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CONSTITUTIONAL SYSTEM OF THE RIGHT TO FREEDOM AND GROUNDS FOR RESTRICTION

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INTRODUCTION

The Right to Freedom in India is a key part of the Constitution and is included in Articles 19 to 22 under Part III, which outlines the Fundamental Rights. These rights are vital for the personal growth of citizens and for maintaining democratic values. Article 19 guarantees six important freedoms: the right to speak and express freely, the right to assemble peacefully, the right to form associations or unions, the right to move across the country, the right to live in any part of India, and the right to practice any occupation or profession of choice.

However, these freedoms are subject to reasonable limitations. The government can impose restrictions in certain situations to protect interests like national security, public order, decency, morality, and the sovereignty and integrity of India. For example, speech that incites violence or spreads hatred can be restricted, and gatherings that threaten peace can be controlled. These conditions ensure that individual liberty does not harm collective well-being or disrupt societal harmony.

Beyond Article 19, the Constitution also guarantees protection of individual rights during legal proceedings through Articles 20, 21, and 22. These include protection against self-incrimination, the right to life and personal liberty, and safeguards against arbitrary arrest and detention. Article 21, especially, has been interpreted broadly to cover different aspects like the right to privacy and fair trial. Although preventive detention is allowed under certain laws, it comes with procedural safeguards. Together, these articles form a balanced legal structure that defends personal freedom while allowing the state to act when necessary for the greater good.

The SCI, through several landmark judgement, has consistently emphasized the critical role of freedom of speech and expression - not only as a fundamental right essential to individual liberty, but also as a pillar of national interest and democratic governance. The Court has

recognized that this freedom is vital for personal development and participation in public life, while also serving the broader purpose of preserving national integrity and democratic values. In the case of *Ramesh Thaper vs State of Madras*¹ the Supreme Court held that the freedom of speech lay at the foundation of all democratic organizations.

In *Sakal Papers vs. Union of India*² were challenged on the grounds that they violated the freedom of speech and expression guaranteed under Article 19(1)(a).

In its judgment, the Supreme Court evaluated whether the restrictions introduced by certain government regulations were justified and aligned with the intended objectives. The Court stressed the critical role of judicial review in determining whether laws or rules that impact fundamental rights, especially the freedom of speech and expression, comply with constitutional standards. It ruled that any limitation placed on this right should be reasonable, proportionate, and aimed at achieving a legitimate public interest. If such restrictions do not meet these criteria, they would be considered unconstitutional. Specifically, Article 19 was central in the *Sakal Papers* case, offering a legal foundation for evaluating whether the state's actions limiting free expression were justifiable and within the scope of constitutional protections.

The Court also clarified that while the government does have the authority to regulate or impose restrictions on the right to carry on a business, it cannot directly violate or suppress any other constitutional freedom to achieve that objective. It emphasized that restrictions on freedom of speech and expression should only be based on valid grounds like national security, maintaining friendly relations with other countries, public order, decency or morality, contempt of court, defamation, or incitement to crime. Article 19 has been designed to separately outline individual freedoms and to specify the conditions under which each may be restricted, guaranteeing that no one right overshadows another. Citizens are entitled to enjoy all these freedoms equally and simultaneously, and no one right is superior to another under Article 19(1).

In the *Kedar Nath Singh* case, the Supreme Court upheld the constitutionality of Section 124A of the Indian Penal Code, which deals with sedition, but it narrowed its interpretation. The Court held that a person can only be punished under this section if their speech incites violence or creates a clear threat to public order. Merely causing annoyance or expressing

¹ 1950 SCR 594

² (1962) 3 SCR 842

harsh criticism, without the likelihood of triggering violence, does not meet the threshold for sedition. The ruling reaffirmed that such speech is protected under Article 19(1)(a), and any broader interpretation would amount to a violation of the fundamental right to free expression.

In Bennett Colman case³ is also known as the "Indian Express Newspapers (Bombay) Pvt. Ltd. v. UOI" case, is a landmark legal battle in Indian judicial history. The events of this case unfolded in 1973, centering on the broader issue of freedom of the press and the extent of government interference in media operations. The conflict began when the Indian government-imposed limitations on the quantity of newsprint available to Bennett Coleman & Co., a major newspaper publisher. These restrictions were widely perceived as an indirect means of censorship, intended to suppress dissent and control the editorial direction of newspapers that had been openly critical of government policies.

