

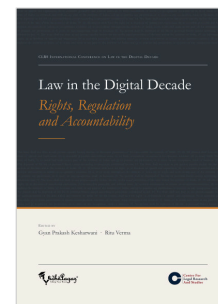
CHAPTER 21

Samvaad: Digital Constitutionalism, Article 19 and the Future of Online Dissent

Anoushka Girish and Apoorva T

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CHAPTER 21

Samvaad: Digital Constitutionalism, Article 19 and the Future of Online Dissent

ANOUSHKA GIRISH* AND APOORVA T**

Digital constitutionalism has emerged as a framework for examining how constitutional values are preserved in an increasingly platform-driven society. In India, where political discourse has progressively shifted from physical spaces to digital platforms, the constitutional guarantee of freedom of speech and expression under Article 19(1)(a) faces new challenges. While digital media has expanded democratic participation, it has also intensified concerns relating to algorithmic amplification, platform moderation, misinformation, surveillance, internet shutdowns, and criminal regulation.

This paper examines the evolution of Article 19 within digital constitutionalism, focusing on student-led protests and online mobilisation. Using the Delhi student rallies as a contemporary case study, it analyses how digital platforms have transformed dissent by enabling rapid dissemination of information, wider participation, and collective action beyond geographical boundaries. It evaluates whether digital activism strengthens constitutional democracy or creates risks through misinformation, polarisation, digital vigilantism, and targeted attacks on individual dignity. The paper further examines the reasonable restrictions under Article 19(2) and their application to online expression through the principles of legality, necessity, and proportionality. It considers the relationship between Article 19 and the dignity protected under Article 21, particularly where harmful content is rapidly reproduced and accountability becomes difficult. It also examines the growing influence of private platforms and algorithmic systems over political expression. The paper argues that digital constitutionalism must balance freedom, dignity, technological power, and constitutional accountability to preserve meaningful democratic dissent in India's digital age.

1 INTRODUCTION

The public square is no longer confined to streets, university campuses, newspapers, or public meetings. It increasingly exists on screens. Social media platforms have transformed the way individuals communicate, organise political movements, express dissent, and participate in democratic life. A protest that once depended primarily upon physical gathering can now begin with a post, spread through hashtags, and reach thousands within minutes.¹ For student movements in particular, digital platforms have become important spaces for mobilisation, documentation, and political expression. This transformation raises a fundamental constitutional question: how far does the protection of freedom of speech and expression under Article 19(1)(a) extend into the digital public sphere?² The Constitution was framed in an era of conventional communication, yet contemporary political discourse is increasingly shaped by social media platforms, algorithms, private content moderation, and instant communication. Online expression can

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¹ Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* (Yale Univ. Press 2018).

² INDIA CONST. art. 19, cl. 1(a).

be amplified to enormous audiences, restricted by governmental action, removed by private platforms, or rendered inaccessible through internet shutdowns.³ At the same time, digital spaces create genuine concerns relating to misinformation, public order, surveillance, privacy, and individual dignity.

The concept of digital constitutionalism provides a framework for examining these developments.⁴ It considers how constitutional values such as liberty, dignity, accountability, privacy, and freedom of expression can be preserved when public discourse is increasingly mediated by digital technologies and private platforms. The constitutional question is consequently no longer limited to whether the State restricts speech. It also concerns who controls the digital spaces in which speech takes place and how technological systems influence what individuals can see, express, and circulate. The Indian judiciary has already addressed several dimensions of these concerns. In *Shreya Singhal v. Union of India* (2015), the Supreme Court struck down Section 66A of the Information Technology Act, 2000, reaffirming the constitutional protection of online expression.⁵ *K.S. Puttaswamy v. Union of India*⁶ recognised privacy as a fundamental right and linked it with autonomy and dignity, while *Anuradha Bhasin v. Union of India*⁷ recognised the internet as an important medium through which constitutionally protected freedoms may be exercised. These decisions demonstrate that fundamental rights cannot become weaker merely because their exercise has moved into digital spaces.

