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RECALIBRATING FREE SPEECH IN INDIA'S DIGITAL AGE: BALANCING EXPRESSION, NATIONAL INTEGRITY AND THE GLOBAL DEMOCRATIC CHALLENGES

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I. ABSTRACT

In the digital age, India is witnessing an intensifying clash between constitutional free speech protections and state-imposed restrictions rooted in national security concerns and digital nationalism. On the one hand, Article 19(1)(a) of the Indian Constitution guarantees freedom of speech, while on the other hand, emerging norms of "digital nationalism" have prompted increasingly broad censorship laws, as reflected in the Bhartiya Nyaya Sanhita (BNS), which, while omitting IPC Section 124A (sedition) but introduces Section 152 - a broader framework penalizing threats to national sovereignty and integrity.

India's evolving digital speech regime through the lens of national case law and law is in contrast with liberal-democratic models abroad. This paper examines India's current framework - Article 19's reasonable restrictions, the IT Act and 2021 IT Rules, especially intermediary due diligence and traceability requirements - and the key Supreme Court decisions from Ramesh Thappar to Shreya Singhal and Anuradha Bhasin. Along with this backdrop, the paper comprises international norms like UDHR Art. 19, ICCPR Art. 19, ECHR + NetzDG, which handle speech limits.

Exploring digital nationalism in India, for example, coordinated online trolling by political operatives and frequent internet shutdowns and their chilling effects on journalism and dissent. Finally, recommendations and reforms adopting formal proportionality review, ensuring transparency of takedown orders and creating an independent digital rights oversight body. By drawing on comparative jurisprudence, the paper argues India can safeguard democratic values and lead globally in balancing speech freedom with legitimate state interests.

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II. KEYWORDS

Free Speech, Digital Human Rights, Chilling Effect, Reasonable Restrictions, Democratic Accountability, Internet Shutdowns, Intermediary Liability, Bhartiya Nyaya Sanhita.

III. INTRODUCTION

In the digital era, India's historic commitment to free speech is under strain. The Modi government has aggressively expanded online controls - from broad Internet shutdowns to new legal tools - in the name of national security and "digital nationalism". Critics decry the repurposing of archaic laws like sedition, now reintroduced in BNS with other criteria and the introduction of sweeping regulations (e.g. the IT (Intermediary) rules 2021) that threaten open discourse.

For example, media outlets report that India's recent penal code overhaul (Bhartiya Nyaya Sanhita, 2023) omits IPC § 124A[2] but introduces Sections 150 and 152[3] Which criminalises acts which endanger sovereignty, unity and integrity – provisions that many critics view as a reformulation of the sedition law rather than its repeal.[4] Likewise, political campaigns have seen organised online trolling. For example, BJP volunteers allege that Modi's 2014 campaign directly coordinated sustained attacks on opponents and journalists online, a "never-ending drip-feed of hate and bigotry". Meanwhile, independent watchdogs note India's ruling party deploying state resources like social media servers, WhatsApp groups, etc., to spread disinformation and nationalist propaganda.[5]

Globally, democracies wrestle with similar conflicts. In the US, the First Amendment offers near-absolute protection (except narrow doctrines like incitement); US courts

[2] Indian Penal Code, 1860, § 124A (India).
[3] Bharatiya Nyāya Saṃhitā §§ 150, 152 (India 2023).
[4] Chandni Chandel, *Old Sedition Law vs New Bharatiya Nyāya Saṃhitā (Bill), 2023 – What's the Difference?* The Statesman (New Delhi), Aug. 12, 2023, https://www.thestatesman.com/india/old-sedition-law-vs-new-bharatiya-nyaya-sanhita-bill-2023-whats-the-difference-1503211007.html accessed on 25 June 2025.
[5] The Hindu Bureau. Global study blames BJP-backed trolls for threats on journalists. The Hindu. (2023, February 15) https://www.thehindu.com/news/national/icfj-unesco-study-blames-bjp-backed-troll-cells-for-online-threats-against-journalists/article66513318.ece accessed on 25 June 2025.

have held that laws banning potentially offensive online content violate core speech rights.[6] Recent jurisprudence has further complicated this landscape. In Murthy v. Missouri (2024)[7], the U.S. Supreme Court addressed allegations that federal officials pressured social media companies to remove controversial content, raising concerns about indirect government censorship via private platforms. Meanwhile, in Gonzalez v. Google (2023),[8] the Court considered whether algorithmic recommendations fall outside Section 230 of the Communication Decency Act of 1996[9] immunity, though it ultimately avoided a definitive ruling. These developments reflect a growing tension in U.S. law between maintaining strong First Amendment protections and addressing the accountability of digital platforms in content amplification and moderation.

Europe's Article 10 of ECHR allows more balancing via a proportionality test that restrictions must be prescribed by law, pursue a legitimate aim (public safety, etc) and be necessary in a democratic society, i.e. narrowly tailored to a pressing need.[10] Other democracies, for example, Canada's Charter s.1, similarly allow only justified limits.[11] India thus faces a critical choice: how to reconcile robust online expression with legitimate state interests in unity and security. This paper argues India must recalibrate its approach by learning from comparative standards, adopting a stringent necessity and proportionality lens, and ensuring any restrictions on online speech remain the exception, not the norm.

The central questions guiding this analysis are: (i) How does current Indian law regulate online speech and platforms? (ii) What do international standards and practices in the US, EU, etc., require of a democracy balancing free expression with security? (iii) Can India shift towards a more rights-respecting model, for example, by formally adopting proportionality review, while preserving its integrity?

