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FROM STREETS TO SCREENS: CORRELATING DIGITAL ACTIVISM, FREEDOM OF EXPRESSION, STATE REGULATION AND DEMOCRATIC PARTICIPATION IN INDIA. A DOCTRINAL AND CASE STUDY ANALYSIS

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1. ABSTRACT

This paper deals examines freedom of expression, mainly in relation to the media services in the country. It deals with the era of print media and the evolution of digital media, right from the beginning of the internet era and the era of television. The paper deals with different clauses of our constitution and also the laws and their amendments made to them right from the time of independence. It also covers newer laws pending before the apex court.

The methodology used in this script is based on the real situations of freedom of expression in different eras, with the analytical hypothesis of each of them. The key findings in the paper are the main issues in which our democracy needs to be more robust and adaptive to the thinking and expression of the new generation. The paper deals with the point that is the need of the hour to have a natural and rational debate and arrive at a consensus conclusion on the issues which the country is facing in different areas. The debate can be held in public/ media/ print.

The conclusion in the paper clearly shows that study made in the paper is justifiable and also has a road map of going forward as to how to strike a balance between the freedom of expression and the political system of the country. It also clearly defines that the rulings of the courts should be respected and followed by every citizen to have a good debate and analysis of major burning issues across the country and the world, which affect the day- to- day life of the common man.

2. INTRODUCTION

It is to be noted that political participation and democratic acceptance in India were largely written on it's streets by way of marches, court room petitions, news papers, radio broadcasts and through television via the national channel Doordarshan. As we all know, the Constitution of India, through it's article 19(1)(a)

has guaranteed the freedom of expression and speech to every citizen from the early years of the Republic. As freedom has gone through many transformation rapidly, more than any constitutional value has experienced before. Previously the citizens grievances where communicated via public meetings, pamphlets, signature campaigns has now changed and it travels through a You tube video, a google document, a social media forward, a hashtag.

The shift in this communication is reproduced in the title of this paper: A movement from Streets to Screens

Digital advocacy-

It is to be noted that the use of social media platforms and digital networks to mobilise and sustain collective action has now become part and parcel of the country's democracy. As we had seen the Anna hazare corruption movement in the year 2011 had spread fast and amplified itself through sms chains and social media mobilizing the power of network communication. The same happened during the Nirbhaya Movement, which showed all of us how a single act of violence against women could become a national conversation. Within hours, this was carried out by the social media platforms Twitter and Facebook long before it was discussed on the floor of Parliament. In 2019 and 2020, the Citizenship Amendment Act and the NRC (National Register of Citizens), which were anchored physically at Shaheen Bagh, gained sustainability digitally across the country. The same happened in the farmers' protest and also the MeToo campaign in India. To see it in a way, it is hereby absolutely confirmed that digital footprints are no longer a stopgap for public outcry and thus have become the most reliable and fastest way of communication. This digital release is not an outcry that happened just like that; each of the digital movements had to meet at some point in time with a state government response in the form of its regulations. These responses ranged from criminal prosecution of the persons using social media to the blocking of their accounts. The prolonged suspension of mobile and internet services in the entire district also came into force. In particular, it is also to be noted that the Anti-Terror Act and the sedition act were also implemented against the activists, particularly those who had shared the document online. Delegated legislation was

made under the IT Act, 2000, under the umbrella of information technology, which resulted in 2021 and 2023 amendments. These have emerged as principal instruments through which the country now seeks to regulate and restrain digital speech. The Judiciary has repeatedly been asked to be the referee in these contests. Examples include the Supreme Court decisions in the Shreya Singhal Case, which struck down the notoriously vague section 66(a) of the IT Act as unconstitutional. Whereas, in Anuradha Bhasin's Case, for the first time, the freedom to access the internet became an aspect of the fundamental freedoms guaranteed under Article 19(1)(a) and Article 19(1)(g) of our Constitution.

This article proceeds from the theory that digital activism, freedom of expression, state regulation and democratic participation in India are not four independent phenomena that happened to co-exist but are four variables that are co-related dynamically with each other. As digital activism is prompting state regulation to tighten itself, the judicial expansion of free expression is opening a new space for digital mobilisation and healthy democratic participation. This can be easily measured by the vibrant public debates between elections and voter turnouts. This rise and fall is the net effect of these pressures. This paper will discuss our constitutional democracy in the digital age, whether it will be correlated historically and will also trace.