Challenging these limitations, the publishers took the matter to court, arguing that the government's actions amounted to a violation of their constitutional right to freedom of speech and expression, as enshrined in Article 19(1)(a). The dispute escalated to the SCI, where a constitutional bench was tasked with examining the legality of the government's move.

In its historic verdict, the Supreme Court firmly held that the freedom of the press is an essential aspect of the broader right to free speech and expression. The Court asserted that any governmental action seeking to interfere with press operations should be justified by strong, legitimate reasons, and should not go beyond what is absolutely necessary to protect public interest. The Bennett Coleman ruling thus reinforced the idea that a free and independent press is fundamental to the health of a democracy. In addition, the judgment reaffirmed the judiciary's critical role in upholding fundamental rights and acting as a check on executive overreach.

In the case of Rangarajan⁴, The Supreme Court observed that a balance should be struck between the right to free expression and the protection of national interests. These two considerations, though both important, cannot always be treated as equally weighted, and the appropriate resolution will vary depending on the specific context and circumstances of each case. The Court emphasized that freedom of expression should not be restricted unless

³ (1973) 2 SCR 757

⁴ (1989) 2 SCC 574

allowing it poses a genuine threat to public welfare or community safety. Moreover, the perceived threat should be imminent and real, not based on distant possibilities or hypothetical concerns. There should be a clear and direct link between the expression in question and the potential harm.

In the case of *Khusboo*⁵, The *Khushboo* case of 2010 emerged as a notable legal and societal debate, shedding light on the complex nature of freedom of speech in India. The controversy began when *Khushboo*, a well-known actress and activist, made public remarks about premarital relationships during an interview. Her statements triggered widespread criticism, leading to multiple legal complaints accusing her of promoting indecency and offending societal values. This case brought to the forefront critical discussions about the scope and limitations of free expression, especially when it involves topics considered culturally sensitive, like sexuality and morality. Supporters of *Khushboo* argued that she was simply exercising her constitutional right to express her views on a matter of public concern. They maintained that, while her opinions may have been controversial to some, they did not constitute a legal violation or justify censorship.

Conversely, those opposing her views believed that her comments clashed with traditional Indian values and were inappropriate for public discourse. Citing laws related to obscenity and public morality, they sought judicial action against her. The resulting legal proceedings drew national attention to the delicate balance between individual rights and collective cultural norms. The case highlighted the difficulties of protecting freedom of speech in a diverse society, where expressions of dissent or unconventional opinions can provoke strong reactions. Ultimately, it emphasized the ongoing tension between democratic rights and societal expectations, reinforcing the need to uphold free speech while encouraging respectful and responsible dialogue.

RESTRICTIONS OF RIGHT TO FREEDOM

The term "reasonable" lacks a precise definition, and there is no clear test to determine the reasonableness of a restriction. Each case should be evaluated based on its unique circumstances, without relying on an abstract, standardized, or universal definition of reasonableness.

⁵ S. *Khushboo vs Kanniammal* (2010) 5 SCC 600

In the case of *State of Madras v. VG Row*⁶, the Supreme Court established the principle that the reasonableness test, whenever applied, should be tailored to the specific statute being challenged. No broad or general principle of reasonableness can be universally applied to all cases. Similarly, in *Chintaman Rao v. State of Madhya Pradesh*⁷, the Court emphasized that a restriction should not be arbitrary and should be limited to what is necessary for public interest.

Several principles have emerged from the Supreme Court regarding how to determine the reasonableness of restrictions:

- **Proper Balancing of Rights:** A restriction that arbitrarily infringes on an individual's rights cannot be considered reasonable. A valid restriction should be directly related to the objective of the legislation and should not exceed what is necessary to achieve that goal. Essentially, there should be a balance between the freedoms protected under Article 19(1)(a) to (g) and the social control permitted by clauses (2) to (6) of Article 19.
- **Substantive and Procedural Reasonableness:** Courts, when assessing the reasonableness of a restriction, consider not only the substance of the restriction but also the procedural aspects set out in the statute. Both the content of the statute and the procedures it lays out contribute to determining whether the restriction is reasonable.
- **Objective Standard of Reasonableness:** The assessment of reasonableness should be based on an objective standard. Judges should not let personal biases influence their judgment of the reasonableness of a restriction. Instead, the evaluation should be made from the perspective of the general public, rather than the individuals affected by the restriction.
- **Reasonableness in Relation to Directive Principles of State Policy (DPSP):** The Directive Principles of State Policy (DPSP) are also important when determining if a restriction on a fundamental right is reasonable. A restriction that furthers the aims of a directive principle is generally considered reasonable.

