

**From Dissent to Criminality in the digital age: Reassessing the Limits of
Free Speech in India**

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Abstract

The rapid expansion of digital communication technologies has fundamentally transformed the exercise of the right to freedom of speech and expression in India. Social media platforms have emerged as indispensable spaces for political participation, democratic engagement, and public discourse, enabling citizens to express opinions, criticize governmental policies, and mobilize collective action. However, the same platforms have also facilitated the dissemination of hate speech, misinformation, online harassment, and content capable of disturbing public order, thereby posing significant constitutional and criminal law challenges. The increasing criminalisation of online speech, particularly in cases involving political expression, has intensified the debate on the permissible limits of free speech in a constitutional democracy. This article critically examines the constitutional and statutory framework governing freedom of speech and expression in the digital age. It analyses the evolving judicial interpretation of free speech through landmark decisions of the Supreme Court. The article further evaluates the scope of criminal liability for online speech under the Bharatiya Nyaya Sanhita, 2023, the Information Technology Act, 2000. The study examines the legal responsibilities of social media intermediaries and the challenges posed by algorithm-driven dissemination of digital content. The article examines that a coherent constitutional framework, guided by judicial safeguards, procedural fairness, and narrowly tailored criminal regulation, is essential to preserve both freedom of expression and the rule of law in India's evolving digital democracy. **Keywords:** Freedom of Speech and Expression; Digital Democracy; Social Media; Criminal Liability; Political Speech; Constitutional Law.

1. Introduction:

Freedom of speech and expression constitutes one of the foundational pillars of every democratic constitutional order. It enables individuals to articulate opinions, exchange ideas, question authority, participate in public affairs, and contribute to the formation of an informed citizenry. In constitutional democracies, the legitimacy of governance depends not merely upon periodic elections but also upon the continuous ability of citizens to scrutinise, criticise, and influence governmental action through free and open discourse. Consequently, the right to freedom of speech has long been regarded as an indispensable condition for the protection of individual liberty, political accountability, and the rule of law. The emergence of the internet and social media has fundamentally transformed the manner in which this constitutional freedom is exercised. Unlike traditional forms of communication, digital platforms facilitate instantaneous dissemination of information across geographical boundaries, allowing millions of individuals to engage in political debate without institutional or editorial mediation.

Platforms such as X (formerly Twitter), Facebook, Instagram, YouTube and WhatsApp have become significant forums for democratic participation, public mobilisation, investigative journalism, electoral campaigns, and civic engagement. These technological developments have expanded the democratic marketplace of ideas by enabling citizens to communicate directly with public institutions, elected representatives, and one another. However, the digital revolution has simultaneously generated unprecedented constitutional and legal challenges. The same platforms that promote democratic participation have also become vehicles for misinformation, disinformation, hate speech, online harassment, identity-based abuse, coordinated propaganda, cyberbullying, deepfake content, and incitement to violence. The speed, anonymity, permanence, and algorithmic amplification of online communication have intensified the potential impact of harmful speech, compelling governments across jurisdictions to reconsider the appropriate legal limits of digital expression. As a result, constitutional democracies increasingly face the difficult task of preserving freedom of expression while protecting competing constitutional values such as public order, national security, individual dignity, equality, and privacy.

The legal landscape governing online expression has undergone further transformation following the enactment of the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the continued operation of the Information Technology Act, 2000, together with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These legislative developments have altered the regulatory framework applicable to digital communication, criminal investigation, electronic evidence, and intermediary obligations. At the same time, social media companies increasingly exercise considerable influence over public discourse through content moderation policies, algorithmic recommendation systems, and community standards, raising complex questions regarding transparency, accountability, due process, and constitutional values in privately governed digital spaces.

Recent public controversies relating to political speech on social media have further intensified debates concerning the limits of constitutional protection. Statements made during political demonstrations, election campaigns, online protests, and digital activism have frequently resulted in criminal complaints, police investigations, platform interventions, and demands for content removal. These developments highlight the persistent tension between the constitutional protection of political criticism and the State's responsibility to prevent speech that crosses legally recognised thresholds such as incitement to violence, unlawful threats, defamation, or other offences defined by law. The increasing convergence of constitutional law, criminal law, and digital governance necessitates a comprehensive re-examination of the legal framework regulating online speech in India.

