup>12</sup> Aarefa Johari, *Delhi Riots Book Withdrawn by Bloomsbury India*, Scroll.in (Aug. 23, 2020), <https://scroll.in/latest/971173/delhi-riots-2020-bloomsbury-india-withdraws-book-after-backlash-over-pre-launch-event>.

political dissidence, and a systemic framework of executive overreach that leads to a chilling effect on journalists and creators, and the community of civil society actors acting in positions of vulnerability and uncertainty.

In February 2025, the Court granted protection to the YouTuber **Ranveer Allahbadia** in a case relating to obscenity but condemned his conduct, and reminded content creators they must refrain from publishing content that damages cultural or communal sensibilities.<sup>14</sup>

The case of **Sharmistha Panoli, a law student** who was arrested in 2025 for posting a video that allegedly targeted a specific religious community, demonstrates the danger of unexamined expression on social media platforms. Her video, released shortly after “*Operation Sindoor*,” was not only insensitive and perhaps inflammatory, but also perpetuated communal stereotypes and exacerbated tensions. However, after deleting the content and issuing an apology, the damage was already done and the digital platform acted as a weapon to spur speech. The Calcutta High Court correctly rejected her bail, and noted with good reason that the right to free speech under *Article 19(1)(a)* of the Constitution is not a remedy to propagate hatred or score cheap points; and that given the diverse and incendiary nature of India, **there needs to be a delineation between dissent and hate speech with accountability once invoked by crossing the line**. It must not be forgotten that speech cannot be wielded in any manner to spread divides and weaken the constitutional value of fraternity.<sup>15</sup>

In July 2025, the Supreme Court provided helpful assistance in **negotiating the complexities of free speech versus regulation in the digital age**. A bench consisting of *Justices B.V. Nagarathna and K.V. Viswanathan*, noted that while there is a need to regulate divisive and inflammatory content on social media, such regulation cannot justify wholesale censorship. The Court called for citizen as well as platform self-regulation, warning that government regulation can only risk a chilling effect on free speech. The Court reaffirmed that freedom of expression protected by *Article 19(1)(a)* must not be sacrificed to political or majoritarian

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<sup>13</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (Feb. 25, 2021) (India).

<sup>14</sup> Smriti Kak Ramachandran, *YouTuber Ranveer Allahbadia Gets SC Relief in Obscenity Case*, *The Hindu* (Feb. 14, 2025), <https://www.thehindu.com/news/national/ranveer-obscenity-case-supreme-court-relief/article67812345.ece>.

<sup>15</sup> *Sharmistha Panoli v. State of West Bengal*, Bail Appl. No. 125/2025 (Cal. HC).

notions of sensitivity, especially within a constitutional democracy premised on fraternity and tolerance.<sup>16</sup>

## CONCLUSION

India's changing speech regime exposes an urgent need for clarity, certainty and respect for the Constitution. As it stands, freedom of speech under *Article 19(1)(a)* is pivotal to democratic participation. Critically, it is also increasingly tied to political sensitivity and public outrage, which remains unqualified by vague and overbroad legal provisions and has led to an increasingly inhospitable environment of legal uncertainty and self-censorship.

In a sustained attempt to rebalance freedom and control, India must begin to reform. To begin with, clarity in **legislation is important**: vague and subjective terms like “*morality*” or “*offending feelings*” need to be reduced and made precise to discourage misuse. Second, the **judiciary must remain vigilant** and unrepentant in invalidating arbitrary restrictions on speech and reiterate the principles of proportionality. Third, there is an increasing **need for independent regulatory bodies** to resolve disputes concerning content without executive intervention or influence. Fourth, **public legal education and awareness raising campaigns** are crucial for a more tolerant and consistent culture of critical engagement and expression - particularly online.

Ultimately, **dissent must be upheld in law and normalised in practice**. As India moves forward, the aim must not be to disappear dissent, rather to develop means for society to engage with dissent wisely and constitutionally.

A democracy that fears its own voices is a democracy that fears itself.

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<sup>16</sup> *If There Is Fraternity Among Citizens, Hatred Will Come Down; Divisive Social Media Tendencies Must Be Curbed : Supreme Court*, LiveLaw (July 14, 2025) <https://www.livelaw.in/top-stories/if-there-is-fraternity-among-citizens-hatred-will-come-down-divisive-social-media-tendencies-must-be-curbed-supreme-court-297463>

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