

OTT PLATFORMS, HATE SPEECH, AND NATIONAL SECURITY: A CONSTITUTIONAL PERSPECTIVE UNDER ARTICLE 19(2).

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Abstract

The rapid proliferation of over-the-top (OTT) platforms in India has democratized content creation and consumption. However, the unregulated nature of digital content has led to the emergence of hate speech and content affecting national security. This article examines the constitutional framework under Article 19(2) with respect to freedom of speech, and the reasonable restrictions imposed to regulate hate speech on OTT platforms. Recent jurisprudence and the regulatory framework point to a delicate balance between safeguarding national security, protecting individual rights, and upholding artistic and expressive freedoms. The article analyzes critical challenges, highlights legal developments, and offers pragmatic suggestions for aligning digital freedoms with constitutional mandates.

Keywords: OTT platforms, hate speech, Article 19(2), national security, freedom of speech, Indian Constitution, censorship, digital regulation

Introduction

OTT (over-the-top) platforms have significantly transformed the Indian entertainment and information ecosystem, providing users with a wide array of instantly accessible digital content beyond traditional cinema or television. Unlike conventional media, OTT content faces minimal censorship, allowing artists and creators unprecedented freedom to experiment with themes, formats, and expressions. However, this creative liberty brings certain risks: the rapid dissemination and borderless reach of digital streaming have enabled the propagation of hate speech and potentially dangerous material that could incite violence or undermine national security.

The constitutional backbone for regulating such content is Article 19 of the Indian Constitution. Article 19(1)(a) grants every citizen the fundamental right to freedom of speech and expression, which includes the liberty to create, publish, and access diverse content on digital platforms. Yet, this right is not absolute. Article 19(2) empowers the State to impose “reasonable restrictions” on this freedom in the interests of sovereignty, integrity, security of the State, public order, decency, morality, and other constitutionally recognized concerns. This legal balance seeks to ensure that creative boundaries are respected without allowing harmful material to threaten social order or national security.

To operationalize these constitutional principles, the Government of India introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules mandate a three-tier grievance redressal system, beginning with self-regulation by publishing platforms, oversight by self-regulatory industry bodies, and, at the final stage, government intervention. Platforms are required to ensure that content does not violate any law, including those prohibiting hate speech or obscene material. Enforcement is

exercised through mechanisms such as blocking orders or takedown notices, drawing authority from Section 69A of the IT Act and other statutory provisions.

The dynamic tension between creative liberty and constitutional restraint is at the heart of current debates on digital media regulation. While OTT platforms expand expressive possibilities, constitutional safeguards defend national interests and social harmony against abuses such as hate speech or content inciting violence. Thus, the regulatory framework aims for equilibrium—preserving fundamental rights while securing public order and national security in the dynamic digital era.

Freedom of Speech and Article 19(2): The Constitutional Contour

Article 19(1)(a) enshrines the fundamental right to freedom of speech and expression, which forms the cornerstone of India's democracy. However, recognizing the possibility of abuse of this freedom, the Constitution empowers the State to impose reasonable restrictions under Article 19(2) on grounds such as the sovereignty and integrity of India, security of the State, public order, decency or morality, and incitement to an offence. The Supreme Court has consistently held that these grounds are exhaustive — no additional restrictions beyond those enumerated in Article 19(2) are permissible, as ruled in *Kaushal Kishor v. State of Uttar Pradesh* and earlier in *Express Newspapers v. Union of India*.

OTT Platforms and the Legal Landscape

With mainstream cinema subject to pre-censorship by the CBFC, OTT platforms operated in a regulatory vacuum until the notification of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules mandate self-regulation, a code of ethics, and a three-tier grievance redressal mechanism for OTT content. Importantly, OTT platforms must not publish content prohibited by any law, including material that provokes violence, threatens public order, or violates decency and morality.

Section 69A of the IT Act, 2000 authorizes the government to block content that threatens the interests enumerated in Article 19(2); such blocking must be precise, justified, and within constitutional limits. However, complete bans or opaque blocking orders often raise concerns over blanket censorship and chilling effects on creativity.