The constitutional difficulty becomes particularly visible in the context of student-led dissent. Digital platforms allow students to organise rapidly, document protests, circulate information, and reach audiences beyond geographical boundaries. However, the same platforms can facilitate misinformation, digital vigilantism, harassment, and targeted attacks upon individuals. During the Delhi student rallies, online posts and stories depicting injured students became part of the wider public narrative surrounding the protests. At the same time, instances of provocative and degrading content directed at public figures demonstrated the difficulty of distinguishing protected political expression from expression that may affect another person's dignity and reputation.

This creates a tension between Articles 19 and 21. While Article 19(1)(a) protects political expression and dissent, Article 19(2) permits reasonable restrictions on specified grounds, including public order, security of the State, and incitement to an offence.⁸ Article 21, meanwhile, protects life and personal liberty and has been interpreted to include dignity.⁹ The constitutional challenge is therefore not whether online expression should be absolutely free, but where the boundary lies between legitimate dissent and unjustifiable harm.

This paper examines that boundary through the framework of digital constitutionalism, focusing particularly on student-led online mobilisation and the Delhi student rallies. It evaluates the constitutional limitations imposed under Article 19(2), the relationship between online expression and the dignity protected under Article 21, and the role of judicial review in determining whether digital restrictions are lawful, necessary, and proportionate.¹⁰ It further examines the growing influence of private platforms and

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

⁴ Nicolas P. Suzor, Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms, 4 SOC. MEDIA + SOC'Y 1 (2018).

⁵ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

⁷ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

⁸ INDIA CONST. art. 19, cls. 1(a), 2.

⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

¹⁰ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).

algorithmic systems over the visibility of political speech. The paper argues that protecting online dissent requires more than simply extending Article 19(1)(a) to the internet. It requires a constitutional framework capable of addressing State restrictions, private platform power, algorithmic amplification, misinformation, and individual dignity simultaneously. Digital constitutionalism must therefore ensure that technological power does not become a substitute for constitutional accountability, while preserving the digital public sphere as a meaningful space for democratic participation and dissent.

2 DIGITAL CONSTITUTIONALISM AND ONLINE DISSENT

Digital constitutionalism examines how constitutional principles operate within an increasingly digital society. Unlike traditional constitutionalism, which largely focuses on the relationship between the State and the individual, the digital environment involves a wider distribution of power. Technology companies, social media platforms, algorithms, and other private actors increasingly influence how individuals communicate, access information, and participate in public life.¹¹ The constitutional question therefore extends beyond whether the State restricts a right to whether the digital environment itself enables or limits its meaningful exercise.

Freedom of expression occupies a central position within this framework. Digital platforms have become important spaces for political discussion, criticism of government policies, dissemination of information, and collective mobilisation. A single post can reach audiences far beyond geographical and institutional boundaries, allowing individuals and groups with limited access to traditional media to participate directly in public discourse. For student movements, this has made digital platforms particularly significant for organising protests, sharing experiences, and building public support.

However, digital spaces are not neutral or unrestricted public forums. The visibility of content can be influenced by algorithms, platform policies, moderation practices, and commercial interests. Content may be removed, restricted, or made less visible by private platforms even without direct State intervention. This creates a distinction between the formal existence of a right to expression and the practical ability to exercise it: an individual may be free to speak, while technological systems influence whether that speech is actually heard.

This tension becomes particularly important in relation to dissent. The ability to criticise public authorities, question policies, organise demonstrations, and express disagreement is fundamental to constitutional democracy. Digital platforms have transformed dissent by allowing movements to move rapidly between physical and online spaces. A student protest can begin with a physical gathering and acquire national visibility through videos, posts, hashtags, and online campaigns. At the same time, these platforms can facilitate misinformation, manipulation, harassment, and digital vigilantism. Governments may invoke public order, security, or other concerns to regulate online mobilisation, while private platforms apply community standards that may differ from constitutional standards governing State action. Online expression is therefore subject to a layered system of constitutional, statutory, governmental, and private regulation.