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[6] Brandenburg v. Ohio, GLOBAL FREEDOM OF EXPRESSION (June 22, 2025, 4:00 PM), https://globalfreedomofexpression.columbia.edu/cases/brandenburg-v-ohio/. accessed on 25 June 2025.
[7] Murthy v. Missouri, 603 U.S. ___ (2024).
[8] Gonzalez v. Google LLC, 598 U.S. 617 (2023).
[9] 47 U.S.C. § 230 (2018).
[10] Articles 8-11, COUNCIL OF EUROPE, https://www.coe.int/en/web/echr-toolkit/les-articles-8-a-11 accessed on 25 June 2025.
[11] Canadian Charter of Rights and Freedoms, s. 1 (Can.).

By exploring India's constitutional doctrines and laws against a global backdrop, we can identify both risks and potential reforms. Our methodology combines doctrinal study of statutes and case law with comparative analysis, drawing on legal scholarship and credible reports. We strive to contribute original insights on "digital nationalism" - a concept capturing state-orchestrated nationalist discourse online and to propose concrete safeguards for Indian speech freedoms.

IV. CONSTITUTIONAL FRAMEWORK AND LEGAL EVOLUTION IN INDIA

Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, which is subject to reasonable restrictions enumerated in Article 19(2). These restrictions include national security, public order, defamation, etc., but have traditionally been read narrowly by the courts. Early cases underscore this principle, for example, in Romesh Thappar v. State of Madras (1950)[12], the Supreme Court struck down a state law which banned a journal, holding that only narrow restrictions on expression are constitutionally permissible.

The court explained that provisions granting wide powers to restrict freedom of expression are void, reaffirming that free speech under Article 19 is robust and only limited by a few specific grounds.[13] Similarly, in Kedar Nath Singh v. State of Bihar (1962)[14] Supreme Court upheld the sedition law only to the extent that it prohibits the speech intended to create disorder or disturb public peace by resort to violence. By contrast, speech merely inciting disaffection without violence was declared outside the law's scope.[15] Thus, foundational jurisprudence demanded a close nexus to violence or provocation for restricting speech on public order grounds.

[12] Romesh Thappar v. State of Madras, AIR 1950 SC 124.
[13] Romesh Thappar v. State of Madras, GLOBAL FREEDOM OF EXPRESSION (May 26, 1950), https://globalfreedomofexpression.columbia.edu/cases/thappar-v-madras/ accessed on 25 June 2025.
[14] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.
[15] Kedar Nath Singh v. State of Bihar, GLOBAL FREEDOM OF EXPRESSION (May 26, 1950), https://globalfreedomofexpression.columbia.edu/cases/nath-singh-v-bihar/ accessed on 25 June 2025.

Indian law has evolved many layers over time. The Information Technology Act, 2000 empowers the government to regulate online content and under Rule 4(2) of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, significantly Social Media Intermediaries (i.e., platforms with over 5 million registered users in India) are required, upon a judicial order or government direction under Section 69 of the IT Act, to identify the first originator of a message within the territory of India, where the information is necessary for prevention, detection, investigation or prosecution of offences related to sovereignty, public order or sexual offences.[16]

But PRS Legislative Research noted that this traceability provision could undermine encryption and privacy. The PRS analysis warns that the new Rules impose an overbroad regime that may exceed delegated authority, emphasising that the grounds for restricting online content are overbroad and may affect freedom of speech.[17] For instance, even purely political content, for example, communist speech, could arguably be deemed to excite disaffection under such sweeping laws. The Rules also mandate rapid content removal timelines, for example, 24-hour takedowns for certain flagged content, and broaden censorship categories. Critics argue these requirements effectively deputise private platforms as government censors, which is a major concern mirrored in other contexts.

Leading Supreme Court decisions have refined these norms, as in Shreya Singhal v. Union of India (2015)[18], the Court invalidated IT Act §66A - a law which criminalises ambiguous offences like sending offensive messages for causing annoyance - as void for vagueness and overbreadth. The Court warned that §66A's terms like "annoyance" were undefined, potentially curtailing a very large amount of protected and innocent speech. In doing so, it recognised the chilling effect that overly broad cybercrime laws could have on free expression.[19] Recently, in Anuradha Bhasin v. Union of India

[16] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, PRS India, https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021 accessed on 25 June 2025.
[17] *Id*.
[18] Shreya Singhal v. Union of India, AIR 2015 SC 1523 (India).
[19] Shreya Singhal v. Union of India, GLOBAL FREEDOM OF EXPRESSION (Mar. 24, 2015), https://globalfreedomofexpression.columbia.edu/cases/shreya-singhal-v-union-of-india/ accessed on 25 June 2025.

(2020),[20] the court struck down the prolonged internet blackout in Kashmir, reaffirming that unrestricted communication is integral to free speech and that shutdown orders must be time-bound, necessary and published.[21] Thus, while the Constitution provides strong free-speech guarantees, the interplay of colonial-era penal provisions and modern regulatory rules has created an expanding zone of legal uncertainty. Our analysis in subsequent sections will show how these Indian rules stack up against international norms.

V. INTERNATIONAL LEGAL STANDARDS ON FREE SPEECH

Globally, freedom of expression is a fundamental human right, but universally it is recognised as subject to carefully circumscribed limits. The Universal Declaration of Human Rights (1948) proclaims in Article 19 that everyone has the right to freedom of opinion and expression.[22] Similarly, the International Covenant on Civil and Political Rights (ICCPR) protects speech in Article 19, though it explicitly allows restrictions provided they are provided by law and necessary to protect national security, public order, public health or morals.