Hate Speech on OTT Platforms: Constitutional and Legal Issues

Hate speech, though not specifically defined in Indian statute, is generally understood as speech that incites violence, provokes hatred, or threatens public order. The Supreme Court, in landmark cases such as *Pravasi Bhalai Sangathan v. Union of India* and *Amish Devgan v. Union of India*, clarified that only speech inciting violence or enmity directly falls outside the protection of Article 19(1)(a).

Courts have observed that hate speech regulation must be precise and not arbitrarily suppress dissent, diverse opinions, or legitimate criticism. Intention, context, and the likelihood of actual harm are essential in determining whether content crosses the constitutional line. Therefore, generalized or vague invocation of public order cannot justify sweeping curbs on speech unless there is clear evidence of imminent danger or destabilization.

Balancing National Security and Digital Freedoms

National security stands as one of the most important grounds for restricting freedom of speech within the Indian constitutional framework. Article 19(2) of the Indian Constitution exhaustively lists the conditions under which the right to free speech and expression may be limited, explicitly delineating security of the State as a core justification. In the digital age, where information travels swiftly and widely, hate speech can rapidly escalate tensions and threaten social harmony, making the imperative of national security stronger than ever.

Despite the legitimacy of such restrictions, the Constitution demands that any curtailment of speech be based on principles of proportionality, necessity, and narrow tailoring. This means that restrictions should not be excessive or vague, but must be precisely justified and directly related to the threat posed. Overreaching measures such as mass censorship or indiscriminate deplatforming are disfavored because they not only undermine the core of free expression but also risk eroding democratic values and stifling the exchange of legitimate ideas and criticism.

Judicial review is central to policing these boundaries, ensuring executive actions never transgress the scope of Article 19(2). The Supreme Court has played an essential role in interpreting and safeguarding constitutional rights through landmark rulings. In *Shreya Singhal v. Union of India*, a watershed case for free speech jurisprudence, the Supreme Court struck down Section 66A of the Information Technology Act for being overly broad and vague, thus leading to arbitrary restrictions on digital speech. The Court emphasized that any governmental intervention impacting free expression online must be accompanied by reasoned orders, procedural safeguards such as notice and appeal, and transparency in takedown measures.

The test laid down in *Shreya Singhal* requires that content be specifically linked to an imminent threat to public order, security, or other permissible grounds, and that the procedure for taking down such content is fair and reviewable. The Court also reaffirmed that restrictions are only valid on the constitutionally enumerated grounds, warning against the addition of new, unspecified justifications for limiting speech. Jurisprudence from *Romesh Thappar v. State of Madras* and subsequent cases further clarifies that merely hypothetical, distant, or vague dangers cannot justify censorship; the link between speech and the risk must be proximate and direct.

This judicial approach not only upholds the necessity of national security but ensures that the right to free speech is not eclipsed by overzealous enforcement. It preserves the essence of democratic dialogue, where dissent, criticism, and minority perspectives can flourish alongside necessary safeguards. As digital platforms become ever more central to societal discourse, constitutional supervision over executive power remains the bulwark protecting individual freedom, even in the face of evolving threats. Thus, the Court's insistence on reasoned, transparent, and reviewable limitations is vital to both preserving security and nurturing the democratic ethic.

Conclusion and Suggestions

OTT platforms, as transformative agents in Indian media, exemplify both the opportunities and perils of digital democratization. While the proliferation of unchecked hate speech poses real threats to national security and social harmony, any regulatory response must be firmly

anchored in constitutional doctrine. Article 19(2) provides an exhaustive, not expandable, set of grounds for restricting speech and mandates that such restrictions be both reasonable and transparent. Striking a balance between digital liberty and regulated responsibility is essential for upholding India's democratic and pluralistic character.

India's regulatory approach towards OTT platforms and hate speech must prioritize clarity, proportionality, and accountability:

Laws and guidelines on digital content should be clearly articulated to prevent vague interpretation and arbitrary enforcement. Procedural safeguards for notice, hearing, and review must be strictly adhered to in all cases of content blocking or takedown, with reasoned and public orders. Regulatory efforts should move towards targeted interventions—focusing on specific content, not entire platforms—and rely on transparent, tech-enabled processes. There is a strong need for independent oversight bodies to supervise self-regulation and government action, reducing risks of executive overreach. Public education, digital literacy campaigns, and constructive stakeholder engagement are vital to empower users while minimizing reliance on state censorship.

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