Digital constitutionalism must consequently address both State restrictions and private technological power. Its objective is not to create a digital space free from regulation, but to ensure that regulation

¹¹ Nicolas P. Suzor, *Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms*, 4 SOC. MEDIA + SOC'Y 1, 1–2 (2018).

remains consistent with constitutional values of liberty, dignity, accountability, and democratic participation. This is particularly relevant to student-led dissent, where the internet has become both a powerful instrument of mobilisation and a new site of constitutional conflict.

3 ARTICLE 19(1)(A) IN THE DIGITAL PUBLIC SPHERE

Article 19(1)(a) of the Constitution guarantees every citizen the freedom of speech and expression, a right central to democratic participation. Although the Constitution does not expressly refer to the internet, constitutional rights cannot be confined to the technologies existing at the time of its adoption. As methods of communication evolve, the protection of expression must extend to the mediums through which individuals actually participate in public discourse.¹²

The internet has significantly expanded the practical dimensions of this freedom. Social media allows individuals to express opinions, access information, criticise governmental action, and communicate with audiences beyond geographical and institutional boundaries. Unlike traditional media, digital platforms allow individuals to participate directly in public discourse without requiring access to newspapers, television, or other established institutions. This has made online spaces particularly important for political expression and collective mobilisation.¹³

The constitutional protection of online speech was significantly strengthened by *Shreya Singhal v. Union of India*,¹⁴ where the Supreme Court struck down Section 66A of the Information Technology Act, 2000. The Court's distinction between discussion, advocacy, and incitement remains particularly relevant to digital dissent. Speech cannot be restricted merely because it is unpopular, offensive, or controversial;¹⁵ constitutional restriction requires a connection with the grounds recognised under Article 19(2).¹⁶

This principle is especially important where digital platforms are used for political and student-led dissent. Criticism of government policy, calls for peaceful mobilisation, and expression of solidarity with a protest movement form an important part of democratic participation. The fact that such expression may generate controversy or reach a large audience does not, by itself, justify its restriction. At the same time, digital communication has altered the scale and speed at which speech operates. A single post can reach thousands within minutes, while online mobilisation can rapidly move between digital and physical spaces. This creates legitimate concerns relating to public order, misinformation, and unlawful conduct, but the scale of digital communication cannot itself become a justification for restricting constitutionally protected expression.¹⁷

The constitutional significance of online expression also intersects with other fundamental rights. In *K.S. Puttaswamy v. Union of India*, the Supreme Court recognised privacy as a fundamental right, linking it with autonomy and dignity.¹⁸ In *Anuradha Bhasin v. Union of India*,¹⁹ the Court recognised the internet as

¹² Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* 213–16 (Yale Univ. Press 2006).

¹³ See generally Secretary, *Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal*, (1995) 2 SCC 161 (recognising the importance of freedom of speech and expression in the dissemination and receipt of information).

¹⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

¹⁵ *Id.* at 20–25. The Supreme Court distinguished between discussion, advocacy and incitement and held that only when discussion or advocacy reaches the level of incitement can it attract restriction under Article 19(2).

¹⁶ INDIA CONST. art. 19, cl. 2.

¹⁷ INDIA CONST. art. 19(2). Restrictions upon freedom of speech and expression must fall within one or more of the constitutionally recognised grounds under Article 19(2).

¹⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

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

an important medium through which constitutionally protected freedoms are exercised. Together, these decisions demonstrate that fundamental rights must remain meaningful within the digital environment.