2. Comparative Constitutional Framework:

Freedom of speech and expression is the cornerstone of a democratic society, enabling individuals to express opinions, participate in public affairs, and hold the government accountable. In India, the evolution of this right reflects a gradual transition from colonial restrictions on expression to constitutional protection under Article 19(1)(a) of the Constitution.

During British rule, laws such as the Vernacular Press Act, 1878, the Indian Press Act, 1910, and the offence of sedition under Section 124A of the Indian Penal Code, 1860 were extensively used to suppress political dissent and nationalist movements. Recognizing these historical experiences, the framers of the Constitution incorporated freedom of speech and expression as a fundamental right while simultaneously permitting reasonable restrictions under Article 19(2) in the interests of sovereignty and integrity, security of the State, public order, decency, morality, contempt of court, defamation, and incitement to an offence. Further strengthened constitutional protection by emphasising that political criticism and public debate enjoy a high degree of constitutional protection, subject only to the reasonable restrictions prescribed under Article 19(2). From a comparative constitutional perspective, the protection of free speech varies across jurisdictions. The United States provides the strongest constitutional protection under the First Amendment, where restrictions on political speech are subjected to strict judicial scrutiny. The United Kingdom, through Article 10 of the European Convention on Human Rights and the Human Rights Act, 1998, recognises freedom of expression while permitting restrictions that are necessary in a democratic society. Germany guarantees freedom of expression under Article 5 of the Basic Law but accords equal importance to human dignity and constitutional order through the principle of proportionality. Canada, under Section 2(b) of the Canadian Charter of Rights and Freedoms, protects freedom of expression while allowing reasonable limits under Section 1 that can be demonstrably justified in a free and democratic society. The comparative analysis demonstrates that no constitutional democracy recognises freedom of speech as an absolute right. While the degree of protection differs among jurisdictions, each legal system seeks to balance individual liberty with competing constitutional values such as public order, national security, dignity, equality, and the rights of others. India follows a model of regulated constitutional freedom, where robust protection of political expression coexists with constitutionally sanctioned reasonable restrictions.

3. Freedom of Speech in the Digital Age:

The digital revolution has fundamentally transformed the nature and exercise of the right to freedom of speech and expression. The rapid growth of the internet, social media platforms, artificial intelligence, and digital communication technologies has created unprecedented opportunities for individuals to participate in public discourse, access information, and engage in democratic processes. Unlike traditional media, digital platforms enable instantaneous, borderless, and interactive communication, allowing citizens to express opinions, criticise governmental policies, mobilise public opinion, and participate in political and social movements. Consequently, social media has emerged as a significant instrument for promoting transparency, accountability, and democratic participation. Despite these advantages, the digital environment has also intensified several constitutional and legal challenges. The anonymity, speed, and widespread reach of online communication facilitate the dissemination of misinformation, disinformation, hate speech, cyber harassment, fake news, deepfake content, and incitement to violence. These developments have raised complex questions regarding the extent of constitutional protection available to online speech and the circumstances in which the State may legitimately regulate digital expression. The challenge lies in balancing the

individual's right to free expression with competing constitutional interests such as public order, national security, individual dignity, privacy, and the rights of others.

The regulation of digital speech has also expanded beyond governmental action to include the role of social media intermediaries. Digital platforms increasingly influence public discourse through content moderation policies, algorithmic recommendations, and community standards. While intermediary regulation seeks to curb unlawful content and ensure a safer online environment, excessive or arbitrary restrictions may adversely affect democratic debate and freedom of expression. Consequently, an effective legal framework must ensure transparency, procedural fairness, accountability, and judicial oversight in both governmental regulation and platform governance. The digital age has therefore transformed freedom of speech from a traditional constitutional guarantee into a complex issue involving constitutional rights, criminal law, intermediary responsibility, and technological governance. Protecting democratic discourse in the twenty-first century requires a balanced constitutional approach that safeguards political expression while preventing genuine harm arising from unlawful online conduct. Such an approach strengthens constitutional democracy by ensuring that technological innovation remains compatible with the principles of liberty, equality, and the rule of law.