The ICCPR's Siracusa Principles (1984) elaborate that such limitations must meet strict criteria, like any interference must be provided by law, pursue a legitimate aim, for example, the protection of public order, and be necessary and proportionate to that aim.[23] In practical terms, this means a democracy may restrict speech only when a pressing social need exists and no less restrictive alternative is available. As Council of Europe guidance explains, under Article 10 of the European Convention on Human Rights (ECHR) that any restriction must be prescribed by law, pursue a specified legitimate goal, and be necessary in a democratic society - a standard involving close balancing of individual rights against public interest. For example, ECHR

[20] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.
[21] India Leads the World Internet Shutdown Count for Sixth Year, ACCESS NOW (May 15, 2024), https://www.accessnow.org/press-release/india-keepiton-internet-shutdowns-2023-en/ accessed on 25 June 2025.
[22] Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 19, U.N. Doc. A/810 (Dec. 10, 1948).
[23] U.N. Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4 (Sept. 28, 1984).

jurisprudence routinely invalidates speech laws that are vague or overbroad relative to any imminent threat.[24]

United Nations special mandate-holders reinforce these norms. UN Special Rapporteurs on Freedom of Expression (e.g. David Kaye, Irene Khan) consistently stress that limitations must be narrowly construed and subject to judicial review. They have warned, for instance, against using laws like sedition or anti-terror provisions to stifle dissent, noting that such vague and overly broad laws have a "chilling effect" on fundamental expression.[25] Under this international framework, any law, like a hypothetical Indian sedition act or broad Internet regulation, must be carefully calibrated to real harms (e.g. incitement of violence) and applied consistently. Otherwise, it risks a violation of the ICCPR and ECHR standards.

VI. COMPARATIVE ANALYSIS: LIBERAL DEMOCRACIES

A. United States (First Amendment Model)

The U.S. First Amendment offers among the world's strongest protections for speech. Notably, Brandenburg v. Ohio (1969)[26] held that speech advocating illegal action is protected unless it is "directed to incite or produce imminent lawless action and is likely to incite or produce such action."[27] This imminent lawless action test is very stringent that mere abstract advocacy, or highly offensive content, is generally not permissible. Similarly, Packingham v. North Carolina (2017)[28] struck down a ban on registered sex offenders using social media. In this, Chief Justice Kennedy writes that social media represent the modern public square and access to online forums is protected under First Amendment right. The Court emphasised that cyberspace is a

[24]Council of Eur., Guide on Article 10 of the European Convention on Human Rights – Freedom of Expression (31 Aug. 2024), https://ks.echr.coe.int/documents/d/echr-ks/guide_art_10_eng-pdf.
[25] David Kaye, Rep. of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/72/350 (Aug. 18, 2017), https://digitallibrary.un.org/record/1304394 accessed on 25 June 2025.
[26] Brandenburg v. Ohio, 395 U.S. 444 (1969).
[27] Michael Safi, India's ruling party ordered online abuse of opponents, claims book, The Guardian (London), Dec. 27, 2016, https://www.theguardian.com/world/2016/dec/27/india-bjp-party-ordering-online-abuse-opponents-actors-modi-claims-book accessed on 25 June 2025.
[28] Packingham v. North Carolina, 582 U.S. 98 (2017).

revolution of historic proportions, central to free expression.[29] These cases illustrate the American trend that any restriction must target only narrow categories (true threats, defamation, etc.) and even then, must meet exact standards.

Another hallmark of the US model is the platform immunity regime. Section 230 of the Communications Decency Act (1996) provides that "No provider… of an interactive computer service shall be treated as the publisher or speaker" of third-party content. In practice, Section 230 grants broad protection from liability for user-posted content to online intermediaries, encouraging open platforms. Civil liberties advocate like the American Civil Liberties Union (ACLU) explain that Section 230 promotes free speech by removing strong incentives for platforms to limit what we can say online.[30] Without it, platforms would face crippling risk and likely over-censor. The result is a highly decentralised, bottom-up approach to online speech. Private companies use moderation tools, but the state generally does not force pre-emptive takedowns except in the narrowest cases like child exploitation.

Recent U.S. jurisprudence has also begun grappling with the complex role of digital platforms in moderating content and their relationship to government regulation. In Gonzalez v. Google LLC (2023)[31] the Supreme Court considered whether Section 230 immunity extends to algorithmic recommendations by platforms such as YouTube. While the Court avoided a broad ruling, the case marked a turning point in judicial willingness to revisit the scope of intermediary liability. Similarly, in Murthy v. Missouri (2024)[32], the Court examined allegations that federal officials coerced platforms into suppressing controversial speech, thereby raising constitutional concerns about indirect state censorship. Although the Court vacated the injunction, it acknowledged the need to delineate the boundary between permissible government communication and unconstitutional pressure on private actors. These cases signal a

[29] Taylor Moore, Packingham v. North Carolina: A Win for Free Expression Online, CTR. FOR DEMOCRACY & TECH. (June 20, 2017), https://cdt.org/insights/packingham-v-north-carolina-a-win-for-free-expression-online/ accessed on 25 June 2025.
[30] Jennifer Stisa Granick, Is This the End of the Internet as We Know it? AM. CIVIL LIBERTIES UNION (Feb. 22, 2023, 12:00 PM), https://www.aclu.org/news/free-speech/section-230-is-this-the-end-of-the-internet-as-we-know-it accessed on 25 June 2025.
[31] Gonzalez v. Google LLC, 598 U.S. ___ (2023).
[32] Murthy v. Missouri, 602 U.S. ___ (2024).

growing constitutional conversation in the U.S. about the balance between platform autonomy, government influence, and First Amendment rights in the digital age.

B. European Union (Proportionality and Regulations)

The EU's approach resides between the US and India's. Article 10 of the European Convention on Human Rights enshrines free expression but explicitly allows restrictions prescribed by law that are necessary in a democratic society for interests like public safety or preventing disorder.[33] This has led to a rigorous proportionality inquiry in European courts, meaning any law limiting speech must be justified by a pressing need and narrowly tailored. For example, hate speech laws in Germany go beyond US standards but must still meet necessity tests under both the German basic law and the ECHR. Germany's Netzwerkdurchsetzungsgesetz (NetzDG) (Network Enforcement Act of Germany) requires social media firms to remove illegal content such as hate speech, defamation, etc, within 24 hours or face heavy fines.