Notes & References

a. Shreya Singhal v. Union of India, (2015) 5 SCC 1; Kunal Kamra v. Union of India, 26 September 2024 struck down the 3(1)(b)(v) amendment rule of the IT rules 2021; b. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.

3. History

3.1 The news paper era of free expression

Long before even the internet came into the country, the Supreme Court of India started building the bridge of digital speech. The Romesh Thappar Case with the State of Madras came to a conclusion within months of our Constitution coming into effect, and the Supreme Court struck down a ban on the circulation of a political newspaper, which gave us freedom of speech. To see it in another way, this laid a foundation for democratic organisations without any free and fair political outcry. Proper government functioning was possible. In a span of 10 years, we also saw the Sakal paper case in which the court struck down the print control regulations that had an indirect control over the size and circulation of the papers, which the state did not achieve indirectly. It is to be noted that what was being forbidden was achieved, and the

commercial regulation was not capable of being used as a method for controlling public expression. We also see that in the *Bennett Coleman & Company* case, the Supreme Court went a step further, making the rights of the publisher and the rights of the reader two sides of the same coin, whereas the coin was the Constitution of India. This gave us a warning against the regulatory schemes that had pinned the press, to name a few, under the neutral economic policy. These examples of early cases establish two hypotheses that would prove the foundation for the digital era: first, that freedom of expression is linked to democratic self-governance, and second, that the state cannot use technical or economic regulation to achieve a restriction on speech that could not be achieved directly.

3.2 The Surveillance era

I want to state that, in my view, the next most important development came from the law of privacy and surveillance and not from the law of speech. It can be seen clearly in the case of *People's Union for Civil Liberties*; in this, the Supreme Court thoroughly and meticulously checked and re-examined the idea of telephone tapping under the Telegraph Act of 1885. This act gave us the right to hold a telephonic conversation in our home in private without any unauthorised intervention. This is a clear aspect of the right to personal liberty and the right to life under Article 21. The Supreme Court framed the procedures and safeguarded the interests before any telephone interaction could be authorised. This judgment of the court has a significant value in the present study because it anticipated, years in advance, the central tension of the digital era, that is, the state's interest in monitoring communication for security purposes versus an interest of citizens in communicating freely and privately. The tension would resurface in a far more technologically complex form in the controversies over the traceability of encrypted messaging and the alleged use of spyware against journalists and activists that arose after 2019.

3.3 The Emergence of the IT Act, 2000

After the deadly Mumbai terror attacks, the digital revolution and the IT Act 2000 were primarily made to ease and facilitate e-commerce and electronic governance. This was an afterthought at that time. This changed with the 2008 amendment, which was part of Section 66A, under which criminal proceedings could have been initiated for sending grossly offensive information and menacing any character which had clear indications to cause inconvenience in society or anger. Section 69A was further strengthened by empowering the government of India

to block public access to online content on specific grounds. The uncertain clause of 66A's language proved problematic in the following years, and it was misused. The citizens of the country were put behind bars for Facebook posts criticising political leaders, creating cartoons and also making funny comments about public figures. This can be easily justified by the arrest of two women from Maharashtra for writing on Facebook as they questioned the city-wide shutdown for a political leader's funeral procession. This was one of the major catalysts for the constitutional change that followed.

3.4 Mobilization of Digital Platform: 2011-2014

During the above-mentioned period, digital activism came into its political force. The corruption movement by Anna Hazare in 2011 which was primarily a hunger strike by him was amplified through mobile network messaging systems, blogs, twitter accounts which became the major tools for demonstration, which resulted in a nation wide campaign and a localized hunger strike due to the digital footprint of it's own in the nation. Pressured our then government of India into the legislative action of the Lokpal Bill. Country-wide protests also erupted after the Delhi gang rape case in 2012, December similarly showing us how a detailed network could be mobilised spontaneously, leaderless and geographically dispersed, far more rapidly than traditional structural ways. These episodes established a process- rapid digital mobilisation and global visibility- sustained through hashtags, which eventually led to physical assembly that would recur in almost all the protest movements that happened in India over the following decades.