The central issue, therefore, is not whether Article 19(1)(a) applies online, but how its protection should operate when digital speech is simultaneously shaped by State restrictions, private platforms, and technological systems. This question becomes particularly significant when online expression forms part of collective student dissent.²⁰

4 CONSTITUTIONAL RESTRICTIONS ON FREEDOM OF EXPRESSION UNDER ARTICLE 19(2)

The freedom guaranteed under Article 19(1)(a) is not absolute. Article 19(2) permits the State to impose reasonable restrictions on freedom of speech and expression, but only on the grounds expressly recognised by the Constitution. These include the 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.²¹ The existence of a recognised ground, however, does not automatically validate a restriction. It must also satisfy constitutional requirements of reasonableness, necessity, and proportionality.²²

The digital environment makes this balance particularly significant. Online speech can reach large audiences within minutes and can move rapidly between platforms and physical spaces. However, the speed or reach of online communication cannot, by itself, justify restricting protected expression. The State must demonstrate a sufficient connection between the expression and the specific harm recognised under Article 19(2).²³

4.1 Sovereignty and Integrity of India

This ground permits restrictions on expression that genuinely threatens the sovereignty and territorial or constitutional integrity of India. Political criticism, advocacy for governmental change, or discussion of regional issues cannot automatically be treated as threats to national integrity. In the digital sphere, where political content can reach audiences across borders, constitutional scrutiny remains necessary to distinguish legitimate political dissent from expression that genuinely threatens national integrity.²⁴

4.2 Security of the State

Security of the State concerns serious threats to the functioning and survival of the State, rather than ordinary breaches of public order.²⁵ Mere criticism of government policy or politically unpopular expression cannot ordinarily be placed within this category. Where digital communication is used to facilitate serious violence or unlawful activity, restriction may be justified; however, the State must establish a genuine connection between the expression and the threat rather than relying on speculative possibilities.²⁶

²⁰ INDIA CONST. art. 19(2).

²¹ *State of Madras v. V.G. Row*, AIR 1952 SC 196; INDIA CONST. art. 19(2).

²² *Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633.

²³ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955; see also *Balwant Singh v. State of Punjab*, (1995) 3 SCC 214.

²⁴ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

²⁵ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

²⁶ INDIA CONST. art. 19(2).

4.3 Friendly Relations with Foreign States

The Constitution also permits restrictions in the interests of friendly relations with foreign States. The borderless nature of digital communication makes this ground increasingly relevant, as online statements may reach international audiences.²⁷ Nevertheless, the existence of an international audience cannot itself justify restricting political expression. The restriction must remain connected to the constitutionally protected interest.²⁸

4.4 Public Order

Public order is particularly significant in the context of student protests and online mobilisation. A social media post supporting a peaceful protest or criticising governmental action does not automatically threaten public order merely because it attracts a large audience or provokes disagreement. There must be a proximate connection between the expression and the anticipated disturbance.²⁹

The speed at which digital content spreads may increase the potential consequences of expression, but it cannot replace this constitutional requirement. Otherwise, the very characteristics that make digital platforms valuable for democratic participation could become a justification for suppressing dissent.³⁰

4.5 Decency or Morality

The grounds of decency and morality permit restrictions on certain forms of legally objectionable expression. However, concepts of morality cannot become unrestricted tools for suppressing ideas merely because they offend prevailing social attitudes.³¹ Restrictions must remain consistent with constitutional values and individual liberty. The Supreme Court's jurisprudence on obscenity has also recognised the importance of considering contemporary community standards rather than treating every form of offensive or unpopular expression as legally objectionable.³²

4.6 Contempt of Court

Expression may also be restricted where it amounts to contempt of court. Digital platforms have significantly expanded public commentary on judicial decisions and proceedings, making this limitation increasingly relevant. At the same time, legitimate criticism of judgments and judicial reasoning remains an important aspect of public discourse. The distinction between criticism and legally punishable contempt must therefore be maintained.³³

4.7 Defamation

Defamation protects reputation against unlawful attacks, an issue that has become more significant in the digital environment because false statements can be disseminated almost instantaneously and remain accessible through reposts and screenshots. However, protection of reputation cannot become a blanket restriction on criticism. Political speech concerning public officials and public institutions must continue

²⁷ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

²⁸ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

²⁹ *Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633.