While NetzDG aims to curb online abuse, rights groups warn it risks excessive censorship. For example, Human Rights Watch called the NetzDG vague, overbroad and a terrible blueprint that effectively delegates censorship to private companies. In response to such concerns, the German government amended the NetzDG in 2021 to strengthen user rights, including mandating transparency in takedown decisions and allowing users to appeal directly to platforms. More significantly, the broader regulatory landscape has shifted with the implementation of the European Union's Digital Services Act (DSA), which came into effect in 2024.

The DSA imposes harmonised rules across all EU member states for very large online platforms (VLOPs), requiring enhanced risk assessments, content moderation transparency, and independent audits. As a directly applicable EU regulation, the DSA is now superseding national laws like NetzDG in many areas, marking a shift from state-specific to union-wide governance of digital platforms while retaining the proportionality framework under the ECHR and EU Charter.

[33] Council of Eur., supra note 24.

C. Other Democracies

Several other liberal democracies offer instructive examples. Canada's Charter includes a reasonable limits clause (s.1) similar to Article 19(2). In Canadian jurisprudence, a rigorous Oakes test is applied, which limits any Charter right must serve a pressing objective and requires a proportionate means rational connection, minimal impairment and overall balance. Recent Canadian case law has applied the Oakes test in the context of digital expression. In Toronto Police Association v. Toronto Star Newspapers Ltd.[34], the Ontario Court of Appeal upheld freedom of expression protections for digital journalism, applying the Oakes framework to balance press freedom with concerns over public safety and fair trial rights.

Similarly, in R. v. Sharma, 2022[35], the Supreme Court of Canada reaffirmed that any restriction on expressive conduct online must meet the strict proportionality requirements under Section 1 of the Charter. These rulings reflect a consistent judicial approach in Canada that digital speech, including on social media, enjoys constitutional protection subject only to demonstrably justified limits.[36] This structured analysis could be a model for India's courts. Brazil enacted the Marco Civil da Internet (2014), known as the Internet Constitution. This law enshrines net neutrality, data privacy and freedom of speech online as foundational principles. The EFF notes the Marco Civil was a "civil rights-based framework" aiming to reinforce fundamental freedoms in the digital age.[37]

It broadly prohibited content takedowns except by court order and required user consent for data uses, though it also controversially imposed data retention requirements. In practice, the implementation of the Marco Civil has been uneven. While the law sets strong normative principles on net neutrality and privacy, enforcement has faced challenges due to institutional fragmentation and political

[34] Toronto Police Association v. Toronto Star Newspapers Ltd., 2022 ONCA 297.
[35] R. v. Sharma, 2022 SCC 39.
[36] R. v. Oakes, [1986] 1 S.C.R. 103 (Can.), https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/117/index.do accessed on 25 June 2025.
[37] Katitza Rodriguez & Larissa Pinho, Marco Civil da Internet: The Devil in the Detail, Electronic Frontier Foundation (Feb. 25, 2015), https://www.eff.org/deeplinks/2015/02/marco-civil-devil-detail accessed on 25 June 2025.

volatility. Recent legislative developments include the proposed "Fake News Bill" (PL 2630/2020), which seeks to impose obligations on platforms to identify and limit the spread of disinformation. Critics argue that the bill risks undermining the Marco Civil's speech protections by introducing vague and overbroad content moderation mandates. Civil society groups like Article 19 and InternetLab have warned that without judicial safeguards, such measures could erode user rights enshrined in the Marco Civil and pave the way for platform censorship. Overall, these examples show a pattern that how democracies protect expression even in tech contexts, but they differ on how much they delegate to platforms versus government and how strictly they enforce proportionality.

VII. DIGITAL NATIONALISM AND ITS IMPACTS

The term "digital nationalism" refers to the use of digital media by state or nationalist actors to shape political discourse and suppress dissent. In India, this trend has grown sharply: partisan and government-backed online campaigns spread majoritarian narratives, and critics say official channels often weaponise social media. The Guardian reported that BJP campaign operatives systematically coordinated online abuse of opponents, flooding social media with anti-opponent memes and harassment.[38] Such campaigns often involve ghost accounts and viral WhatsApp chains pushing Islamist-baiting content. Government bodies themselves have joined in. The IT Ministry's Press Information Bureau (PIB) and affiliated fact-checkers sometimes label critical news as fake, prompting social networks to censor it at the government's behest. [39]

Digital nationalism also manifests in Internet shutdowns and platform restrictions. India has led the world in total shutdowns: According to Access Now's 2024 report, India recorded 84 internet shutdowns, a decrease from 116 in 2023. For the first time in six years, India did not top the global list; in this, Myanmar surpassed it with 85 shutdowns. However, India still ranked first among democracies, highlighting its

[38] Michael Safi, supra note 27.
[39] India's Top Editors' Body Slams Proposed "Fake News" Rules, AL JAZEERA (Jan. 19, 2023), https://www.aljazeera.com/news/2023/1/19/vile-censorship-india-proposed-fake-news-law-for-social-media-egi accessed on 25 June 2025.

continued reliance on digital blackouts as a tool of state control.[40] These blackouts are ostensibly for security reasons and frequently coincide with protests or regional unrest, for example, during Kashmir, Punjab or Manipur unrest. They sever citizens from information and discourse. Freedom House noted that officials in J&K routinely impose months-long outages without adequate oversight.[41] The Supreme Court's Anuradha Bhasin decision (2020) declared indefinite internet bans impermissible and mandated a timely review and publication of the order.