3.5 Fact check of unit litigation and the IT rules-2021

The government of India notified the rules of Information Technology under Section 87 of the IT Act in February 2021, imposing due diligence obligations on social media intermediaries which included the appointment of officers, which also expedited the content takedown timelines and controversially a traceable requirement which compelled the significance social media platforms offering messaging services to identify originator of the specific messages on Judicial or Government request. The digital rights organisation and the messaging platforms disagreed with this requirement, as it was incompatible with end-to-end encryption, with the association of privacy protected under the Justice Puttaswamy order. The rules were amended in April 2023 to empower the central government to notify and fact-check, with authority to flag off government-related content on social media as vague, false or misleading, which added an obligation on the intermediaries to remove such content from social media to retain safe

harbour protection under section 79. The amendment was challenged by the stand-up comedian Kunal Kamra, the Editors Guild of India and some petitioners before the High Court of Bombay. After the split verdict between the two-judge bench, a tie-breaking bench held in September 2024 stated that the amended rule was unconstitutional, reasoning that terms like vague, false or misleading were undefined and over-broad, and that it could produce a chilling effect on justified speech, that citizens did not possess the right to truth, and that it justified the government acting as the sole arbitrator of what misinformation it constituted about itself. The Central Government's appeal was heard by the Supreme Court in early 2026 for final adjudication, with the court making it clear that it would not stay the Bombay High Court's order, leaving the constitutional status of fact-checking of online speech as one of the most significant open questions.

Notes & References

- a. Bennett Coleman & Co. v. Union of India, (1973) 2 SCR 757*
- b. Romesh Thappar v. State of Madras, AIR 1950 SC 124.*
- c. Sakal Papers (P) Ltd. v. Union of India, AIR 1962 SC 305.*
- d. People's Union for Civil Liberties (PUCL) v. Union of India, AIR 1997 SC 568.*

4. Objectives of the Study

It is to be noted that this study is based on a set of linked objectives that together help to map a relationship between free expression, digital activism, democratic participation and the state regulation that is practised in the country. Each objective discussed is based on the facts and foundations set out in Part II and is designed to be tested against the questions and specific research and hypothesis mentioned in the parts that follow.

1. The primary objective is to trace, in a connective narrative, how Indian constitutional doctrine on freedom of expression, which was developed originally for print and radio media, has been elaborated, extended, reinterpreted and in some cases strained by the origin of digital communication, from Romesh Thappar via Shreya Singhal through Anuradha Bhasin.
2. The second objective of this paper is to identify and streamline the principle legal instruments via which the Indian state controls and regulates its digital activism and online expression including the IT Act, 2000, The intermediary Guidelines and digital media ethics code rule, 2021 (which was amended in 2023), also the temporary

suspension of telecom services rules, 2017, and the adjacent security legislation of unlawful activities (Prevention act, 1967, which so far has been evoked against digital activists.

3. My third objective will be to examine the relation between digital mobilisation and State regulatory response. We shall carry this out with the help of the case studies that have been identified in the historical part of this paper. It is to be understood that the periods of high digital activism are highly influenced by an emphasis on state regulation or united measures, and if so, then from what conclusion has that been taken- whether it is legislative, executive or prosecutorial.
4. In the paper, the fourth objective is to assess the Judiciary's role as an inter-mediating institution. The extent to which the higher judiciary has functioned as a moderating or balancing institution in the expansion of digital activism and in balancing state regulations; both the doctrinal tools examined by the courts and the practical efficacy of Judicial interventions (doctrines such as proportionality and the vagueness of the doctrine).
5. The impact of this correlation on democratic participation and its evaluation is the fifth objective of the paper. In this objective, the evaluation of the interaction between digital activism and state regulation is examined in terms of the quality and depth of democratic participation in the country, which goes beyond formal electoral participation. To consider the vibrancy of public deliberation. The emergence of willingness of citizens to express dissent and its chilling side effects, if any, which are produced by regulatory uncertainty.
6. In the sixth objective, we will identify the gaps in the existing legal and regulatory framework. In this objective, we will identify gaps, ambiguities and inconsistencies in the current legal framework of India governing digital speech and activism, with particular attention to the unanswered questions which are currently pending before the Supreme Court in the fact check unit litigation and the wider debate over a proposed Digital India Act to replace the IT Act, 2000.
7. In the final and seventh objective, we propose a normative framework for reform. This objective will be proposed on the basis of the preceding analysis, a normative framework that will better reconcile the legitimate interest of the state in public order, national security and the prevention of misinformation. This will also guarantee the constitutional right to freedom of expression and the requirements that are practical for a digitally mediated democracy.

5. Research Questions

SQ1. In what way has the judicial system in India enhanced and developed the constitutional protection of freedom of expression from traditional print media to the era of online India and digital speeches?

