



FREEDOM OF SPEECH VS. NATIONAL SECURITY – A CRITICAL ANALYSIS OF CONSTITUTIONAL LIMITS

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ABSTRACT

Freedom of speech and expression occupies a central position in constitutional democracies, acting as a safeguard against authoritarianism and enabling informed public participation. However, this freedom often encounters limitations when weighed against the imperatives of national security. In India, Article 19(1)(a) of the Constitution guarantees freedom of speech, while Article 19(2) permits reasonable restrictions in the interest of the sovereignty and integrity of the nation, security of the State, and public order. This research paper undertakes a detailed examination of the constitutional limits imposed on freedom of speech in the name of national security. It analyses the philosophical justification for such restrictions, traces the evolution of judicial interpretation in India, and evaluates the proportionality doctrine as a balancing mechanism. Through an in-depth study of landmark judicial pronouncements, national security legislation, and contemporary challenges arising from digital speech, the paper argues that while restrictions are constitutionally permissible, they must be narrowly tailored and subject to strict judicial scrutiny. The paper concludes that excessive reliance on national security as a justification risks undermining democratic values and constitutional morality.

Keywords: Freedom of Speech, National Security, Article 19, Reasonable Restrictions, Proportionality.

INTRODUCTION

Freedom of speech and expression is universally regarded as the cornerstone of democratic governance. It enables individuals to express opinions, criticise governmental actions, disseminate information, and participate meaningfully in public discourse. In India, this right

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finds constitutional recognition under Article 19(1)(a) of the Constitution and is considered essential for ensuring accountability, transparency, and informed decision-making in a democratic polity.

However, no constitutional right exists in absolute terms. The exercise of free speech often comes into conflict with competing state interests, particularly national security. The State bears the responsibility of safeguarding its sovereignty, integrity, and internal stability, which may necessitate restrictions on speech that threatens these interests. The challenge lies in ensuring that such restrictions do not become tools for suppressing dissent or curtailing legitimate democratic expression. This paper critically examines the constitutional limits placed on freedom of speech in the interest of national security, with a focus on judicial interpretation and evolving constitutional standards.

CONSTITUTIONAL FRAMEWORK OF FREEDOM OF SPEECH IN INDIA

Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression. The ambit of this right is expansive and includes freedom of the press, political speech, artistic and literary expression, commercial speech, and, in contemporary times, digital and online speech. The framers of the Constitution envisioned free speech as a necessary condition for democratic governance and social progress.

At the same time, Article 19(2) empowers the State to impose reasonable restrictions on this right in the interests of the sovereignty and integrity of India, security of the State, public order, decency, morality, defamation, and other grounds. The expression reasonable restrictions acts as a constitutional safeguard, requiring that limitations on speech must be justified, proportionate, and non-arbitrary.

The First Constitutional Amendment, 1951, significantly expanded the scope of permissible restrictions in response to early judicial decisions such as *Romesh Thappar v. State of Madras*, where the Supreme Court struck down censorship laws for being unconstitutional. This amendment marked a shift towards balancing individual liberty with societal interests, particularly national security and public order.

NATIONAL SECURITY AS A GROUND FOR RESTRICTION

National security occupies a distinct and sensitive position among the constitutionally recognised grounds for restricting freedom of speech. Although the term is not expressly defined in the Constitution, it is generally understood to include the protection of the State against external aggression, war, terrorism, armed rebellion, espionage, and activities that threaten the sovereignty, integrity, and territorial unity of the nation. Speech that directly incites violence, promotes secessionist tendencies, or provides material assistance to hostile forces may legitimately be curtailed in the interest of safeguarding national security, as such expression poses a real and imminent threat to the survival of the State.

At the same time, the expansive and indeterminate nature of the concept of national security raises serious constitutional concerns. Its inherent vagueness allows for broad executive discretion, increasing the risk of arbitrary or disproportionate restrictions on speech. History demonstrates that security-based justifications have often been employed to silence political opposition, stifle minority viewpoints, and criminalise criticism of governmental policies. In a constitutional democracy, however, dissent is not a threat to national security but a vital component of democratic governance, facilitating accountability and the correction of state excesses.

