
FREEDOM OF SPEECH IN INDIA AND THE UNITED STATES: A COMPARATIVE STUDY OF CONSTITUTIONAL PROTECTION, JUDICIAL REVIEW AND CONTEMPORARY CHALLENGES

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ABSTRACT

Freedom of speech is an essential condition of democratic constitutionalism. It enables citizens to participate in public affairs, criticise government, exchange ideas and hold public institutions accountable. India and the United States recognise freedom of expression as a fundamental constitutional right, but they protect and limit that right through substantially different constitutional structures. In the United States, the First Amendment adopts broad and apparently absolute language: “Congress shall make no law... abridging the freedom of speech.” American constitutional jurisprudence has consequently developed a strong presumption against governmental interference, particularly in relation to political speech. In India, Article 19(1)(a) guarantees freedom of speech and expression, but Article 19(2) expressly permits the State to impose reasonable restrictions on specified grounds.

This article undertakes a doctrinal and comparative study of freedom of speech in India and the United States. It examines constitutional provisions, legislative frameworks and leading judicial decisions, including *Brandenburg v. Ohio*¹, *New York Times Co. v. Sullivan*², *United States v. Stevens*³, *Romesh Thappar v. State of Madras*, *S. Rangarajan v. P. Jagjivan Ram*⁴, *Shreya Singhal v. Union of India*⁵ and *Anuradha Bhasin v. Union of India*. The article argues that the American model offers stronger protection against prior restraint and government censorship, while the Indian model provides a more explicit framework for balancing speech with public order, national security and social interests. However, broad statutory language,

¹ *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

² *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)

³ *United States v. Stevens*, 559 U.S. 460 (2010)

⁴ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574

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

criminal sanctions and inconsistent enforcement in India create a significant chilling effect. The article recommends stricter proportionality review, clearer legislative standards, stronger protection for political dissent and greater procedural safeguards against arbitrary restrictions.

KEYWORDS: Freedom of Speech, Article 19(1)(a), First Amendment, Reasonable Restrictions, Prior Restraint, Proportionality, Comparative Constitutional Law.

1. INTRODUCTION

Freedom of speech is essential to any constitutional democracy, enabling citizens to hold power accountable, participate in politics, and foster intellectual and artistic expression. While both the United States and India protect expression through written constitutions and judicial review, their legal structures differ significantly in how they handle restrictions.

The American framework relies on the First Amendment's absolute language—"*Congress shall make no law...*"—which contains no explicit exceptions. As a result, the US Supreme Court has established narrow, highly demanding legal tests to limit speech, creating a strong presumption in favor of protected expression.

In contrast, India's Constitution explicitly balances liberty and social order. Article 19(1)(a) grants freedom of speech to all citizens, while Article 19(2) outlines specific grounds for "reasonable restrictions," such as sovereignty, security of the state, and public order.

In practice, India's balancing act is frequently vulnerable to broad statutory interpretations, lengthy criminal processes, administrative blockages, and state intervention. Rather than copying American doctrine directly, India's key challenge is to enforce strict judicial oversight and preserve dissent as an essential democratic value.

2. Statement of the Problem

The principal problem examined in this article is the tension between constitutional freedom of speech and the State's power to restrict expression in the interests of public order, national security, morality and reputation.

In India, Article 19(2) there are a number of grounds for restrictions. These grounds of restrictions are constitutionally recognized, although there are few of them like "public order," "decency," "morality" and "incitement," which could be construed broadly. Further, criminal law and other special laws pertaining to the restrictions of speech could put serious obligations on individuals despite the possibility of conviction.

In the United States, the lack of a specific list of constitutional restrictions has led to the evolution of categorical standards and scrutiny. The American system gives strong protection

to political criticism, offensive speech, and dissenting opinions. Nevertheless, the American system has its own problems such as hate speech, private censorship through digital platforms, misinformation, campaign financing, and threats of violence.

The problem, therefore, is to determine whether the Indian framework provides an adequate constitutional safeguard against excessive State interference and what comparative lessons may be drawn from American jurisprudence.

3. Research Questions

1. How do the constitutional foundations of freedom of speech in India and the United States differ?
2. How have the Supreme Court of India and the Supreme Court of the United States defined the permissible limits of speech?
3. Does India's doctrine of reasonable restrictions adequately protect political dissent and unpopular expression?
4. What lessons can India draw from the American approach concerning prior restraint, vague restrictions, incitement and judicial review?

