

# Changing Perspective of Restricted Freedom of Expression on the Grounds of Security of the State in the Era of Digital Media

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**Abstract:** *The idea of security of the State was perceived as a very limited concept, and most of the time, situations like rebellion, war, or direct incitement to violence were the only ones considered. The landmark cases, such as Ramesh Thappar v. State of Madras and Kedar Nath Singh v. State of Bihar, have shown that only those kinds of speech that are likely to cause public disorder or violence could be limited by the government on this ground. But, digital media has changed this situation drastically. Social networking platforms, encrypted messaging apps, and worldwide communication networks have made it possible to share information quickly across countries, and this has sometimes led to misinformation, cyber radicalization, and digital threats to nation's security.*

**Keywords:** This change has led to the reconsideration of the extent and limitations of restricted speech and has raised important questions about the balance of power, responsibility, and how to uphold democratic principles and morals.

## I. INTRODUCTION

The idea of security of the State was perceived as a very limited concept, and most of the time, situations like rebellion, war, or direct incitement to violence were the only ones considered. The landmark cases, such as Ramesh Thappar v. State of Madras<sup>1</sup> and Kedar Nath Singh v. State of Bihar<sup>2</sup>, have shown that only those kinds of speech that are likely to cause public disorder or violence could be limited by the government on this ground. But, digital media has changed this situation drastically. Social networking platforms, encrypted messaging apps, and worldwide communication networks have made it possible to share information quickly across countries, and this has sometimes led to misinformation, cyber radicalization, and digital threats to nation's security.

With passing time, the State's point of view on security has not only included the traditional physical threats but also cyber and informational aspects. This change has led to the reconsideration of the extent and limitations of restricted speech and has raised important questions about the balance of power, responsibility, and how to uphold democratic principles and morals.

## II. CONSTITUTIONAL PERSPECTIVE

Freedom of expression is an important part of democratic governance; however, it has never been unrestricted under the Indian Constitution. Article 19(1)(a) establishes the right to freedom of speech or expression, while Article 19(2) states the use of reasonable limitations in the interest of the State's sovereignty or security.

The important decisions of Supreme Court (SC) of India have added an extra dimension to constitutional adjudication regarding State security and digital expression after 2020. Union Territory of Jammu & Kashmir v. Foundation for

<sup>1</sup> AIR 1950 SC 124

<sup>2</sup> AIR 1962 SC 955



Media Professionals<sup>3</sup>, the Court went through the issue of the ongoing 4G internet ban in Jammu & Kashmir and laid emphasis on the periodic review and proportionality in cases that raised the issue of national security and online speech.

### III. LEGISLATIVE PERSPECTIVE

In the digital era, the legislative opinion addressing limitations of freedom of expression due to the security of the State has been reevaluated with significant importance. Article 19(1)(a) of Constitution provides freedom of speech; however, Article 19(2) allows limitation of this freedom for national security requirements. Digital media have become a fair source of new security threats including cyber terrorism, online radicalization, misinformation, and digital espionage.

The Information Technology Act, 2000, is the principal legislation for regulating online expression. Section 69A gives the government the authority to block digital content which threatens national security and the SC has decided that this provision is constitutionally valid in case of *Shreya Singhal v. Union of India*. However, it's necessary to have safeguards and reasonableness. The “Unlawful Activities (Prevention) Act, 1967” criminalizes use of internet for acts of terrorism and secession, which is a legislative measure against digital extremism. In the same way, the *Bharatiya Nyaya Sanhita, 2023*, has provisions which deal with acts endangering sovereignty, like those carried out by electronic modes. Therefore, the legislation has a dual purpose of ensuring freedom of digital expression and protecting the State.

### IV. JUDICIAL PRONOUNCEMENT

The line between state security and free speech in digital space is still being defined by recent judicial pronouncements. In *Manohar Lal Sharma v. Union of India*<sup>4</sup>, the Court opined on national security claims not becoming a magic spell to dispense with judicial scrutiny and thereby reaffirming constitutional accountability of the State in the digital world, while it was discussing the implanted spyware allegations against the digital surveillance.

Moreover, in *S.G. Vombatkere v. Union of India*<sup>5</sup>, Court distinctly demarcated the colonial, era sedition provision as something that is under review and, hence, suspended its judicial operation, thus demonstrating the willingness to protect speech at least as far as it does not clearly endanger State security. Also, *Kaushal Kishor v. State of Uttar Pradesh*<sup>6</sup> has broadened the argument on the extent of protection of free speech and constitutional remedies available, thereby suggesting that contemporary jurisprudence is more about rights than about power.

*Shreya Singhal v. Union of India*, this case is one whose ratio is being freshly decided by the SC of India. The Court firmly differentiated between advocacy and incitement and held that only such speech which provokes immediate lawless action can be lawfully restricted. Also in *Pravasi Bhalai Sangathan v. Union of India*<sup>7</sup>, SC held that vague and excessively broad restrictions on free speech have the effect of muting voice of legitimate expression, thus a principle that is more and more being cited in cases concerned with content regulation on the internet. *Union of India v. People's Union for Civil Liberties*<sup>8</sup> is a case in which the SC required procedural safeguards for surveillance thereby providing the basis for the present day to take review of digital espionage in the guise of security.