In conclusion, the reasonableness of a restriction is assessed case by case, with careful consideration of the balance between individual rights and public interest, the nature of the

⁶ 1952 AIR 196

⁷ AIR 1951 SC 118

restriction, and the objectives it serves. The involvement of Directive Principles of State Policy further guides the determination of whether a restriction aligns with the broader goals of societal welfare.⁸

GROUND OF REASONABLE RESTRICTION

Article 19(1)(a) guarantees the right to freedom of speech and expression. However, this right is not absolute, and reasonable restrictions can be imposed on it under Article 19(2). Importantly, only laws - rather than administrative orders or departmental directives - can impose these restrictions. Absolute freedom is not permitted, and certain conditions allow the state to limit this right.

One of the key grounds for restricting freedom of speech is the "sovereignty and integrity of India", a principle added by the Constitution (Sixteenth Amendment) Act of 1963. This guarantees that speech cannot undermine India's sovereignty or promote separatism or secession within the country. While sedition is often considered a legitimate basis for limiting free expression, it is not explicitly mentioned in Article 19(2). In the case of *Debi Soron v. State of Bihar*⁹, the Supreme Court upheld that Sections 124A (sedition) and 153A (promoting enmity between groups) of the Indian Penal Code (IPC) are valid restrictions for maintaining public order, and are protected under Article 19(2).

Another ground for restricting freedom of speech is the "security of the State." The state is authorized to limit free speech if it poses a threat to national security. The Supreme Court clarified the meaning of "security of the state" in *Romesh Thappar v. State of Madras*. The Court emphasized that "security of the state" does not refer to all public disturbances. Instead, it pertains only to significant and serious forms of disorder, like rebellion, insurrection, or waging war against the state. Ordinary offenses like illegal assemblies, riots, and affrays do not fall under this category. Therefore, speech that incites severe criminal acts, like terrorism or violence against the state, can be restricted on grounds of national security, but less serious offenses will not justify such restrictions.

Another limitation on free speech is related to "friendly relations with foreign states." This restriction was introduced by the Constitution (First Amendment) Act in 1951. The purpose of this provision is to prevent hostile propaganda that could harm India's relationships with foreign friendly nations. Notably, member states of the Commonwealth, comprising Pakistan,

⁸ Naveen Talawar, Reasonable Restrictions to the Right to Freedom, LAW COLUMN (2021)

⁹ AIR (1954) Pat. 254

are not considered "foreign states" under this provision, meaning that speech cannot be restricted merely because it harms relations with Pakistan.

The term "public order" refers to the maintenance of peace and tranquility within society. It encompasses the condition of harmony that prevails when there is no disturbance to public peace, a state that is achieved through internal governmental restrictions. Public order was not initially included in Article 19(2), but after judicial judgement, it became recognized as a valid ground for restricting free speech. Public order is disturbed by acts that disrupt public serenity, like community disturbances or strikes designed solely to create dissatisfaction among workers. However, simple criticism of the government does not, by itself, disturb public order. For example, the Union Government may ban propaganda from a country at war with India under the "public order" restriction.¹⁰

"Morality or decency" also serves as a basis for limiting free speech. These terms have broad meanings and can encompass speech or expression deemed obscene, vulgar, or offensive to public standards of morality. Sections 292-294 of the Indian Penal Code set forth examples of how speech can be restricted for reasons of decency and morality. Obscenity, in particular, is defined as content that is "against modesty or decency; vulgar, dirty, and disgusting." The "test of obscenity" examines whether a publication, taken as a whole, has the potential to corrupt or degrade individuals, particularly those who are vulnerable to such influence.

"Contempt of court" is another ground for limiting freedom of speech. If a statement or action exceeds reasonable criticism and becomes contemptuous of the judiciary, it can be restricted. According to the Contempt of Courts Act of 1971, contempt of court is classified into two categories: civil contempt and criminal contempt. Civil contempt refers to the willful disobedience of a court's order, judgment, or directive. Criminal contempt involves actions like publishing statements or engaging in behavior that disrespects or disrupts the functioning of the court. This includes acts that scandalize the authority of the court, obstruct justice, or lower its dignity.