SQ2. Which constitutional principle governed the restrictions provided on the online speech in India?

SQ3. In what way has the supreme court addressed the implications of the constitution on the internet shutdowns and the restrictions on the internet based expressions?

SQ4. Does the constitutional right to privacy applicable to state surveillance and digital communications?

SQ5. In which way have the Indian courts kept the balance to the right of peaceful protest with respect to competing public interest in the cases which are involving digitally coordinated or publicly organized protests?

SQ6. The state regulation when uses the vague or overboard standards which are the constitutional concerns which arise when the state behaves like this

NOTE:

1. This study does not take into consideration or ask whether the digital activism statistically causes greater state regulation
2. Whether the restrictions on internet statistically reduce mobilization
3. The citizens of India generally engage themselves in self censorship or not
4. The above questions would require empirical evidence and therefore these are not the scope of the study.

6. Research Methodology

6.1 Research design

The research adopts a doctrinal, legal method supported by qualitative case law analysis. The study mainly examines the constitutional provisions, the legislation, the delegated legislation and the judicial decisions made with respect to freedom of expression, digital communication, private privacy, internet restrictions and the protests.

The paper does not involve or undertake statistical research, any kind of surveys, interviews or quantitative measurements of digital activism.

The main purpose of this paper/study is to identify and primarily analyse the constitutional principles which have already been developed via judicial decisions.

6.2 Primary Sources

The principal primary sources include the following:

- Constitution of India;
- Article 14;
- Article 19(1)(a);
- Article 19(1)(g);
- Article 19(2);
- Article 21;
- Information Technology Act, 2000;
- Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021;
- relevant amendments to the IT Rules;
- Temporary Suspension of Telecom Services Rules, 2017;
- Indian Telegraph Act, 1885, where relevant;
- judicial decisions of the Supreme Court and High Courts.

6.3 Selection of cases

Cases have been selected because they provide judicial discussion of one or more of the following:

- freedom of expression;
- freedom of press;
- freedom of online speech;
- intermediary liability;
- freedom of privacy and surveillance;
- internet restrictions;
- freedom of protest;
- freedom of digital communication;
- State regulation of online information.

The principal cases analysed are:

1. Romesh Thappar v. State of Madras
2. Sakal Papers (P) Ltd. v. Union of India
3. Bennett Coleman & Co. v. Union of India
4. People's Union for Civil Liberties v. Union of India
5. Shreya Singhal v. Union of India

6. Justice K.S. Puttaswamy (Retd.) v. Union of India
7. Anuradha Bhasin v. Union of India
8. Amit Sahni v. Commissioner of Police
9. State (NCT of Delhi) v. Disha A. Ravi
10. Kunal Kamra v. Union of India

6.4 Analytical framework

Each and every major judicial decision is examined in the study through the following framework:

- a) Facts and context
- b) Legal issues
- c) Applicable law
- d) Judicial reasoning
- e) Constitutional principle
- f) Relevance to the digital expression and democratic participation

This approach of the paper ensures that it does not just describe the cases but it identifies what each of the judicial decisions made against the cases contributes to the understanding of the constitution towards digital expression.

6.5 Scope and limitations

The paper is purely doctrinal and qualitative. It, in no way attempts to establish a statistical relationship between the intensity of digital activism and the severity or the frequency of the state regulation.

This study does not claim to mention the number of citizens affected by online restrictions and the extent of self censorship

The conclusions of this study are limited to what can be reasonably identified from the constitutional provisions, legislation and the judicial decisions examined.

7. Constitutional and Legal Framework

7.1 Article 19(1)(a): Freedom of Speech and Expression

This article guarantees Indian citizens the fundamental right to the freedom of speech and freedom of expression.

The apex court has established that the freedom of expression is essential to democratic

involvement. Although early cases mainly focused on newspapers and old media. Shreya Singhal constitutes a notable application of Article 19(1)(a) to online speech.

7.2 Article 19(2): Reasonable Restrictions

The freedom given under article 19(1)(a) is not qualified for granting justified regulation on specific grounds.

Consequently, State regulation of speech must be evaluated within the constitutional limits set forth by Article 19(2).

The importance of this article can be seen in the Shreya Singhal case where the apex court evaluated whether the restriction created by section 66A is aligned with the constitutionally allowable limitations.

7.3 Article 14

This article guarantees equality before law and equal protection of the laws.