4. Social Media and Criminal Liability

The exponential growth of social media has transformed the exercise of freedom of speech and expression by providing individuals with an unprecedented platform for communication, political participation, and democratic engagement. While these technological advancements have strengthened participatory democracy, they have simultaneously created complex constitutional and criminal law challenges relating to the regulation of online speech. Unlike traditional media, social media permits instantaneous dissemination of information to a global audience with minimal editorial oversight. The anonymity, speed, and algorithm-driven amplification of digital content significantly increase the potential impact of online speech. Consequently, expressions capable of inciting violence, promoting communal disharmony, disseminating misinformation, or damaging individual reputation can spread rapidly and produce serious social consequences. The constitutional challenge therefore lies in distinguishing protected political expression from speech that legitimately attracts criminal liability.

These constitutional limitations apply equally to digital communication, thereby requiring every restriction on online expression to satisfy the tests of legality, proportionality, and constitutional necessity. The enactment of the Bharatiya Nyaya Sanhita, 2023 has introduced a revised criminal law framework governing offences that may arise from online communication. Although the legislation does not criminalise criticism of the government or public authorities merely because it is harsh, offensive, or politically unpopular, criminal liability may arise where online speech constitutes offences such as promoting enmity between groups, disseminating false information with unlawful intent, criminal intimidation, defamation, public mischief, or speech directly connected with violence or other recognised criminal offences. The determination of criminal liability must therefore depend upon the statutory ingredients of the particular offence and the constitutional limitations, rather than upon the political content of

the expression itself. An equally significant dimension of digital speech regulation concerns the role of social media intermediaries. Under the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, intermediaries are required to exercise due diligence and comply with lawful governmental or judicial directions concerning unlawful content. Nevertheless, content moderation by private digital platforms raises important constitutional questions relating to transparency, accountability, procedural fairness, and the protection of democratic discourse. Excessive censorship, arbitrary content removal, or inconsistent enforcement of community standards may undermine public confidence in digital governance and indirectly restrict constitutionally protected expression.

Recent controversies involving political speech on social media further demonstrate the complexities of regulating digital expression. Online criticism of political leaders, election-related commentary, protest movements, and viral digital campaigns frequently generate criminal complaints, demands for content removal, and investigations by law enforcement agencies. While the State possesses a legitimate interest in preventing unlawful speech that threatens public order or infringes legally protected rights, criminal law should not become a mechanism for suppressing legitimate political dissent or unpopular viewpoints. Constitutional adjudication therefore requires courts to carefully distinguish between offensive speech, which may remain constitutionally protected, and expression that crosses the legal threshold of incitement, criminal intimidation, defamation, or other punishable conduct.

A democratic society requires robust protection for political discussion, investigative journalism, academic debate, satire, and public criticism, even where such expression is uncomfortable or unpopular. At the same time, the constitutional commitment to free speech cannot be interpreted as protecting speech that intentionally causes legally recognisable harm through violence, hatred, or other criminal conduct.

5. Judicial Approach

Since the commencement of the Constitution, the Supreme Court has consistently emphasised that constitutional protection extends to digital communication in the same manner as traditional forms of expression. In *Shreya Singhal v. Union of India*¹ the Court declared Section 66A of the Information Technology Act, 2000 unconstitutional on the ground that it's vague and overbroad provisions created a chilling effect on legitimate speech. The Court drew a crucial distinction between discussion, advocacy, and incitement, holding that only expression reaching the threshold of incitement could ordinarily justify criminal restriction under Article 19(2). This judgment established the constitutional foundation for protecting online political speech and continues to influence subsequent jurisprudence on digital free expression. Subsequent judicial decisions have reinforced the principle that political criticism, satire, dissent, and unpopular opinions are integral components of democratic governance. More recently, in *Kaushal Kishor v. State of Uttar Pradesh*², the Supreme Court reaffirmed that freedom of speech remains a fundamental constitutional value while recognising that it operates

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

² *Kaushal Kishor v. State of Uttar Pradesh*, (2023) 4 SCC 1

within the framework of reasonable restrictions prescribed under Article 19(2). The judgment emphasises that constitutional adjudication must carefully balance individual liberty with competing constitutional interests rather than permitting arbitrary limitations on expression. Judicial attention has also increasingly focused on the responsibilities of digital intermediaries. Following *Shreya Singhal*, Indian courts have consistently recognised that intermediaries cannot ordinarily be held liable for user-generated content merely because objectionable material appears on their platforms. Instead, liability generally arises only after compliance obligations are triggered through legally recognised mechanisms, thereby preserving both free expression and procedural safeguards. Recent litigation concerning online content moderation and government takedown mechanisms illustrates the continuing judicial effort to reconcile intermediary obligations with constitutional protections for digital speech.