4. Research Objectives

This article seeks:

1. To examine the constitutional and statutory framework governing freedom of speech in India and the United States.
2. To analyse leading judicial decisions and identify the principles developed by the two constitutional courts.
3. To compare the treatment of political speech, incitement, defamation, public order, prior restraint and online expression.
4. To identify practical weaknesses in the Indian framework and propose legally sustainable reforms.

5. RESEARCH METHODOLOGY

The article adopts a doctrinal, comparative and qualitative legal research methodology.

The doctrinal component examines constitutional provisions, statutes and judicial decisions. Indian primary sources include Articles 19(1)(a) and 19(2) of the Constitution, the Information Technology Act, 2000, the Bharatiya Nyaya Sanhita, 2023⁶ and judgments of the

⁶ Bharatiya Nyaya Sanhita, 2023

Supreme Court of India. American primary sources include the First Amendment, federal statutes and decisions of the Supreme Court of the United States.

The comparative component studies similarities and differences between the two systems, the historical reasons for those differences and their practical consequences. Secondary sources include constitutional commentaries, law review articles, academic books and reports of constitutional institutions.

6. Research Hypothesis

The hypothesis of this article is that the American model offers better protection to political dissent because it imposes a greater burden on the State and limits prior restraint and protects only those categories of speech which are unprotected under a narrow definition. The Indian model has the potential to protect speech effectively, but the wide constitutional grounds of restrictions and the criminal process involved might create vagueness and chilling effect on free speech. Thus, India needs to keep the balancing approach, but at the same time impose stricter proportionality test.

7. Literature Review

Academic literature on freedom of speech has generally developed around three themes: the philosophical justification of free expression, the constitutional limits on State power and the institutional role of courts.

Alexander Meiklejohn emphasised the relationship between free speech and self-government. According to this approach, political expression deserves special protection because democratic citizens must have access to information and criticism concerning public affairs.

Indian constitutional scholarship, meanwhile, has always been preoccupied with the connection between individual liberty and social order. H.M. Seervai⁷ analyzed the structure of Article 19 and the significance of judicial review of restrictions. M.P. Jain⁸ highlighted the growth of freedom of speech on the basis of rulings of the Supreme Court of India. Granville Austin⁹ viewed fundamental rights as part of the larger process of social change and constitutional democracy.

⁷ H.M. Seervai, *Constitutional Law of India*, vol. 2, 4th ed. (Universal Law Publishing Co., New Delhi, 1999)

⁸ M.P. Jain, *Indian Constitutional Law*, 8th ed. (LexisNexis, Gurgaon, 2018)

⁹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, New Delhi, 1966)

8. Constitutional Framework in the United States

8.1 Text and Scope of the First Amendment

The First Amendment prohibits Congress from abridging freedom of speech. Through the Fourteenth Amendment, this protection applies to State governments as well. The First Amendment protects spoken words, written expression, artistic communication, symbolic conduct, political association and, in certain circumstances, commercial speech.

The constitutional protection is based on several related values:

- Individual autonomy and dignity;
- Democratic self-government;
- Discovery and testing of truth;
- Prevention of government censorship; and
- Protection of minorities and unpopular viewpoints.

The First Amendment generally prohibits viewpoint discrimination. The government cannot allow one side of a debate while suppressing the opposing side merely because it dislikes the message.

8.2 Political Speech and Public Officials

In *New York Times Co. v. Sullivan*, the Supreme Court ruled that public officials suing for defamation about their actions have to prove “actual malice,” meaning that the publication was made either with knowledge of its falsity or with reckless disregard of the truth. The ruling acknowledged the possibility of making mistakes in the discussion of public affairs and the threat of self-censorship due to high liability.

It should be noted that this decision does not mean complete immunity for lies. What it means is that there is a very high bar to reach for public officials, considering the price of democracy higher than the price of possible lies.

8.3 Incitement

The modern American test for incitement was established in *Brandenburg v. Ohio*. The Court held that the State may not punish advocacy of force or law violation unless the advocacy is directed to inciting or producing imminent lawless action and is likely to produce such action.

This test contains three important requirements:

1. Advocacy must be directed toward unlawful action;
2. The unlawful action must be imminent; and
3. The action must be likely to occur.

Abstract teaching or general approval of unlawful conduct is ordinarily protected. The rule reflects the Court's concern that governments may label strong criticism or radical political ideas as dangerous in order to suppress them.