³⁰ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

³¹ *Navej Singh Johar v. Union of India*, (2018) 10 SCC 1.

³² *Aveek Sarkar v. State of West Bengal*, (2014) 4 SCC 257.

³³ *Contempt of Courts Act, 1971*, §§ 5, 13.

to receive meaningful constitutional protection.³⁴ Any restriction must therefore remain within the limits prescribed by Article 19(2).³⁵

4.8 Incitement to an Offence

Incitement represents an important boundary between protected expression and unlawful conduct. Digital platforms can rapidly disseminate calls encouraging violence or other offences, making this ground particularly relevant to online communication. However, discussion, advocacy, and incitement must remain distinct. Expression cannot be restricted merely because it is provocative or unpopular; the nature of the expression and its connection with unlawful conduct must be considered.³⁶

Thus, Article 19(2) does not create a general power to control undesirable online speech. It establishes specific constitutional boundaries within which restrictions may operate. In the context of student dissent, the central question is therefore whether the State can demonstrate that a particular expression falls within one of these grounds and whether the restriction imposed is reasonable, necessary, and proportionate.³⁷

5 THE REQUIREMENT OF REASONABLENESS, NECESSITY AND PROPORTIONALITY

The enumeration of grounds under Article 19(2) does not provide the State with an unrestricted power to regulate speech. A restriction must also be reasonable. Constitutional review therefore requires an examination of the relationship between the legitimate objective and the measure adopted to achieve it.³⁸

The principle of proportionality has become increasingly important in this assessment. A restriction should pursue a legitimate objective, be rationally connected to that objective, be necessary in the circumstances, and avoid imposing a disproportionate burden upon the fundamental right.³⁹ In the digital context, proportionality assumes particular significance because restrictions can affect not only the individual whose speech is targeted but also audiences, movements, and entire online communities.

For instance, removing an individual post may have a different constitutional impact from blocking an entire account, restricting a hashtag, shutting down internet access within a region, or preventing access to an entire platform. Although each measure may be justified in particular circumstances, the constitutional analysis must consider whether the extent of the restriction corresponds to the actual threat.⁴⁰

The question, therefore, is not whether the State possesses the power to regulate online expression. It undoubtedly possesses constitutionally recognised powers to do so. The more difficult question is where the constitutional boundary lies between legitimate regulation and suppression of dissent. This boundary becomes particularly important when restrictions affect student movements, political mobilisation, and collective expression.

The Delhi student rallies provide a useful context for examining this tension. They demonstrate how digital platforms can operate simultaneously as instruments of mobilisation and as spaces subject to governmental and private regulation. The following section therefore examines the role of digital platforms

³⁴ INDIA CONST. art. 19(1)(a), 19(2); *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

³⁵ INDIA CONST. art. 19(2).

³⁶ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

³⁷ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

³⁸ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

³⁹ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

⁴⁰ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

in facilitating student-led dissent and considers whether restrictions imposed upon such mobilisation can withstand constitutional scrutiny under Article 19(2).⁴¹

6 DIGITAL VIRALITY, DIGNITY AND THE LIMITS OF ONLINE DISSENT

The constitutional tension becomes particularly complex when digital expression is directed at the dignity of an identifiable individual. During the Delhi student protests, alongside posts documenting injuries and expressing political disagreement, there were also provocative posts directed at public figures. One reported post carried an “RIP” message concerning a serving Union Minister, falsely suggesting his death. Even if presented as political rhetoric or satire, such an expression raises a question beyond Article 19(1)(a): does the protection of political expression extend to deliberately portraying a living person as dead?