The provision becomes applicable where digital regulations are questioned as arbitrary, indefinite or biased.

Article 14 together with Article 19 was involved in the constitutional challenge to the 2023 fact check unit amendment before the Bombay High Court.

7.4 Article 21 and Privacy

Article 21 protects life and personal liberty.

In the Justice K.S Puttaswamy case, The nine-judge bench validated privacy as a Fundamental right under the Constitution.

The principle is applicable to current telecommunication because they incorporate personal information, digital identity and private communication.

The principle of this is relevant to digital communication as because the modern communication system involves information and digital identity as well as private communication.

8. Evolution of Freedom of Expression: Key Judicial Decisions

8.1 Shreya Singhal Case (Constitutionalisation of online speech)

Section 66A came into question in the Constitution in the year 2015 when the Supreme Court in this case unanimously struck the provision down as unconstitutional. The court observed

that the terms used in the provision were so irrelevant and undefined that they left it open to the authorities to criminalise a very large amount of protected and innocent speech, producing what the court described as a chilling effect on legitimate online expression. The provision in the law was to be found absolutely immaterial to any restrictions permitted under Article 19(2), and it could not be saved as a decision-maker restriction on the freedom of speech. The Supreme Court also read down the liability provisions in Section 79 of the Act, making it clear that the individuals who were in between could be required to take down the posted content only when the court orders it or by a legal notification by an appropriate government agency. This cannot be taken down by any private complaint alone. This remains, to this day, the single most cited Indian judgment on free digital expression. It has frequently been invoked in subsequent cases over restrictions on online speech. This includes the arbitration over the IT Rules of 2021.

8.2 Anuradha Bhasin, the internet shutdowns and Kashmir

In August 2019, the abrogation of the special status of Jammu and Kashmir under Article 370 was accompanied by the most extensive and longest internet shutdowns by any democracy, which affected the region's population for many months. This internet shutdown was challenged before the Supreme Court by the executive editor of Kashmir Times, Anuradha Bhasin, who argued that the inaccessibility of the internet had brought newspaper journalism in the Jammu and Kashmir region to a standstill and the restrictions were imposed without any proper procedural safeguards that were required under the temporary suspension under the Telecom Services Rules, 2017 (Public emergency or public safety). The Supreme Court, in its judgment in January 2020, held that the freedom of speech and expression via the medium of the internet is constitutionally protected under the rights of Article 19(1)(a), and also the freedom to conduct trade and business using the internet is also protected under Article 19(1)(g). The court observed that any order suspending internet services must be temporary; it has to be published and must also record reasons. It must be subjected to pre-periodic review, and that Section 144 of the Code of Criminal Procedure will not be used as a tool to suppress the exercise of Fundamental Rights. The court, however, declined to strike down the specific shutdown orders. The Anuradha Bhasin case has been repeatedly cited by the Supreme Court itself in the case of *Foundation of Media Professionals versus U.T. of Jammu and Kashmir*, which compelled governments to give justifications for the prolonged internet restrictions. This case is a landmark in history. I had raised this in my paper because the moment in which Indian Constitutional Law formally recognised that a state controls it is, in substance, a form of speech

regulation.

8.3 Justice K.S Puttaswamy: Fundamental Rights of Privacy

Justice K.S. Puttaswamy headed a 9-judge bench of the Supreme Court in August 2017, which unanimously held that the fundamental right to privacy is protected under Article 21 as an integral part of the freedom rights guaranteed under Part 3 of the Constitution, overruling the earlier decisions that were held. Justice Puttaswamy arose out of the challenge to the biometric identification of the Aadhaar scheme, for its implications extended directly to digital activism. This supplies the constitutional foundations for later objections to state surveillance by activists and journalists, most visible in the controversy over the use of spyware Pegasus, which was subjected to the Supreme Court technical committee, which followed a batch of petitions, including the petition of journalist Mohan Lal Sharma. Justice Puttaswamy also underlines the recurring debate over the traceability of encrypted messaging platforms by the IT Rules of 2021. Since the traceability of anonymous digital speech indicates precisely the association and expressiveness of the privacy interest that Mr Puttaswamy protects.

8.4 The toolkit case, the farmers movement, the CAA-NRC protests

The CAA-2019 and the NRC resulted in and crystallised the protests around the sitting of Shaheen Bagh in Delhi, where they were coordinated, facilitated and managed for months together through very smoothly coordinated digital communication. Though the physical protest had to undergo administrative and legal challenges. The Supreme Court took suo motu cognisance in the dispute of Amit Sahni V. Police Commissioner to address the balance between the right to protest and the right of the citizens to use the public roads. It was made clear that the right to protest, which is a Fundamental right, cannot be extended to infinite or indefinite occupation of a public thoroughfare.