8.4 Prior Restraint

There is great skepticism in American constitutional law towards prior restraint, which is defined as governmental attempt to prevent publication before actual speech occurs. In the case of *Near v. Minnesota*¹⁰, the law was declared unconstitutional, which allowed authorities to stop publication of allegedly scandalous or defamatory materials. Prior restraint was described by the Supreme Court as carrying a heavy presumption against its constitutionality. In the famous case of *New York Times Co. v. United States*¹¹, the government attempted to prevent publication of classified documents related to the Vietnam War by newspapers. The injunction was denied by the Court since the government could not show the exceptional justification needed for prior restraint.

8.5 Unprotected and Less-Protected Speech

The First Amendment does not protect every form of expression equally. Categories traditionally receiving reduced or no protection include:

- True threats;
- Incitement;
- Obscenity;
- Certain forms of defamation;
- Fraud;
- Speech integral to criminal conduct; and
- Child sexual abuse material.

In *United States v. Stevens*, the Court invalidated a federal statute criminalising depictions of animal cruelty because the law was substantially overbroad. The Court rejected the argument that the government could create new categories of unprotected speech simply by balancing social value against harm. This decision illustrates the importance of clear constitutional limits on legislative power.

¹⁰ *Near v. Minnesota*, 283 U.S. 697 (1931)

¹¹ *New York Times Co. v. United States*, 403 U.S. 713 (1971)

8.6 Hate Speech

In India and in much of Europe, the government is allowed to ban speech that is considered hateful or offensive, the U.S. government generally cannot prohibit such speech. Such speech is protected except where it constitutes an actual threat, incitement, or any other form of unprotected speech.

In *R.A.V. v. City of St. Paul*, the Supreme Court struck down a hate symbol ordinance since it discriminated against speech based on its disfavoured viewpoints. In *Matal v. Tam*¹², the Supreme Court ruled that the government could not deny the registration of trademarks on the ground that they were disparaging.

While the American policy allows for the protection of deeply offensive speech, it does not prohibit private entities from having their policies.

9. Constitutional Framework in India

9.1 Article 19(1)(a)

Article 19(1)(a) guarantees every citizen the right to freedom of speech and expression. The Supreme Court has interpreted this broadly to include:

- Freedom of the press;
- Circulation of newspapers;
- Commercial advertising;
- Artistic and cinematic expression;
- The right to receive information;
- The right to remain silent;
- Political dissent;
- The right to criticise government; and
- Certain forms of symbolic and digital expression.

Unlike the United States Constitution, the Indian Constitution expressly refers to “freedom of speech and expression.” The Supreme Court has treated the press as protected even though the Constitution does not separately mention freedom of the press.

In *Bennett Coleman & Co. v. Union of India*¹³, the Court held that restrictions on newsprint could violate press freedom if their practical effect was to limit circulation and prevent newspapers from carrying news and views. The Court focused on the effect of government policy rather than merely its form.

¹² *Matal v. Tam*, 582 U.S. 218 (2017)

¹³ *Bennett Coleman & Co. v. Union of India*, (1972) 2 SCC 788

9.2 Article 19(2)

Article 19(2) permits reasonable restrictions in the interests of:

1. Sovereignty and integrity of India;
2. Security of the State;
3. Friendly relations with foreign States;
4. Public order;
5. Decency or morality;
6. Contempt of court;
7. Defamation; and
8. Incitement to an offence.

A restriction must satisfy several requirements. It must be imposed by law, relate to one of the specified grounds and be reasonable. The restriction must also have a proximate connection with the harm it seeks to prevent. Executive convenience or vague claims of public dissatisfaction cannot independently justify suppression.

The distinction between “security of the State” and “public order” was explained in *Dr. Ram Manohar Lohia v. State of Bihar*¹⁴. The Court held that these are not interchangeable concepts. Security of the State concerns serious threats such as rebellion or war, while public order refers to disturbances affecting the community at large. A remote or speculative connection between speech and disorder is insufficient.

9.3 Early Press-Freedom Decisions

In *Romesh Thappar v. State of Madras*, the Supreme Court invalidated an order banning entry and circulation of a journal because the restriction did not fall within the then-existing constitutional grounds. The case established that political criticism cannot be suppressed merely because it is unpopular or disturbing to the government.

In *Brij Bhushan v. State of Delhi*¹⁵, the Court struck down pre-censorship of a newspaper. These early decisions demonstrate judicial concern with prior restraint and the danger of executive censorship.

The constitutional response to these judgments included the First Amendment to the Indian Constitution, which expanded the grounds on which speech could be restricted. This history reveals an important difference from the United States: constitutional amendment in India was used to enlarge the State’s power to regulate speech.