Recognising this danger, courts have consistently emphasised the need for a clear, proximate, and direct nexus between the speech sought to be restricted and the alleged threat to national security. Mere apprehension, speculative harm, or remote connection is insufficient to justify curtailment of a fundamental right. Judicial precedents have underscored that only those expressions that create a tangible risk of violence or public disorder can be lawfully restricted under this ground. This approach prevents the dilution of constitutional protections through vague or overbroad interpretations of security interests.

Additionally, contemporary constitutional jurisprudence increasingly demands that restrictions imposed in the name of national security satisfy the test of proportionality. This requires that the restriction pursue a legitimate aim, be necessary to achieve that aim, and constitute the least restrictive means available. Measures that impose sweeping or blanket limitations on speech, without individualised assessment or procedural safeguards, fail to meet constitutional scrutiny. Thus, while national security remains a legitimate and compelling state interest, its

invocation must be carefully circumscribed to prevent erosion of fundamental freedoms and constitutional morality.

JUDICIAL INTERPRETATION AND EVOLUTION

The Indian judiciary has played a decisive role in shaping the contours of freedom of speech and its permissible restrictions. In *Romesh Thappar v. State of Madras*¹ the Supreme Court held that restrictions on speech must have a direct connection with public order or security of the State and cannot be justified on speculative grounds. Similarly, in *Brij Bhushan v. State of Delhi*,² the Court struck down pre-censorship of newspapers, reaffirming the centrality of press freedom in a democracy.

A significant development occurred in *Kedar Nath Singh v. State of Bihar*,³ where the Supreme Court upheld the constitutionality of the sedition law under Section 124A of the Indian Penal Code, but confined its application to speech involving incitement to violence or intention to create public disorder. This judgment sought to reconcile the need for national security with the protection of political expression.

In recent years, the doctrine of proportionality has emerged as a critical tool in constitutional adjudication. In *Modern Dental College v. State of Madhya Pradesh* and later reaffirmed in *Anuradha Bhasin v. Union of India*, the Supreme Court held that restrictions on fundamental rights must be proportionate to the legitimate aim sought to be achieved. This doctrine requires that measures restricting speech must be suitable, necessary, and balanced.

NATIONAL SECURITY LEGISLATIONS AND THEIR IMPACT ON FREE SPEECH

The tension between state sovereignty and individual liberty is most visible in the application of national security laws. While the Constitution of India guarantees the freedom of speech and expression, it also permits reasonable restrictions under Article 19(2). However, the line between protecting the nation and suppressing dissent is often blurred by the broad language of specific statutes.

Several legislative measures empower the State to restrict speech in the interest of national security. Laws such as the Unlawful Activities (Prevention) Act, 1967, the Information

¹ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124

² *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129

³ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955

Technology Act, 2000, and preventive detention statutes grant wide discretionary powers to the executive. While these laws are designed to counter serious threats such as terrorism and insurgency, their application often raises concerns regarding free speech and civil liberties. The Supreme Court's decision in *Shreya Singhal v. Union of India*⁴ marked a watershed moment in protecting digital free speech. By striking down Section 66A of the Information Technology Act for being vague and overbroad, the Court emphasised that restrictions on speech must be narrowly defined and directly traceable to the grounds mentioned in Article 19(2). The judgment underscored the chilling effect that vague laws can have on free expression.

Why this mattered:

Vagueness Doctrine: The court ruled that because offensive was not clearly defined, the law could be used to arrest anyone for almost any speech, leading to self-censorship.

The Chilling Effect: The judgment recognised that when laws are overbroad, citizens stop speaking altogether out of fear of prosecution, which chills the democratic process.

Narrow Tailoring: The Court mandated that a restriction on speech must be narrowly drawn to address a specific threat, rather than casting a wide net over legitimate expression.

Today, the debate has shifted toward misinformation and encryption. The government argues that traceability in messaging apps is necessary to prevent riots and terrorism. Conversely, privacy advocates argue that breaking encryption would destroy the anonymity required for free speech and whistleblowing.

Key Legal Standard: For a restriction to be valid under Article 19(2), it must be:

- Authorised by law
- Serving a legitimate state interest (e.g., public order, security)
- Proportionate to the aim it seeks to achieve.

⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

CONTEMPORARY CHALLENGES IN THE DIGITAL ERA

The emergence of the digital age has fundamentally redefined the relationship between individual expression and state security. While technology offers unprecedented connectivity, it also presents complex regulatory hurdles that the legal system is still racing to address.

The Dual Nature of Digital Platforms: The digital revolution has acted as a double-edged sword:

Rapid Information Flow: Social media allows for the instantaneous sharing of ideas, but it is equally capable of spreading harmful content such as misinformation, hate speech, and extremist propaganda.

The Necessity of Regulation: Some degree of government oversight is considered essential to prevent real-world harm and maintain social order.

Constitutional Risks: The primary concern is that overreaching measures such as total, indefinite internet shutdowns often bypass constitutional protections and stifle legitimate discourse.

Judicial Intervention: A landmark moment in this evolution was the Supreme Court's ruling in *Anuradha Bhasin v. Union of India*.⁵ This case was pivotal in establishing how traditional rights apply to modern technology.

Internet as a Fundamental Right: The Court declared that the right to access the internet is an integral component of the freedom of speech and expression guaranteed under the Constitution.

The Test of Proportionality: Any state-imposed restriction on internet access cannot be arbitrary. It must be proportionate, meaning the measure must be necessary, the least restrictive option available, and balanced against the goal it seeks to achieve.

Periodic Review: The judiciary mandated that suspension orders must not be indefinite and must undergo regular reviews to ensure they remain justified.

⁵ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637

BALANCING FREEDOM AND SECURITY: A CONSTITUTIONAL NECESSITY

The central constitutional challenge lies in striking a principled balance between individual liberty and collective security. While absolute freedom of speech may, in exceptional circumstances, pose genuine risks to national security, excessive or indiscriminate restrictions threaten the very democratic foundations they seek to protect. A constitutional democracy must therefore ensure that national security considerations do not override civil liberties in a manner that normalises censorship or suppresses dissenting voices.

Judicial oversight plays a pivotal role in maintaining this equilibrium. Courts act as constitutional sentinels by scrutinising executive action and ensuring that restrictions on speech are neither arbitrary nor disproportionate. The application of constitutional principles such as **reasonableness, proportionality, and least restrictive means** ensures that limitations on free speech are justified by a legitimate state interest and bear a rational nexus to the objective sought to be achieved. As affirmed in *Modern Dental College v. State of Madhya Pradesh*,⁶ restrictions on fundamental rights must not only pursue a legitimate aim but must also be necessary and balanced, thereby preventing excessive encroachment upon individual freedoms.

Transparency and procedural safeguards further strengthen this balance. Measures restricting speech in the name of national security must be accompanied by clear statutory guidelines, periodic review, and accountability mechanisms to prevent abuse of power. The absence of such safeguards risks creating a chilling effect on speech, compelling citizens to engage in self-censorship out of fear of legal consequences.

Importantly, constitutional jurisprudence recognises that **dissent and criticism of governmental policies are integral to democracy** and cannot be conflated with threats to national security. Peaceful expression, even when critical or unpopular, constitutes protected speech under Article 19(1)(a). Any attempt to criminalise such expression under the broad and vague banner of national security undermines constitutional morality and weakens public trust in democratic institutions. Ultimately, the strength of a constitutional democracy lies not merely in its ability to protect itself from threats but in its capacity to do so without compromising the fundamental freedoms that define its constitutional identity.

⁶ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

CONCLUSION

Freedom of speech and national security are both indispensable to the survival of a constitutional democracy. The Indian Constitution attempts to harmonise these competing interests through Articles 19(1)(a) and 19(2). Judicial interpretation has consistently emphasised that restrictions on speech must be reasonable, proportionate, and justified by a genuine threat to national security.

This research paper concludes that while national security is a legitimate ground for restricting speech, its invocation must be subject to strict constitutional scrutiny. An overbroad or arbitrary application of security-based restrictions poses a serious threat to democratic values and individual liberty. Ultimately, the strength of a democracy lies in its ability to protect both freedom and security without sacrificing one at the altar of the other.