The farmers' protest against the three farm laws against the government of India in 2020 showed how planned, and even more technological, use of digital tools was used, which generated substantial global attention through coordinated social media campaigns. The same period also produced one of the most controversial applications of India's anti-terror and sedition law to digital activism, which led to the arrest of the young climate activist, Disha Ravi, in February 2021, in connection with a toolkit document that was shared and formulated the plans and strategies for supporting the farmers' protest internationally. Although the related charges ultimately did not result in any conviction. The case became one of the most widely discussed illustrations. The risk that loosely worded security legislation can be deployed

against individuals whose principal intention and offence was to create digital coordination of lawful protests.

Notes & References

- a. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.*
 - b. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.*
 - c. Shreya Singhal v. Union of India, (2015) 5 SCC 1.*
 - d. Amit Sahni v. Commissioner of Police, (2020) 10 SCC 439.*
- State (NCT of Delhi) v. Disha A. Ravi, Bail Order, Patiala House Courts, New Delhi, 23 February 2021.*

9. Digital Activism and Selected Case Studies

9.1 Digital activism as a medium of political participation

Historically, the development discussed earlier clearly shows that political communication has migrated from pamphlets, newspapers and public meetings to websites and social media platforms. However, for the purpose of this doctrinal study, digital activism is not treated as an independent right created by a particular judgment; instead, the protection provided for the same is examined through existing rights such as freedom of speech, freedom of expression, freedom of peaceful protest, and privacy.

9.2 Shaheen Bagh and Amit Sahni

The protests of Shaheen Bagh are a classic example of a physical protest that was largely supported by digital communication. In this case, the constitutional question concerning the protest by the public was taken up by the Supreme Court in the case of *Amit Sahni V. Commissioner of police, (2020) 10 SCC 439*.

The apex court recognised the right to peaceful protests but also gave much greater emphasis to the point that public roads and spaces cannot be occupied indefinitely in a manner that causes continuing obstruction. Therefore, the case demonstrates that the fundamental right to protest and the rights of the people of society must be balanced.

9.3 Farmers Protests and The Disha Ravi Proceedings

Digital platforms for communication were used for farmers' protests. The proceedings in the court involved Disha Ravi and the allegations relating to a toolkit association with the farmers' protests.

The bail proceedings are relevant to this study as they demonstrate strongly the legal significance of identifying and distinguishing between expression, advocacy, communication and conduct alleged to have criminal consequences.

This case should not, however, be treated as establishing a very general constitutional rule that all kinds of digital activism are protected or that all digital coordination is lawful.

The relevance of the same is confined to the judicial reasoning and factual circumstances of the particular proceedings.

10. State Regulation of Digital Expression

The state regulation of digital expression operates through different legal guidelines and mechanisms. The information technology act, 2000 provides the principle framework (statutory).

The section 69A provides a mechanism to block access to information in specific circumstances.

The IT Rules in the case establishes the obligations concerning intermediaries and digital platforms. The internet restrictions may also in a way affect the digital expression indirectly by restricting the access to the communication infrastructure itself.

The constitutional validity of these kinds of restrictions therefore is fully dependent on the applicable constitutional provision and the judicial standards developed by the courts.

The important point established via the case examined in this paper is that the digital nature of communication does not place the regulation of the state outside the constitutional scrutiny.

11. Judicial Balancing of Rights and State Interests

11.1 Anuradha Bhasin

The case of Anuradha Bhasin demonstrates that the restrictions affecting the internet access must comply with constitutional and legal requirement.

The Supreme Court requires publication of orders, stated reasons, temporary restrictions and review.

Therefore, this case clearly established judicial safeguards against indefinite internet shutdown.

11.2 Justice Puttaswamy

Justice Puttaswamy established privacy as a fundamental constitutional right.

The bench provides the constitutional basis for examining state actions which involve personal

information and communications.

Therefore, the digital regulation involving surveillance or personal information has to be considered alongside the constitutional protection of privacy.

11.3 Shreya Singhal

The case of shreya singhal demonstrates the importance of clear legal standards.

The law regulating digital expression cannot use vague terminology in a broad way that individuals cannot reasonably determine what kind of expression is prohibited.