Contempt of Court refers to actions or statements that undermine the authority of a court, interfere with the administration of justice, or obstruct legal proceedings. Specifically, it includes any conduct that lowers or attempts to lower the dignity of any court, prejudices or hinders the proper functioning of justice, or obstructs justice in any manner. However, certain activities are not considered contempt. These include honest publication or dissemination of

¹⁰ Simmi Tiwana, Right to freedom of Press and Article 19, IJNRD (2023)

material, full and impartial reports of court proceedings, legitimate criticism of judicial acts, grievances against judicial officers made in good faith, and the publication of reasonable information regarding in-camera or private hearings. These actions are protected as they do not harm the integrity of the judicial system.

Defamation refers to statements that harm a person's reputation by exposing them to hatred, ridicule, or contempt. Under Indian law, defamation is governed by Section 499 of IPC. This law does not differentiate between slander (spoken defamation) and libel. Such statements are considered legitimate restrictions on free speech, as they protect individuals from unjust harm to their reputation.

Incitement to an Offence was introduced as a ground for restricting free speech under the Constitution (First Amendment) Act of 1952. This provision clarifies that the right to freedom of speech does not extend to encouraging others to commit criminal acts. The term "offence" is not specifically defined in the Constitution, but according to the General Clauses Act, it refers to any act or omission punishable under the law at the time. Courts assess whether there has been an incitement to commit an offense by evaluating the context and evidence of each case.

The problems with Article 19(2)

The scope of restrictions under Article 19(2) was expanded through the First Amendment, which was a response to the Supreme Court's judgement in the *Romesh Thappar* and *Brij Bhushan* cases. In *Romesh Thappar*, the Court struck down a state ban on the circulation of a magazine, citing that it did not meet the criteria of public safety or public order. Similarly, in *Brij Bhushan*, the Court ruled against the government's attempt to pre-censor a journal under the justification of maintaining public order. These judicial setbacks led to a constitutional amendment, allowing the government to impose greater restrictions on the freedoms guaranteed under Article 19(1).

The First Amendment also introduced the 'reasonable restriction' clause, which empowered the courts to assess whether limitations on free speech were justified. However, despite this provision, judicial interpretations over the years have not established a clear, uniform test to determine which expressions fall under the restrictions outlined in Article 19(2). As a result, while there have been several landmark judgments protecting free speech, like in the cases of *Arup Bhuyan*, *Shreya Singhal*, and *Anuradha Bhasin*, the inconsistency in judicial decisions regarding freedom of speech remains apparent.

In contrast to these progressive judgement, the Court has often adopted varying interpretations of the concept of "public order" as mentioned in Article 19(2), leading to different conclusions over time. This inconsistency highlights the ongoing challenge in balancing free speech with national interests.¹¹

Public orders & Article 19

One of the first landmark cases addressing the scope of "public order" was *Ramji Lal Modi*, which examined the constitutionality of Section 295A of IPC. This section criminalizes acts or statements that insult or hurt the religious feelings of any community. The Court rejected the idea of using a proximate test to link speech directly to public disorder and instead upheld Section 295A as constitutional, arguing that it had a "calculated tendency" to disturb public order. This concept of calculated tendency became the standard for determining when speech could be restricted for the sake of public order, rather than requiring a direct connection between speech and disorder. Following this line of reasoning, the *Kedar Nath Singh* case upheld the sedition law, arguing that certain types of speech have the potential to incite public disorder.

However, in *Ram Manohar Lohia*, the Court took a different approach by narrowing the interpretation of "public order." It ruled that for speech to pose a threat to public order, there needed to be a direct and significant link between the speech and the alleged public disorder. This interpretation was further refined in *Madhu Limaye v. Ved Murti*, where the Court clarified that public order should be distinguished from public tranquillity, meaning a disturbance had to be more than just a minor disruption to public peace. The Court stressed the need for a balance between free speech and reasonable restrictions, but emphasized that the two should not be treated as equally important in every situation.