¹⁴ *Dr. Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740

¹⁵ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129

9.4 Public Order and Cinema

In *S. Rangarajan v. P. Jagjivan Ram*, the Supreme Court considered opposition to the screening of a film. The Court held that freedom of expression cannot be suppressed because hostile groups threaten violence. The State must protect the speaker and maintain order rather than surrender to a “heckler’s veto.”

The Court stated that the anticipated danger must not be remote, conjectural or far-fetched. There must be a proximate and direct nexus between the expression and the threatened harm. This is an important protection against censorship based on the possibility that others may react violently.

9.5 Press Freedom and Prior Restraint

In *Sakal Papers v. Union of India*¹⁶, the Court invalidated governmental regulation of newspaper page limits and pricing because it indirectly restricted circulation and the quantity of speech. The decision recognised that economic controls can violate freedom of expression even when they do not expressly prohibit publication.

In *Express Newspapers v. Union of India*¹⁷, the Court held that regulatory measures affecting newspapers must be examined for their direct and intended effect on press freedom. Government cannot evade constitutional scrutiny by presenting a speech restriction as an ordinary economic or administrative measure.

9.6 Right to Information¹⁸

Freedom of speech includes the right to receive information necessary for meaningful democratic participation. In *State of Uttar Pradesh v. Raj Narain*¹⁹, the Supreme Court observed that citizens have a right to know about public acts of public officials. The right to information is not unlimited, but secrecy must be justified by a recognised public interest.

This principle later influenced the enactment of the Right to Information Act, 2005. Access to information strengthens expression because citizens cannot effectively participate in public debate without access to relevant facts.

9.7 Section 66A and Online Speech

In *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the Information Technology Act, 2000²⁰. The provision criminalised sending information through

¹⁶ *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305

¹⁷ *Express Newspapers (P) Ltd. v. Union of India*, AIR 1958 SC 578

¹⁸ Right to Information Act, 2005

¹⁹ *State of Uttar Pradesh v. Raj Narain*, (1975) 4 SCC 428

²⁰ Information Technology Act, 2000, s. 66A, struck down in *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

a computer or communication device that was “grossly offensive,” “menacing” or caused “annoyance,” “inconvenience” or “insult.”

The Court found the provision unconstitutional for vagueness and overbreadth. Ordinary citizens could not reasonably determine what conduct was criminal. The provision also permitted prosecution of protected discussion merely because it caused annoyance or inconvenience.

The Court distinguished three concepts:

- Discussion, which lies at the heart of freedom of speech;
- Advocacy, which remains protected even when unpopular; and
- Incitement, which may be restricted when it reaches the constitutionally required threshold.

Only when discussion or advocacy reaches incitement can State restriction ordinarily be justified under Article 19(2). This judgment is one of the strongest Indian decisions against vague restrictions on digital expression.

9.8 Internet Access and Speech

Anuradha Bhasin v. Union of India has confirmed that freedom of speech and expression on the internet is constitutionally guaranteed. While the Supreme Court did not recognise access to the internet as an independent fundamental right, it ruled that any restrictions placed on it must satisfy constitutional requirements.

It mandated that any order suspending internet service had to be public, reviewable and proportional. It has ruled that indefinite suspensions of internet services were unconstitutional. The decision also linked technological access to journalism, trade, education and politics.

10. Comparative Analysis

a) Constitutional Text: The US First Amendment employs absolute text requiring the state to prove a recognized exception under strict scrutiny. Article 19(1)(a) of the Indian Constitution grants speech while Article 19(2) explicitly lists constitutional grounds for restriction, prioritizing a direct balance between individual liberty and social interests.

b) Standard of Review: While the US applies strict scrutiny for content-based limits and intermediate scrutiny for content-neutral regulations, India traditionally used the "reasonableness test." Recent jurisprudence (e.g., *Puttaswamy*) introduced the proportionality test (legality, legitimate objective, suitability, necessity, and balancing), though judicial

review in India remains inconsistent, often deferring to the executive on national security and public order.

c) Political Speech & Defamation: The US offers near-absolute protection for political speech—even if false or offensive—and safeguards press criticism under the *New York Times v. Sullivan* "actual malice" standard. India protects political criticism, but retains criminal defamation (upheld in *Subramanian Swamy* under Article 21's right to reputation), which can create a chilling effect on journalists and political dissent.