The reasoning of court regarding vagueness is particularly relevant to subsequent regulation of online speech.

11.4 Kunal Kamraa

In the majority decision of Bombay high court in the year 2024 concerning the 2023 amendment to rule 3(1)(b)(v) provides a contemporary application of these principles.

The majority concluded that amended rule was unconstitutional and the ultra vires the information technology act.

The 3rd judge opinion mainly address the vagueness and over-breach of the expression used in the provision.

Therefore, this case demonstrates the importance of constitutional standards developed in Shreya Singhal case. At the same time, because the government's appeal remains pending before the supreme court. This study does not treat the Bombay high court decision as final in determination of the issue.

Notes & References

1. Kunal Kamra v. Union of India
2. Shreya Singhal V. Union of India, (2015) 5 SCC 1
3. Justice K.S Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1
4. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

12. Doctrinal Analysis

This paper uses a doctrinal approach that is based on the Constitution, relevant legislation and the judicial decisions made by the courts of India.

The analysis examines how Indian courts have interpreted the freedom of expression, modes

of digital communication, the application of internet restrictions, internet privacy and state regulations. This study in no way uses surveys, interviews or statistical data.

12.1 Freedom of expression and digital speech

The decision of the Supreme Court shows a gradual development towards the protection of the freedom of expression. In the *Romesh Thapar V. State of Madras* case, the court in particular has recognised the great importance of the circulation of political expression. In the case of *Sakal Paper v. Union of India* and *Bennett Coleman v. Union of India*, the court has examined the state measures which are affecting the freedom of the press and has held that regulatory measures cannot be used in a manner that restricts the freedom of expression unjustifiably.

This principle has been applied directly to digital communication in the *Shreya Singhal* case, in which the apex court struck down section 66A of the IT Act because of its vagueness and over-broad terms. This could restrict constitutionally protected speech. This case therefore establishes that online expression is also protected under Article 19(1)(a), subject to the restrictions permitted by Article 19(2).

12.2 Internet restrictions and privacy

In the case of *Anuradha Bhasin v. Union of India*, the Supreme Court of India recognised that freedom of speech and expression through the internet is covered and protected under Article 19(1)(a). The court also gave emphasis on the restrictions on internet access, which must satisfy constitutional requirements and, proportionally, should remain subject to judicial review.

Privacy is also relevant to digital communication in the *PUCCL v. Union of India* case; the court recognised the privacy concerns involved in telephone interception and required procedural safeguards. In the *Justice K.S. Puttaswamy* case, the Supreme Court recognised that privacy is a fundamental right under the Constitution. Therefore, these decisions establish that state action involving digital communication and surveillance in all cases must respect the constitutional privacy protections.

12.3 Overall Doctrinal Position

The cases which have been examined in this paper demonstrate that the freedom of expression remains constitutionally protected when it is exercised through digital platforms.

At the same time, the state may impose the relevant restrictions that satisfy the constitutional requirements. Therefore, the case law provides a legal basis for examining the balance between digital activism, freedom of expression, state regulation and democratic participation without

requiring any survey or statistical analysis.

Notes & References

1. Shreya Singhal V. Union of India, (2015) 5 SCC 1
2. Justice K.S Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1
3. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637
4. Romesh Thapar v. State of Madras, AIR 1950 SC 124
5. Sakal papers (P) Ltd. v. Union of India, AIR 1962 SC 305

13. Recommendations

13.1 Clear Legal Standards

The regulations which affect digital speech must be absolutely clear and precise in language so that the citizens and the intermediaries can understand their legal obligations.

This particular recommendation follows from the concerning the vagueness which were examined in Shreya singhal and Kunal Kamra cases.

13.2 Constitutional scrutiny of digital restrictions

The restrictions which affect the online expression should remain subjected to article 19(1)(a) and article 19(2).

The fact that this expression occurs through a digital platform should not remove constitutional scrutiny.

13.3 Procedural safeguards

Restrictions such as internet shutdowns should follow the procedural safeguards which are recognized in Anuradha Bhasin, including publication, reasons, temporariness and review.

13.4 Protection of privacy

Digital regulatory mechanisms involving personal the information, identification or surveillance should respect the constitutional protection of privacy as recognized by Justice Puttaswamy.

13.5 Judicial Oversight

The digital regulations affecting substantially the fundamental rights, the effective judicial

review should remain available.