Despite the more restrictive approach in *Ram Manohar Lohia*, there have been cases where courts have expanded the meaning of "public order." For instance, in *Baragur Ramachandrappa v. State of Karnataka*, the Court broadened the scope of public order by banning the publication of the novel *Dharmakaarana*, arguing that its content could offend the sentiments of particular communities. Similarly, in 2017, the Supreme Court upheld a ban on the book *Basava Vachana Deepthi* on the grounds of religious offense, without providing a detailed explanation for its ruling.

¹¹ . Shailendra Jha, *Liberty under Indian constitution regarding speech and expression*, IJPSG (2020)

In addition, "public order" has increasingly been invoked to restrict protests that disrupt public mobility and to justify internet shutdowns, particularly during exam periods to prevent cheating. For example, the Ministry of Information and Broadcasting suspended two media channels for their critical coverage of the Delhi riots, citing public order concerns. In addition, the Central Media Accreditation Guidelines (2022) granted the Union Government the authority to selectively accredit journalists, restricting their access to government offices based on vague grounds like public order, morality, or decency.

The expansion of "public order" as a justification for limiting free speech has had far-reaching implications, with journalists, activists, and protesters being prosecuted under laws that safeguard public order. As a result, the concept of reasonable restriction under "public order" has been broadened, providing the government with extensive powers to limit freedom of expression.

INFORMATION TECHNOLOGY ACT, 2000, AND ITS AMENDMENTS

IT Act serves as the main legal system for regulating different online activities in India, comprising those associated with social media usage. Within this Act, several provisions outline the boundaries of lawful digital conduct. One of the most debated sections was Section 66A¹², which dealt with penalties for sending offensive messages through electronic communication. This provision attracted widespread criticism for being vaguely worded and for having the potential to be misused as a tool to suppress free speech. Critics argued that terms like "grossly offensive" and "menacing character" were overly subjective and could be interpreted in ways that unjustly criminalized legitimate criticism or dissent.

Over time, numerous cases emerged in which individuals were arrested under Section 66A for posting comments or content online that criticized political figures or government decisions. These incidents sparked serious concern about abuse of authority and the chilling effect such laws could have on open digital discourse. In response to these concerns, the SCI, in the landmark *Shreya Singhal v. Union of India*¹³ case in 2015, declared Section 66A unconstitutional. The Court ruled that it infringed upon the fundamental right to freedom of speech and expression under the Indian Constitution. The judgment was a pivotal moment for

¹² Section 66A of the Information Technology Act, 2000

¹³ *Shreya Singhal v. UOI* AIR 2015 SC 1523

digital rights in India, affirming that online speech deserves the same protections as offline speech, and that legal restrictions should be clearly defined to avoid misuse.

In contrast, Section 69A¹⁴ grants the government the authority to block access to online content under specific conditions - like safeguarding the sovereignty, integrity, defense, and security of the nation, maintaining public order, or preserving relations with foreign states. While this section focuses primarily on national security and law enforcement, it also raises concerns regarding freedom of expression. The discretionary powers it provides should be exercised carefully to ensure they do not infringe upon constitutional rights without just cause. As such, Section 69A remains a point of ongoing debate in discussions around the balance between state security and individual freedoms in the digital space.

Section 69A of the Information Technology Act empowers the government or its designated authorities to order the blocking of public access to online content if they believe such action is necessary in specific situations. This authority is governed by certain procedural safeguards, which include issuing a reasoned order and providing the affected party with an opportunity to present their case before the content is blocked. Despite these safeguards, there are ongoing concerns about the potential misuse of this provision to undermine freedom of speech and expression.

Critics argue that the vague and broadly defined justifications for blocking content under this section could be exploited to target dissenting voices, suppress government criticism, or limit political expression. In several instances, Section 69A has reportedly been used to take down websites, social media handles, or digital content that challenged official narratives or criticized public policies. These actions have fueled intense debates about the fine line between national security interests and the protection of civil liberties, particularly the right to free expression online.

While the purpose of Section 69A is to address genuine threats to national security, sovereignty, and public order, its enforcement should adhere to constitutional values and follow the principles of necessity, proportionality, and legality. For the provision to be implemented in a fair and democratic manner, the government should act with transparency and accountability. It is crucial that any restrictions on digital content be clearly justified, legally

¹⁴ Section 69A of the Information Technology (IT) Act, 2000

sound, and subject to independent oversight to prevent arbitrary censorship and ensure the upholding of fundamental rights in the digital domain.