Recently the protest movement that emerged in July 2026 (called CJP protest) became one of the most significant digitally driven youth movements in India. Initially organised to demand accountability for alleged examination irregularities and educational reforms, it rapidly expanded through social media platforms such as X, Instagram, Facebook, and YouTube, which facilitated information sharing, public mobilisation, and nationwide participation. During and after the protests, certain videos and social media posts allegedly containing abusive or derogatory remarks against the Prime Minister attracted public attention. Reports of criminal complaints, the registration of a Zero FIR, and notices issued to social media platforms triggered a constitutional debate on the boundary between protected political criticism and speech that may attract criminal liability. The controversy raises an important constitutional question regarding the scope of Article 19(1)(a). While Indian constitutional jurisprudence protects political criticism, dissent, satire, and even harsh criticism as essential features of democratic discourse, such protection is subject to the reasonable restrictions enumerated under Article 19(2), including public order, defamation, and incitement to an offence. Accordingly, the constitutionality of such expression depends not on its offensive nature alone but on whether it falls within any constitutionally permissible restriction.

Recent disputes concerning online political expression, platform governance, and content-blocking mechanisms further indicate that Indian courts are moving towards a more structured constitutional framework for regulating digital speech. While recognising the State's legitimate interest in addressing unlawful online content, the judiciary has continued to emphasise that governmental regulation must remain transparent, procedurally fair, and consistent with Article 19(2). The judiciary's evolving approach reflects a commitment to ensuring that criminal law and digital regulation do not unduly suppress democratic participation, while simultaneously safeguarding public order, individual rights, and the integrity of the constitutional framework.

Conclusion and Suggestions

The regulation of freedom of speech and expression in the digital age presents significant constitutional challenges. While digital platforms have strengthened democratic participation by facilitating communication and political mobilisation, they have also intensified the tension between individual liberty and legitimate State regulation. A major challenge is the absence of clear legal standards for distinguishing protected political criticism from unlawful online

speech. Ambiguity regarding the constitutional limits of expression may lead to inconsistent enforcement and create a chilling effect on democratic discourse. Equally concerning is the rapid spread of misinformation, disinformation, hate speech, and deepfake content, which can undermine public order, electoral integrity, and individual reputation. Further, the expanding role of social media intermediaries in moderating online content raises concerns over transparency, accountability, and procedural fairness, as private platforms increasingly influence public discourse through content moderation policies.

To address these concerns, a balanced constitutional framework is essential. Parliament should enact a comprehensive legal framework governing digital speech that incorporates the principles of legality, necessity, proportionality, and procedural fairness. Criminal liability for online speech should remain narrowly confined to expression that clearly falls within the reasonable restrictions under Article 19(2). Social media intermediaries should adopt transparent content moderation practices, provide effective grievance redress mechanisms, and ensure procedural safeguards for users. Judicial oversight should continue to protect constitutional freedoms by rigorously applying the principles of proportionality and necessity while reviewing restrictions on online expression. At the same time, the State should promote digital literacy and constitutional awareness to encourage responsible online participation and reduce reliance on criminal sanctions.

Ultimately, India must adopt a rights-based approach to digital governance that safeguards political criticism, dissent, academic debate, and investigative journalism while permitting narrowly tailored restrictions on speech that constitutes incitement to violence, criminal intimidation, hate speech, or other constitutionally permissible grounds under Article 19(2). As India evolves as a digital democracy, constitutional governance must remain anchored in the values of liberty, equality, dignity, and the rule of law, ensuring that digital spaces continue to serve as forums for democratic participation while enabling proportionate regulation of genuinely unlawful online conduct.

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