



DAILY EDITORIAL ANALYSIS

TOPIC

**COURTS MUST PROTECT, NOT
REGULATE FREE SPEECH**

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In Context

- Recent observations by the **Supreme Court in Ranveer Allahbadia vs Union of India (2025)**, where the Court suggested the creation of new regulatory mechanisms for online content, have revived a critical constitutional debate: **Should courts merely protect free speech, or can they legitimately shape its regulation?**

Understanding Free Speech in a Democracy

- Free speech, or Freedom of Speech and Expression, is a **fundamental principle that allows individuals or communities to articulate their opinions**, ideas, and beliefs without fear of retaliation, censorship, or legal sanction from the government.
- It is universally recognized as a core human right, protected by documents like the **Universal Declaration of Human Rights (UDHR, Article 19)**.

Constitutional Conundrum: Article 19(2) and the Limits of Restriction

- Article 19(1)(a) of the Constitution** guarantees freedom of speech and expression as a fundamental right.
- The bedrock of free speech in India is that it is not absolute; it is subject to **“reasonable restrictions” under Article 19(2)**.
 - These restrictions are specific and exhaustive:** sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

Role of Judiciary in Regulating Free Speech

- Judiciary as Constitutional Guardian:** The Courts safeguarding free speech by interpreting the scope of Article 19(1)(a) and its permissible limits.
 - Courts ensure that the **State does not use regulatory powers** to stifle dissent or political criticism.
- Doctrinal Contributions:** The Supreme Court has developed **doctrines such as proportionality and the chilling effect** to assess the impact of restrictions on speech. These doctrines help distinguish legitimate regulation from unconstitutional suppression.
- Separation of powers:** Law-making and policy formulation lie with the legislature and executive, while courts are confined to interpretation and review.

Challenges from Regulation of Free Speech in India

- Criminalisation of speech through **penal laws remains a major challenge**, as provisions on sedition, enmity, obscenity, and defamation are frequently invoked against journalists and critics despite judicial narrowing.
- Vague statutory terms such as “public order”, “morality”, and “offensive content”** grant wide executive discretion, enabling arbitrary and selective suppression of dissent.
- Frequent internet shutdowns** pose a serious threat to free speech, disrupting news flow, political communication, and journalistic work.
- Digital speech regulation under the IT Act and IT Rules, 2021 imposes **heavy compliance burdens on intermediaries** and allows opaque content takedowns without independent oversight.

Legal Frameworks in Regulating Free Speech

- Regulation of free speech in India is spread across constitutional provisions, criminal law, and sector-specific regulations. **Key elements include:**
 - Constitution:** Article 19(1)(a) read with Article 19(2); related rights under Articles 14 and 21 governing fairness and due process.

- ♦ **Penal statutes:** Provisions akin to Sections 124A, 153A, 295A, 499, 505 (now re-enacted analogues under Bharatiya Nyaya Sanhita) dealing with sedition-like offences, promoting enmity, insult to religion, defamation and public mischief.
- ♦ **IT framework:** Information Technology Act, 2000 (including blocking under Section 69A) and IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 for intermediaries, digital news and OTT platforms.
- ♦ **Media-specific norms:** Cable TV and cinematograph laws, programme and advertising codes, and self-regulatory guidelines for print, TV and digital news media.

Judicial precedent

- **Common Cause v. Union of India (2008):** The Court underlined that the separation of powers prevents courts from solving every governance problem through judicial orders and ad-hoc policy prescriptions, especially in domains better handled by the legislature or expert regulators.
- **Sahara India Real Estate Corp. Ltd. v. SEBI (2012):** While recognising postponement orders to protect fair trials, the Court warned against blanket prior-restraint on media and insisted that any curbs on reporting must be narrowly tailored, temporary and exceptional.
- **Kaushal Kishor v. State of Uttar Pradesh (2023):** A Constitution Bench held that the grounds in Article 19(2) are exhaustive and that no additional restrictions on free speech can be imposed by creatively invoking other fundamental rights or vague notions of “constitutional morality”.

Global Perspective on Content Regulation

- From a global perspective, democratic jurisdictions such as the European Union, Germany, the United Kingdom, and Australia primarily rely on post-publication content removal and penalties for platform non-compliance, supported by legal safeguards and judicial oversight.
- In contrast, authoritarian regimes like China and Russia enforce stringent content laws characterised by pre-censorship, extensive surveillance, and criminalisation of dissent. This divergence underscores the risk that excessive or preventive content regulation may gradually erode democratic freedoms.

Way Ahead

- **Legislative Process, Not Judicial Decree:** Any new regulation must come from Parliament via a comprehensive law (like the proposed Digital India Act), following extensive public consultation, not through ad-hoc court orders.
- **Co-Regulation:** The ideal model is statutory backing for self-regulatory bodies (like the Digital Publisher Content Grievances Council), overseen by a judicial (not executive) authority only at the appellate stage.
- **Digital Literacy:** The long-term defense against “offensive” content is not a firewall, but a discerning citizenry. Investments in digital media literacy are more effective than censorship.
- **Judicial Restraint:** The Supreme Court must return to its role as the constitutional umpire. As Pandit Thakur Dass Bhargava stated in the Constituent Assembly, the Court’s job is to say whether a restriction is reasonable, not to demand that restrictions be imposed.

Source: TH

Daily Mains Practice Question

[Q] Examine the constitutional and democratic risks associated with judicially driven regulation of free speech, particularly in the digital sphere.