Section 79¹⁵ plays a key role in defining the legal responsibilities and protections for intermediaries - which include entities like internet service providers, social media networks, web hosts, and search engines. These intermediaries act as facilitators, enabling the transmission, storage, or hosting of content created or shared by users.

This provision grants conditional immunity to intermediaries, shielding them from being held legally accountable for third-party content that is accessed, stored, or shared through their platforms. However, this protection is not absolute; it applies only if the intermediaries comply with certain legal obligations and due diligence requirements set out under the law. Failure to meet these conditions may result in the loss of this legal safeguard.

Intermediary Guidelines and Digital Media Ethics Code (2021):

Key Provisions:

Appointment of Grievance Redressal Officers: Social media platforms with more than 5 million users should designate a Grievance Redressal Officer in India to handle user complaints and grievances.

Content Removal and Traceability: Platforms are obligated to remove or block access to illegal content within a set timeframe after receiving a court order or notice from the relevant government authority. They should also ensure traceability of the source of information that could pose a risk to national security or public order.

Adherence to Code of Ethics: Digital news platforms and OTT providers should comply with a Code of Ethics, which includes rules on content classification, age verification, and banning content that undermines India's sovereignty and integrity.

Periodic Compliance Reports: Social media platforms should submit regular compliance reports to the government, detailing their adherence to these regulations and the steps taken to address user complaints and grievances.

Implications:

¹⁵ Section 79 of the Information Technology Act, 2000

Increased Regulatory Oversight: These guidelines mark a major increase in the government's oversight of digital content and social media platforms in India. The goal is to tackle issues like misinformation, fake news, hate speech, and harmful online content.

Challenges for Platforms: The guidelines present significant challenges for social media companies, digital news sites, and OTT platforms, especially in areas like content moderation, data storage, and complying with traceability requirements.

Concerns About Freedom of Expression: Some critics argue that these regulations could undermine freedom of expression and privacy by imposing strict content control and traceability rules. They worry about potential censorship and government overreach in enforcing these measures.

In conclusion, the Intermediary Guidelines and Digital Media Ethics Code (2021) represent a major shift in India's approach to regulating digital media. While they aim to address critical concerns about online content and platform responsibility, they also raise important questions regarding the balance between regulation, free speech, and privacy in the digital era.¹⁶

REASONABLE RESTRICTIONS: FAIR OR UNFAIR

The case of *Shreya Singhal v. Union of India*¹⁷ dealt specifically with the issue of the virtual era's freedom of speech and expression. Section 66A¹⁸ was declared unlawful and unconstitutional in this judgment. According to this section of the IT Act—"Any individual who transmits with the help of a computer system or transmitting medium such data that is defamatory, or by the understanding of its falsehood, the data is conveyed for the intent of leading to anger, aggravation, threat, insult, harm, animosity, or ill will."

The right to access the Internet is a privilege acknowledged by judicial decree and a Supreme Court (SC) decision in the case of *Anuradha Bhasin vs Union of India*¹⁹. The central issue in this case was whether the government's internet shutdown and restrictions on movement in Kashmir were lawful, whether the right to freedom of speech and expression under Article 19(1)(a) extends to the digital realm, and whether imposing an internet ban was consistent with the limitations outlined in Article 19(2).

¹⁶ Mehta, Bhashkar, Right to Privacy and Media, SSRN (2023)

¹⁷ *Shreya Singhal v. UOI* AIR 2015 SC 1523

¹⁸ Section 66A of IT Act

¹⁹ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637

The rationale behind evaluating this issue was based on the premise that everyone has the right to freedom of speech and expression, and the Court considered how far these rights can be restricted, comprising the possibility of an outright ban. To assess the government's actions, the Court applied the proportionality test, requiring the government to justify any restrictions before enforcing them.

The Supreme Court upheld the fundamental right to free speech, reinforcing a longstanding view that the medium through which speech is exercised is an essential part of this right. For instance, in the Indian Express case, the Court recognized the importance of freedom of the press.