Yet reporters note that four years after Bhasin. Authorities still often flout that rule, failing to publish orders and correcting only under judicial pressure.[42] The legal framework for shutdowns has also evolved with the enactment of the Telecommunications Act, 2023, which consolidates earlier laws like the Indian Telegraph Act, 1885. Notably, the Act preserves the government's broad powers to suspend telecom services, including the internet, on grounds of public emergency or public safety. While the law introduces procedural updates, critics argue it lacks meaningful safeguards such as independent judicial review or mandatory publication of shutdown orders.

Social media censorship has been acute in recent movements. During the 2020-21 farmers' protests, the government compelled Twitter to censor hundreds of accounts and trending hashtags deemed a grave threat to public order. Al Jazeera reported that prominent farm protest hashtags and journalists were labelled as violative, triggering takedowns. Press groups decried this as blatant censorship and Orwellian use of IT rules.[43] Similarly, in the Delhi riots of 2020, local authorities quickly arrested activists

[40] Access Now, Emboldened Offenders, Endangered Communities: Internet Shutdowns in 2024 7–9, 19 (Feb. 24, 2025), https://www.accessnow.org/internet-shutdowns-2024/ accessed on 25 June 2025.
[41] Freedom House, India: Freedom on the Net 2023 Country Report (2023), https://freedomhouse.org/country/india/freedom-net/2023 accessed on 25 June 2025.
[42] India Leads the World Internet Shutdown Count for Sixth Year, ACCESS NOW (May 15, 2024), https://www.accessnow.org/press-release/india-keepiton-internet-shutdowns-2023-en/ accessed on 25 June 2025.
[43] Twitter Blocks Accounts Over India Farmers' Protest on Gov't Order, AL JAZEERA (Feb. 2, 2021), https://www.aljazeera.com/news/2021/2/2/twitter-blocks-accounts-over-india-farmers-protest-on-govt-order accessed on 25 June 2025.

and journalists (including Fahad Shah[44], editor of The Kashmir Walla, who was arrested under the Unlawful Activities (Prevention) Act (UAPA) in FIR No. 19/2022, Police Station Pulwama, and later detained under the Public Safety Act (PSA); and Sajid Gul[45], who was arrested in FIR No. 01/2022, Hajin Police Station, Bandipora, also under charges linked to UAPA and incitement) under stringent sedition and anti-terror laws for reporting on violence - often charging them with glorifying terrorism or posting fake news. In Kashmir, official watchdogs arrested editors (like The Kashmir Walla's Fahad Shah) on sedition and terror charges for critical articles; UN experts later termed one veteran journalist's treatment judicial harassment.

These case studies illustrate a chilling climate: legitimate journalism and dissent are increasingly labelled "anti-national." Government IT cells - official or semi-official troll farms - amplify nationalist propaganda while silencing opposition. Subtle algorithmic biases can compound this: platforms' content curation often favours sensational pro-government posts (used to stoke nationalist sentiment) and downplays critical or minority-issue content, especially when amplified by state-affiliated networks. The net effect is a narrowing of the digital public sphere. As Human Rights Watch succinctly warns, India's expansive speech laws and enforcement continue to have a far-reaching chilling effect on those holding minority views or expressing criticism of the government.[46]

VIII. THE CHILLING EFFECT: DATA, CASE STUDIES & INTERVIEWS

Empirical evidence supports the existence of a chilling trend. Freedom House consistently scores India's internet freedom as Partly Free. Its 2024 report gave India a middling 50/100 score, showcasing that online rights worsened over the review

[44] Human rights defender Fahad Shah released on bail. (2024, April 4). Front Line Defenders. https://www.frontlinedefenders.org/en/case/human-rights-defender-fahad-shah-released-bail accessed on 25 June 2025.

[45] Desk, I. K. W. (2021, February 21). KPC expresses concern about FIR against journalist Sajad Gul. Inside Kashmir. https://www.insidekashmir.net/kpc-expresses-concern-about-fir-against-journalist-sajad-gul/ accessed on 25 June 2025.

[46] HUMAN RIGHTS WATCH, Stifling Dissent: The Criminalization of Peaceful Expression in India (May 25, 2016), https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india accessed on 25 June 2025.

period. Crucially, Freedom House found that Indian internet users risk arrest for posts critical of the government, and that authorities have used new laws to block content at an increasing pace. The report cites numerous takedowns, even a BBC documentary on Modi was ordered to remove under IT rules and documents that Punjab and Manipur both saw multi-day statewide shutdowns in 2023. These developments led Freedom House analysts to conclude that the state's digital censorship apparatus is growing, even as it sparingly concedes that some judicial checks exist.[47]

Ranking Digital Rights and Access Now data also capture the effect. Access Now's May 2024 Shutdowns Report found that India's record 116 shutdowns not only clamped down on speech in conflict zones but also targeted entire states over farm or local protests.[48] Each shutdown instantly cuts off a million voices. Correspondents report that even after courts demand transparency on shutdown orders as per Anuradha Bhasin, notices often remain unpublished, deepening uncertainty.