13.6 Distinction between protected expression and unlawful conduct

The Legal regulation should distinguished between political discussion, advocacy, criticism and other protected expression on the one hand, and should conduct that independently satisfies the requirements of a criminal offence on the other hand.

The distinction between discussion, advocacy and incitement in the Shreya Singhal case is particularly relevant here.

14. Limitations

The paper has certain limitations-

1. This is a doctrinal and qualitative study and does not conduct any statistical analysis of digital activism.
2. The study does not attempt to establish a numerical or casual relationship between the amount of digital activism and the state regulation frequency.
3. The study in no way uses surveys or interviews to determine the amount of self censorship among citizens.
4. The protests movement which are historical in nature are used primarily as a contextual illustrations where they are not directly supported by judicial determinations.
5. the study gives greater and important emphasis to Supreme Court and High Court decisions and therefore does not provide an exhaustive analysis of every decision of subordinate courts.
6. the constitutional positioning which concerns the Fact Check Unit must be updated in accordance to the final decision of the Supreme Court because the government's challenge to the Bombay High Court judgment remains pending.

15. Conclusion

The development of freedom of expression in India demonstrates that the constitutional principles must operate across changing forms of communication. The change from the newspaper era and traditional media to the arrival of the internet and social media platforms has fully changed the manner in which citizens of India communicate, organise, and participate in public affairs. But it has to be noted that it has not removed the constitutional framework governing freedom of expression.

This paper examines the judicial decisions that demonstrate this constitutional continuity. The Romesh Thapar, the Sakal Papers, and the Bennett Coleman cases establish important principles with respect to press freedom and the dissemination of information. The Shreya Singhal case extends constitutional scrutiny directly with respect to the field of online expression. The Puttaswamy verdict expresses privacy as a fundamental right, which is absolutely relevant to the digital environment. The Andhra Pradesh case demonstrates that restrictions on internet access can affect constitutionally protected freedoms and therefore must comply with legal and procedural safeguards. In the Amit Sahni case, it is clearly demonstrated that a balancing act is needed between the right to protest and the rights of others. The proceedings concerning Disha Ravi and the Fact Check Unit further clearly demonstrate the continuing legal questions surrounding digital communication and State regulation.

Lesson emerging from these decisions clearly states that technological development does not create a separate constitutional space beyond judicial review. Whether expression takes place through a newspaper, public meeting, social-media post or another digital platform, restrictions affecting fundamental rights remain subject to constitutional requirements.

It is also to be noted that freedom of expression is not absolute.

Therefore, the constitutional challenge lies in ensuring that the regulation remains within the limits established by law and the Constitution.

The examination of the judiciary in this study mainly focuses on the importance of clarity, constitutional authority, procedural safeguards, proportionality and judicial review at a time when state actions affect digital expressions.

The movement from streets to screens therefore in no way represents the replacement of the constitutional democracy by modern technology. Rather, it represents, in a way, a new environment in which constitutional principles must be established and should continue to operate.

The courts of India have already developed significant principles for this new environment, and the future regulation of digital expression must remain consistent with those principles.

16. Bibliography

16.1 Constitutional and Statutory materials

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- b) The Constitution of India (Article 14, 19 and 21), 1950
- c) The Unlawful Activities (Prevention) Act, 1967

- d) The Information Technology Act, 2000
- e) The Temporary Suspension Of Telecom Services Rules, 2017
- f) The Information Technology Rules, 2021
- g) The Information Technology Amendment Rules, 2023

16.2 Table of cases

1. Romesh Thappar v. State of Madras, AIR 1950 SC 124.
2. Sakal Papers (P) Ltd. v. Union of India, AIR 1962 SC 305.
3. Bennett Coleman & Co. v. Union of India, (1973) 2 SCR 757.
4. People's Union for Civil Liberties (PUCL) v. Union of India, AIR 1997 SC 568.
5. Shreya Singhal v. Union of India, (2015) 5 SCC 1.
6. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
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8. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.
9. Foundation for Media Professionals v. Union Territory of Jammu and Kashmir, (2020) 5 SCC 746.
10. State (NCT of Delhi) v. Disha A. Ravi, Bail Order, Patiala House Courts, New Delhi, 23 February 2021.
11. Kunal Kamra v. Union of India, Bombay High Court, judgment dated 26 September 2024.
12. Union of India v. Kunal Kamra, Special Leave Petition, Supreme Court of India (pending, admitted 2026).

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