As a result, in the era of digital media, the issue can be viewed from two perspectives: as a positive development or as a negative one. For instance, when the government banned several Chinese apps, some regarded it as a beneficial step, while others criticized it as a violation of Article 19(1)(a), as the ban affected popular social media platforms and gaming apps like PUBG, which have millions of users in India.²⁰

CODE OF ETHICS AND PROCEDURE AND SAFEGUARDS IN RELATION TO DIGITAL MEDIA

The IT Rules, 2021 introduced a set of guidelines and standards of conduct aimed at regulating intermediaries, like social media platforms, to ensure better control over digital media and online content in India. Below are the main aspects concerning the code of ethics and the procedures and safeguards required for social media platforms:

- **Code of Ethics for Digital Media:** The 2021 Intermediary Rules outline a code of ethics and behavioral standards that digital platforms, comprising social media intermediaries, should adhere to. These guidelines cover content moderation, user interactions, and compliance with legal systems.
- **Grievance Redressal System:** Social media platforms are required to set up effective grievance redressal systems to handle user complaints and concerns promptly. This includes the appointment of a designated Grievance Redressal Officer to oversee complaints related to content moderation and user engagement.
- **Transparency Reporting:** Platforms should produce and share regular transparency reports that highlight their content moderation activities. These reports should detail

²⁰ <https://nickledanddimed.com/2024/01/07/right-to-privacy-in-the-world-of-social-media/>

the number of complaints received, actions taken, and the content that has been removed or blocked. This approach is meant to promote transparency and accountability in how platforms manage content.

- **User Interaction and Feedback:** Social media platforms are encouraged to actively engage with their users, gathering feedback about their policies, user experience, and general platform practices. Such interaction can help platforms refine their services and better address user concerns.
- **Adherence to Legal Obligations:** Social media platforms should comply with the applicable legal systems, comprising the Information Technology Act, 2000, and related regulations. This includes guaranteeing compliance with data protection, privacy, cybersecurity, and content management laws.
- **User Privacy Protection:** Platforms are required to take steps to safeguard user privacy and ensure the security of personal data. This includes robust data protection practices, obtaining user consent for data usage, and securing the storage and transfer of data.
- **Child Safety Measures:** Social media platforms should take measures to protect minors from harmful content and online exploitation. This includes implementing age verification processes, providing parental controls, and setting up safeguards to prevent online bullying and harassment.

While the IT Rules, 2021 provide a regulatory system for social media platforms in India, there remains ongoing debate about the sufficiency and effectiveness of these rules in addressing the complexities of online content regulation. Many have called for further improvements and strengthening of these regulations to create a safer, more secure, and inclusive digital environment for all users.

The Rhea Chakraborty case²¹. Long story short, popular actor Sushant Singh Rajput, unfortunately, died of suicide on 14th June 2020. In the case of Rhea Chakraborty, concerns were raised about the role of media sensationalism and trial by media, which could potentially affect the fairness of the legal process and violate her right to a fair trial. The intense media coverage and widespread public speculation sparked debates about the presumption of innocence, the right to privacy, and the negative impact of media trials on the judicial system.

²¹ Bachchan, A. (2021). <https://www.youthkiawaaz.com/2021/01/online-bandwagon-and-outrage-culture-in-india/>

Legal experts and civil society groups stressed the importance of allowing the legal system to operate independently, free from outside influence, and guaranteeing that the accused receive fair treatment and due process.

Freedom of speech and expression is a fundamental right under Article 19(1)(a) . While this right is essential for a thriving democracy and facilitates the exchange of ideas, it is not absolute and should be balanced with other rights, like the right to a fair trial. In Rhea Chakraborty's case, media coverage and public discussions raised questions about the limits of freedom of speech, with some arguing that it led to a trial by media and infringed upon the privacy and dignity of those involved.

On the other hand, some argued that media scrutiny and public discussion are vital for holding public figures and institutions accountable, and for guaranteeing transparency in high-profile cases. The judiciary plays a critical role in safeguarding fair trial rights, guaranteeing that legal proceedings are impartial and free from bias. It is crucial to have legal and ethical guidelines in place to regulate media coverage of ongoing legal cases, especially those involving sensitive matters or well-known individuals, to prevent the spread of misinformation and protect the rights of the accused.

Civil society groups, media watchdogs, and legal professionals have called for responsible journalism and adherence to ethical standards by the media to ensure fairness, accuracy, and impartiality in their reporting of legal proceedings. The case of Rhea Chakraborty highlights the delicate balance between the right to a fair trial, freedom of speech, and media ethics in India. It emphasizes the need for a balanced approach that safeguards the rights of the accused while also promoting transparency, accountability, and freedom of expression in a democratic society.