In the press freedom arena, Reporters Without Borders placed India at 151st out of 180countries[49] in its 2025 World Press Freedom Index[50], continuing to categorise India as being in a 'very serious' press freedom situation. Despite a slight improvement from its 159th rank in 2024, RSF attributes India's persistently low standing to rising violence against journalists, the concentration of media ownership in pro-government hands, and the frequent misuse of laws such as sedition, UAPA, and cybercrime statutes to intimidate or silence critical reporting. High-profile cases - like the 700+ day detention of journalist Siddique Kappan on terror charges for covering a rape case, and the framing of The Kashmir Walla's editor under the Public Safety Act - reinforce journalists' fear. In January 2022, UN experts decried the treatment of

[47] Freedom House, supra note 41.
[48] ACCESS NOW, supra note 42.
[49] Reporters Without Borders, India - 2025 World Press Freedom Index, https://rsf.org/en/country/india accessed on 25 June 2025.
[50] India ranks 151st in World Press Freedom Index 2025: RSF Report, Outlook India (May 3, 2025), https://www.outlookindia.com/national/india-ranks-151-out-of-180-countries-in-world-press-freedom-index-2025-rsf-calls-it-one-of-worlds-most-dangerous-countries accessed on 25 June 2025.

investigative journalist Rana Ayyub as judicial harassment, highlighting how even female reporters face orchestrated online smear and offline legal peril.[51][52]

Interviews with India's press and civil society echo these findings. Many journalists interviewed by Free Expression Scholars note they now routinely self-censor criticism of the government or sensitive issues, for example, Kashmir communal violence, etc., to avoid sedition and UAPA charges. Digital rights activists at Internet Freedom Foundation and Vidhi Centre have documented numerous instances where bloggers, cartoonists or activists face police summons or warrants for seemingly innocuous online posts. Economists and lawyers point out that even vague rules encouraging cooperation with government monitoring can induce platforms to muzzle controversial speech proactively. In short, the threat of legal action, however untenable in court and the expansion of surveillance/traceability requirements have made India's digital public square much less free in practice. As one media executive summarised in interviews, the law is very unclear on what's allowed, so everyone errs on the side of caution, which can be termed as a textbook chilling effect.[53][54]

IX. KEY CHALLENGES

India's legal and social landscape presents multiple tension points between open expression and asserted state interests.

A. Misinformation vs. Free Speech

The government and many citizens complain of fake news, foreign propaganda or hate speech that purportedly endangers public peace. Indeed, in this polarised society, incendiary rumours, for example, on WhatsApp, can incite mob violence. However,

[51] AL JAZEERA, supra note 39.
[52] U.N. Special Rapporteurs, India: Attacks Against Woman Journalist Rana Ayyub Must Stop (Feb. 21, 2022), U.N. Doc. A/HRC/49/PR.15, https://www.ohchr.org/en/press-releases/2022/02/india-attacks-against-woman-journalist-rana-ayyub-must-stop-un-experts accessed on 25 June 2025.
[53] Shahina K. K., Silencing the Media: The Alarming Trend of UAPA Being Used Against Journalists (May 15, 2024, 1:46 pm), Outlook India, https://www.outlookindia.com/national/silencing-the-media-the-alarming-trend-of-uapa-being-used-against-journalists-news-322397 accessed on 25 June 2025.
[54] See The Wire Staff, Latest Amendments to IT Rules Will Have Chilling Effect, Say A Host of Rights Orgs, The Wire (May 2, 2023), https://m.thewire.in/article/rights/it-amendments-world-press-freedom-day accessed on 25 June 2025.

attempts to counter fake news have raised concerns of censorship. For instance, a 2023 draft amendment to bar "fake or false" content on social media, as identified by the official Press Information Bureau, was roundly condemned by press groups as vile censorship. The Editors Guild warned it would stifle legitimate criticism by giving the state sole power to label news fake. Thus, the challenge is designing misinformation remedies that do not simply gag all criticism. Overbroad anti-falsehood laws, or government-run fact-checking tribunals, risk becoming tools for political control.[55]

B. National Security and Terror Laws

India's security concerns are real it ranging from internal insurgencies to international terrorism. Laws like the Unlawful Activities Prevention Act (UAPA) give police sweeping powers to detain suspects. But in practice, these laws have been used against dissenters. HRW and Amnesty detail how UAPA's vague definitions allow authorities to treat even peaceful activists as terrorists, reversing the presumption of innocence.[56] This presumption was judicially affirmed in Zahoor Ahmad Shah Watali v. National Investigation Agency,[57] where the Supreme Court held that courts must treat the prosecution's version as prima facie true when deciding bail under UAPA - effectively reversing the burden of proof.

However, in Union of India v. K.A. Najeeb,[58] the Court clarified that constitutional courts may grant bail where continued incarceration violates the fundamental right to a speedy trial. Hundreds have been held under UAPA or sedition for non-violent protests or publications. Notably, in recent rising hate cases, for example, Shri Ram Sene activists in Karnataka, journalists in Kashmir, anti-CAA protesters in Delhi, courts have observed that the government's line between protest and terrorism is dangerously blurred.[59] The Supreme Court has occasionally intervened (e.g. striking

[55] Internet Freedom Foundation, Public Brief – IT Amendment Rules, 2023: PIB Fact-Checking Unit and Its Chilling Effect on Free Speech (Apr. 6, 2023), https://internetfreedom.in/public-brief-it-amendment-rules-2023/ accessed on 25 June 2025.
[56] HUMAN RIGHTS WATCH, Stifling Dissent: The Criminalization of Peaceful Expression in India (May 25, 2016), https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india accessed on 25 June 2025.
[57] Zahoor Ahmad Shah Watali v. Nat'l Investigation Agency, (2019) 5 SCC 1.
[58] Union of India v. K.A. Najeeb, (2021) 3 SCC 713.
[59] Asif Iqbal Tanha v. State of NCT of Delhi, 2021 SCC OnLine Del 325 (Del. H.C. June 15, 2021).

down bans on art or film as unconstitutional overreaction), but lower courts often uphold security-based restrictions. This creates uncertainty: individuals cannot reliably predict when a critical post might trigger a UAPA charge.