d) Incitement & Public Order: The US applies the strict *Brandenburg* standard (requiring intentional advocacy of imminent, likely lawless action). Indian constitutional law similarly distinguishes advocacy from incitement (e.g., *S. Rangarajan*, *Shreya Singhal*) requiring proximity to disorder, but practical enforcement suffers from unpredictable criminal complaints under broadly framed statutes.

e) Prior Restraint: Both jurisdictions maintain a strong presumption against prior restraint. While Indian courts have struck down pre-censorship and administrative bans (e.g., *Brij Bhushan*, *Bennett Coleman*, *Anuradha Bhasin*), administrative measures like internet shutdowns and publication prohibitions often act as effective prior restraints in practice.

f) Hate Speech & Offensive Expression: The US protects offensive speech and hate speech unless it constitutes a true threat or direct incitement. India permits broader regulation to protect public order and social harmony in a diverse society, though the text warns against letting "hurt sentiments" substitute for valid Article 19(2) grounds.

g) Digital Speech & Private Platforms: Both the First Amendment and Article 19(1)(a) govern state action rather than private actors. As digital platforms become primary public forums, both jurisdictions face the challenge of regulating private platform policies without triggering state censorship or enabling digital threats to democracy.

11. FINDINGS

The study produces the following findings:

1. Both India and the United States consider freedom of speech an important component of democracy, but the latter country starts with a more robust presumption against State involvement.
2. India's Article 19(2) system allows for more grounds on which limitations may be placed in comparison to the American First Amendment doctrine.
3. The American legal system ensures especially robust protections for political commentaries and offensive speech from prior restraints.

4. India's major challenge is not so much in the language of its constitution but rather in broad legislation, criminal prosecution, administration actions and delayed justice.

5. Freedom of speech has undergone drastic changes owing to digital communication. It thus becomes a constitutional issue of speech to analyze internet shutdowns and platform controls.

12. Recommendations

12.1 Apply Strict Proportionality to Political Speech

Indian courts should apply the most rigorous proportionality review when a restriction affects political criticism, journalism, protest or election-related expression. The State should be required to establish a real and proximate connection between speech and the alleged harm.

12.2 Narrow Vague Criminal Provisions

Speech-related offences should contain clear definitions, requirements of intention and a demonstrable likelihood of harm. Terms that merely describe annoyance, insult or offence should not automatically justify criminal prosecution.

12.3 Strengthen Protection Against Prior Restraint

Pre-publication bans, internet shutdowns and preventive orders should be imposed only in exceptional circumstances. Every such order should be written, reasoned, time-bound and subject to prompt independent review.

12.4 Improve Procedural Safeguards

Before registration of a criminal case concerning speech, an independent senior officer should assess whether the alleged expression clearly falls within Article 19(2). Courts should dispose of manifestly abusive prosecutions at an early stage.

12.5 Ensure Transparency in Internet Restrictions

All internet suspension orders should be promptly published, geographically limited, supported by evidence and reviewed at short intervals. Indefinite or blanket shutdowns should be treated as constitutionally suspect.

14. CONCLUSION

The United States and India represent two distinct constitutional approaches to freedom of speech. The American model relies on an absolute textual guarantee under the First Amendment, using strictly tailored, judicially created exceptions to provide high protection against prior restraint, viewpoint discrimination, and government criticism. However, this framework faces growing vulnerabilities regarding private platform censorship, online harassment, and digital threats. Conversely, the Indian framework employs a constitutional

balancing model under Article 19(1)(a) and Article 19(2), which explicitly permits "reasonable restrictions" to reconcile individual liberty with public order, national security, and reputation. As demonstrated through landmark Supreme Court rulings like *Romesh Thappar*, *S. Rangarajan*, *Shreya Singhal*, and *Anuradha Bhasin*, the Indian model is not inherently weak and can robustly protect expression when restrictions remain narrow, necessary, and proportional.

The primary issue facing the Indian system is implementation rather than constitutional design. Vaguely worded statutes, excessive executive discretion, preventive measures, and prolonged criminal proceedings often transform permissible constitutional limits into practical censorship, forcing citizens to endure years of litigation to defend lawful speech. To bridge this gap between rights and practice, India does not need to abandon its balancing structure or copy American law directly. Instead, it must strengthen constitutional safeguards through strict application of the proportionality test, clear statutory drafting, resistance to the heckler's veto, and stronger protections for political dissent. Ultimately, preserving freedom of speech requires more than formal constitutional recognition; it demands an institutional willingness to tolerate disagreement and offensive ideas, permitting restrictions only when faced with direct and demonstrable harm.

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