With respect to these decisions, it explains that although national security happens to be an important constitutional concern. However, it is still dependent on restrictions to pass the tests of legality, necessity, and proportionality so that democratic freedoms and constitutional principles are guaranteed in the digital era, and the powers of the executive are kept in check.

<sup>3</sup>(2020) 15 SCC 384

<sup>4</sup>. SCC OnLine SC 985

<sup>5</sup>. (2022) SCC OnLine SC 663.

<sup>6</sup>. (2023) 4 SCC 1.

<sup>7</sup>. 11 SCC 477

<sup>8</sup>. AIR 1997 SC 568



#### **V. INTERNATIONAL PERSPECTIVE**

In current digital age, maintaining a balance between freedom of expression and national security is a challenging issue. Restrictions on national security that are both necessary and legal are granted by “Article 19 of the International Covenant on Civil and Political Rights”. The UN Human Rights Committee stated in General Comment No. 34 that security measures can’t be used to suppress political opponents or public dissent. Governments must ensure any such actions follow strict rules and serve clear, defined purposes. These restrictions must not target individuals for views or beliefs that challenge official policies. Legal oversight should be strong and transparent.

In the United States, decisions, particularly the *Brandenburg v. Ohio* case<sup>9</sup> of the Supreme Court of the United States, the imminent lawless action test was created by the court, which allows one to restrict only where the speech is aimed at producing immediate violence. The European “Court of Human Rights interpreted Article 10 of the European Convention” on Human Rights to permit national security restrictions in the *Handyside v. United Kingdom* decision, provided that a detailed review of the nature of the restriction is conducted to ensure that it is proportional<sup>10</sup>. On the whole, judicial bodies worldwide acknowledge that with digital mediating, the security risks are greatly heightened; however, they emphatically state that democracies ought to be protected by free and spirited discussions so that security concerns won’t serve as an excuse for authoritarian censorship to be the order of the day.

#### **VI. RECENT TRENDS**

Lately, restrictions or barriers on free speech tied to national safety in digital spaces show how tech issues mix with laws and court oversight. Across nations, leaders lean into online rules like making platforms responsible for user posts, demanding removal of certain material, using software that watches internet activity, all aimed at tackling false information, hacking risks, or extremist messaging online. Some countries are perceiving threats more widely, adding cyber-attacks, mixed military civilian dangers, and digital influence campaigns, giving those in power wider reach to observe, cut off, or erase web content. Yet judges in democratic systems push back, insisting rights stay protected through tighter checks on whether silencing speech is truly needed balanced fair in process when state blocks digital voices.

There is a significant move toward enabling judicial or independent review of security-based content takedowns and surveillance orders so as to preclude arbitrary censorship and to grant privacy protection. Besides, human rights institutions stress that vague or excessively broad laws cannot be the grounds for large-scale digital repression. Also, civil society and technology platforms have been instrumental in shaping the agenda by transparency reporting and algorithmic accountability, thus challenging security justifications which are often kept secret. These trends taken together disclose a worldwide balancing act: on the one hand, States seek to ensure national security in a highly connected world, while on the other hand, legal and societal forces endeavour to continue upholding rights and freedoms of their people.

#### **VIII. CONCLUSION AND SUGGESTIONS**

The development of case law regarding restriction of freedom of expression to protect security of State demonstrates a constitutional balancing act that has become more complex, as a result of the emergence of digital media. The core commitment remains to democratic discourse, while Article 19(2) of Indian Constitution authorizes appropriate speech and expression restrictions for state sovereignty and security.

The digital ecosystem fast dissemination, anonymity, algorithmic amplification, and cross, border communication has increased the volume of expression as well as the potential risks to national security. As a result, the government uses justification of security more and more to control the content of the internet, the mechanisms of surveillance, and the platforms of intermediaries. Nevertheless, courts particularly the Supreme court have again emphasized that any

<sup>9</sup>. 395 U.S. 444 (1969).

<sup>10</sup>. (1976) 1 EHRR 737



restriction must follow legality, necessity, and proportionality to prevent fundamental rights from being lost to executive power. The current view holds that national security should not justify silencing fair dissent, honest criticism, or political discussion if such limits are too wide or unclear. Democracy depends not only on identifying harmful speech but also on fostering public conversations grounded in accurate information. Digital expression laws should include clear definitions, specific rules emphasizing essential concerns, and systems for independent review. Laws governing online speech should feature exact definitions, narrowly written rules, and checks through independent bodies. No general bans should apply without defining specific behaviours or harms. Instead, the focus should stay on preventing only clearly harmful conduct. This approach supports open debate while maintaining legal accountability. There should be a regular review by the courts of the judiciary of the decisions on Internet shutdowns, blocking orders for content and surveillance measures that get rolled out and this should be made part of the institutionalized process. There should be strong obligations to disclose information both on the State and on the intermediaries so as to stop the misuse of the security stories. Besides that, putting money into digital literacy and counter-speech strategies can provide less restrictive alternatives to total bans. In the end, the two goals of ensuring national security and upholding freedom of expression should be seen as different from one another at first sight only; in fact, they must be incorporated as a constitutional culture that is firmly committed “to the rule of law, accountability and democratic” pluralism both legally or historically.

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