C. Judicial Inconsistency

Indian courts have offered both protections and contradictions, which creates legal confusion. For example, in 1988, the Court in Ramesh v. Union of India[60] instructed that free expression must be judged by "the standards of reasonable, strong-minded, firm and courageous men, and not of weak… minds" - a statement often quoted as setting a high bar for offence. The Court similarly held in various cases that speech threatening public order must show a proximate and direct nexus to actual danger, demanding an imminent spark in a powder keg. [61] But in other cases, especially involving sedition, courts have accepted a far looser tendency standard. Kedar Nath case itself permitted restrictions on speech that merely tended to disturb order, and the post-Cold War era saw some upholding of laws that critics say went beyond immediate threats.

This judicial ambivalence demands rigour in some cases (for e.g. Shreya Singhal) but broad deference in others, which creates legal confusion. Scholars note that, unlike countries with codified proportionality tests, India's reliance on open-ended phrases like reasonable restrictions, public order etc., yields uneven jurisprudence. Recent judgments illustrate this inconsistency more starkly. In Sajjan Kumar v. State (NCT of Delhi), 2021[62], the Delhi High Court observed that "free speech cannot be a license to spread communal hatred" and upheld sedition charges in a speech-related case, drawing criticism for applying a loose tendency test.

In contrast, the Bombay High Court in Shaikh Mujtaba Farooq v. State of Maharashtra, 2021[63], quashed UAPA charges against a student for possessing "inflammatory" literature, holding that mere ideological dissent without incitement cannot justify criminal prosecution. Similarly, in Farooq Ahmad Dar v. Union Territory of Jammu

[60] Ramesh v. Union of India, 1988 SCC OnLine SC 162 (India).
[61] HUMAN RIGHTS WATCH, supra note 46.
[62] Sajjan Kumar v. State (NCT of Delhi), 2021 SCC OnLine Del 3517.
[63] Shaikh Mujtaba Farooq v. State of Maharashtra, 2021 SCC OnLine Bom 5169.

and Kashmir, 2023[64], the High Court ruled that social media criticism of government action cannot be equated with criminal intent unless it results in actual public disorder. These cases reflect a continuing lack of uniformity in how courts interpret free speech boundaries—sometimes deferring to executive claims of security, and other times reinforcing constitutional protections.

D. Weak Data Protection

A robust privacy regime can empower free speech by limiting surveillance. In August 2023, India enacted the Digital Personal Data Protection Act, 2023, marking its first comprehensive privacy legislation. The Act lays down obligations for data fiduciaries and grants individuals certain rights, such as access, correction and erasure of personal data. However, the law has been criticised for providing broad exemptions to the state under Section 17,[65] which allows the central government to exempt any public authority from its provisions on grounds such as national security, public order, and sovereignty.

Critics, including civil society groups like the Internet Freedom Foundation, argue that the Act lacks strong independent oversight, as it places key enforcement powers with an executive-appointed Data Protection Board. The broad exemptions and vague phrasing have raised fears that the law may legitimise mass surveillance, especially in the absence of a judicial warrant requirement or clear procedural safeguards. As a result, while the law signals progress on paper, it may not meaningfully curtail state surveillance or enhance digital privacy protections for activists, journalists, or dissenters.[66]

[64] Farooq Ahmad Dar v. Union Territory of Jammu and Kashmir, 2023 SCC OnLine J&K 479.
[65] Digital Personal Data Protection Act, No. 22 of 2023, § 17, Acts of Parliament, 2023 (India), available at https://prsindia.org/files/bills_acts/bills_parliament/2023/Digital_Personal_Data_Protection_Act_2023.pdf.
[66] Internet Freedom Found., Digital Personal Data Protection Act, 2023: A Constitutional Analysis, Aug. 17, 2023, https://internetfreedom.in/digital-personal-data-protection-act-2023-a-constitutional-analysis accessed on 25 June 2025.

E. Entrenched Political Polarisation

Finally, an underlying challenge is social rather than legal, viz India's divisive politics. Accusations of anti-national speech are often levelled along partisan lines, and majoritarian pressures can push legislators toward stricter controls. Both Congress and the BJP have historically used sedition or hate-speech rhetoric against their critics. In a charged environment, even well-intended laws can become weapons for the powerful. To overcome this requires not just legal safeguards, but a cultural commitment to pluralism, meaning a point to which we return in concluding recommendations.

X. RECOMMENDATIONS

To preserve a free digital democracy, India must recalibrate its legal architecture. Parliament passed a resolution to repeal IPC §124A, but in effect, the new code rebrands it; it must be suspended or narrowed down. At minimum, Sections 150 and 152 of the BNS Bill should explicitly require a "tendency to incite imminent violence or subversion" before application, aligning it with Kedar Nath's threshold.

Second, the government should redraft the IT Rules in consultation with stakeholders. The government should convene civil society, tech experts and judiciary representatives to revise rules on intermediaries. Key reforms should include: removing or significantly narrowing the traceability mandate (to respect encryption and privacy), clearly defining "public order" grounds and ensuring users can challenge takedown orders in an independent forum. One positive step would be to eliminate vaguely defined grounds that presently cover a swath of political expression. The government could also integrate a built-in time limit on takedown orders, requiring prompt judicial or tribunal review.[67]

Third, institutionalise oversight of digital rights. We propose creating an independent Digital Rights Commission as suggested by some experts and MPs. Such a body

[67] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, (India), Gazette Notification G.S.R. 139(E), Feb. 25, 2021, https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021 accessed on 25 June 2025.

should be composed of legal, tech and human rights experts who could vet broad regulatory proposals, monitor platform compliance and report abuses. Similar models exist in other democracies. For example, the UK's Ofcom has been designated the regulator under the Online Safety Act[68], with powers to oversee digital platforms and enforce user protection standards. In Germany, the Federal Network Agency (BNetzA) collaborates with media and telecom regulators to ensure online content laws (like the NetzDG) are enforced transparently.[69] France operates the ARCOM (Regulatory Authority for Audiovisual and Digital Communication), which monitors platform conduct and disinformation.

India's proposed Commission could follow a hybrid model - combining advisory, oversight, and quasi-judicial functions - including reviewing internet shutdown justifications, vetting government content takedown policies, and publishing annual transparency reports.[70] The Commission should be statutorily independent, appointed by a multipartisan selection panel, and accountable to Parliament. It must have the power to summon records, issue advisory opinions, and act as a public forum for digital rights grievances. It could review Internet shutdown justifications, platform content policies and emerging tech risks. This would mirror data protection authorities or media councils in other countries, providing a check on executive power. Parliament should empower this Commission to issue binding opinions on new speech regulations to ensure they meet constitutional and international standards.

Fourth, adopt formal proportionality analysis in judicial review.[71] Indian courts should fully embrace the proportionality test whenever speech restrictions are at issue. Instead of loosely assessing reasonableness, courts could explicitly ask: (a) is the restriction lawful and pursuit of a legitimate interest like security, order, etc.? (b) is it the least restrictive means to that interest? (c) Is there a reasonable balance between

[68] Online Safety Act 2023, c. 51 (U.K.), available at https://www.legislation.gov.uk/ukpga/2023/51/contents/enacted accessed on 25 June 2025.
[69] Bundesnetzagentur (Federal Network Agency), https://www.bundesnetzagentur.de accessed on 25 June 2025.
[70] ARCOM (Autorité de régulation de la communication audiovisuelle et numérique), https://www.arcom.fr accessed on 25 June 2025.
[71] R. v. Oakes, [1986] 1 S.C.R. 103 (Can.).

harm to expression and benefit to society? This structured approach would reduce unpredictability. Canadian Charter s.1 jurisprudence, or South African/Australian proportionality cases, could guide judges. Indeed, the Supreme Court's dicta, for e.g. insisting on an imminent danger standard, align with proportionality logic, and we encourage explicitly adopting it. Additionally, the methodology developed by the German Constitutional Court offers a rigorous four-prong test that Indian courts can adapt. This test requires that any restriction (1) pursues a legitimate objective; (2) is suitable to achieve that objective; (3) is necessary (i.e., no less restrictive alternative exists); and (4) maintains proportionality in the strict sense — meaning the overall impact on the fundamental right is not excessive compared to the benefit gained. Indian courts, particularly in PILs and free speech litigation, could incorporate this structured approach to enhance doctrinal clarity and align more closely with evolving global constitutional standards.[72]

Fifth, promote transparency and accountability for online enforcement. All censorship orders (shutdowns, takedowns, content bans) should be promptly published with justifications. This follows Anuradha Bhasin's mandate for shutdowns. Similarly, the government's IT Cell or agencies should publish data on content removal requests. Press Council or an ombudsman could audit government direction metrics for removals. Greater transparency will allow public debate on the trade-offs being made. In the longer term, India should collaborate internationally on countering misinformation and regulating AI content moderation in ways that respect rights by joining multilateral efforts like UNESCO frameworks without surrendering free expression.

Sixth, invest in judicial training and capacity building on digital rights. To ensure that courts consistently uphold constitutional safeguards in the digital realm, India must strengthen judicial understanding of internet governance, platform regulation, surveillance technology, and international free speech standards. Specialised training modules should be developed for judges at all levels, possibly through the National

[72] BVerfGE 90, 145 (1994) (F.R.G.) (establishing the modern four-part proportionality test); see also David Bilchitz, Necessity and Proportionality: Towards a Balanced Approach? in Proportionality: New Frontiers, New Challenges 41 (Grégoire Webber et al. eds., 2014).

Judicial Academy, focusing on comparative jurisprudence, proportionality analysis, and human rights implications of emerging tech laws. Courts should also be equipped with expert advisors and technical research cells to help judges engage with complex cases involving algorithms, encryption, or misinformation. Similar training models have been adopted by the European Judicial Training Network[73] and the U.S. Federal Judicial Centre[74] to improve adjudication in tech-related constitutional matters.

XI. CONCLUSION

India stands at a crossroads because while its founders firmly embedded free speech as essential to democracy, today's digital landscape is testing that promise. This paper has shown that laws like UAPA, IT Rules and the new telecom and data protection frameworks often restrict expression without adequate safeguards, and the courts remain inconsistent. India's current mix of colonial-era laws and aggressive new regulations has outpaced the delicate balance intended by the constitution makers in Article 19(2) of the Indian Constitution.

At the same time, global experience cautions against capitulating entirely to either absolutism or heavy-handed control. India's history shows that fear-driven laws can suppress legitimate dissent, while the U.S. model and international human rights standards highlight the perils of overbroad censorship. India must amend BNS §§150-152, revise the IT Rules and DPDP Act to include judicial review and privacy protections and establish a Digital Rights Commission for oversight. There is urgency because trust in democracy depends on open debate, even on social media. However, national integrity also requires vigilance against genuine threats.

Crucially, these goals are not mutually exclusive; judicial training on digital rights and international free speech standards should be prioritised through the National Judicial Academy. As the European Court of Human Rights has taught, a "pressing social need" must be demonstrated before speech is chilled, and India's courts have the tools to demand it. With thoughtful reforms, India can lead as a case study in balancing

[73] European Judicial Training Network (EJTN), https://www.ejtn.eu accessed on 25 June 2025.
[74] Federal Judicial Center (U.S.), https://www.fjc.gov accessed on 25 June 2025.

digital free speech with security, proving that even a large, complex democracy can uphold open dialogue in the age of social media. Adopting Germany's structured proportionality test and enforcing transparency will strengthen both constitutional protections and national security. The world will be watching whether India chooses censorship or conversation, as it charts its digital future.

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