This question must also be examined through Article 21. The Supreme Court has recognised dignity as an essential component of the right to life and personal liberty.⁴² A public official cannot be insulated from criticism merely because the criticism is harsh or offensive. However, there is a distinction between criticising a Minister’s policies or performance and publishing an “RIP” message for a person who is alive. The former concerns public conduct; the latter can become a deliberate form of humiliation directed at the individual. The constitutional challenge is therefore to distinguish criticism of the office-holder from dehumanisation of the individual.

The problem becomes more complicated because digital harm rarely remains confined to the original speaker. A post can be reposted, screenshotted, shared in groups, uploaded on another platform, and reproduced by hundreds or thousands of users. As dissemination increases, the original source becomes harder to identify while the audience becomes increasingly difficult to contain. Even when the original post is deleted, screenshots and subsequent copies may continue circulating.⁴³

This creates a significant enforcement dilemma. Punishing every person who reproduced the content could result in an excessively broad restriction, particularly because individuals may differ in their intention, knowledge, and degree of participation. Conversely, focusing exclusively on the original creator may fail to address the harm caused by deliberate amplification. Digital communication therefore creates a gap between legal responsibility and technological reach. The scale of dissemination can also intensify the injury to dignity. A degrading statement communicated privately and the same statement circulated before thousands cannot necessarily produce equivalent consequences. Digital content can be repeatedly reproduced, making the harm extend beyond the moment of its original publication.

This raises the question of what constitutes a reasonable restriction under Article 19(2). The State may legitimately address expression that causes legally recognised harm, but restrictions cannot be so broad that legitimate political criticism becomes punishable merely because it is offensive. Proportionality therefore requires consideration of the content, context, intention, target, reach, and likely consequences of the expression.⁴⁴ The example also demonstrates why Article 21 cannot become a blanket justification for suppressing dissent. Students must remain free to criticise governmental policies, organise protests, and express anger or disagreement. At the same time, constitutional freedom does not operate in isolation

⁴¹ Id.

⁴² *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

⁴³ Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* 1–12 (Stanford University Press 2010).

⁴⁴ *Om Kumar v. Union of India*, (2001) 2 SCC 386.

from the rights and dignity of others.⁴⁵ The Delhi student rallies therefore reveal a central tension within digital constitutionalism: the same technology that amplifies legitimate dissent can amplify cruelty and harm. Article 19(1)(a) protects the speaker, Article 19(2) defines constitutionally recognised limitations, and Article 21 protects the dignity of the individual affected. The challenge is to preserve all three without allowing either unrestricted digital harm or excessive State control to dominate the online public sphere.⁴⁶

7 JUDICIAL RESPONSES TO DIGITAL CIVIL LIBERTIES IN INDIA

The Indian judiciary has increasingly adapted constitutional principles to the digital environment. The decisions in *Shreya Singhal v. Union of India*, *K.S. Puttaswamy v. Union of India*, and *Anuradha Bhasin v. Union of India* collectively demonstrate that technological change cannot diminish the protection of fundamental rights.⁴⁷

In *Shreya Singhal*, the Supreme Court struck down Section 66A of the Information Technology Act, 2000, holding that vague and overbroad restrictions on online expression could not withstand constitutional scrutiny. The Court's distinction between discussion, advocacy, and incitement remains particularly important to digital dissent, reaffirming that speech cannot be restricted merely because it is unpopular, offensive, or inconvenient.⁴⁸

Puttaswamy expanded the constitutional framework beyond expression by recognising privacy, autonomy, and dignity as fundamental rights. In a digital environment, surveillance and the collection of personal information may discourage individuals from participating in protests or expressing controversial opinions, creating a chilling effect even without a direct restriction on speech.⁴⁹

In *Anuradha Bhasin*, the Court recognised that freedom of speech and expression can be exercised through the internet. Although it did not declare internet access itself to be a separate fundamental right, it recognised the internet as an important medium for exercising existing constitutional freedoms and emphasised the need for constitutional scrutiny of restrictions on access.⁵⁰

Together, these judgments establish that fundamental rights follow the individual into the digital sphere. However, they also expose a limitation in the traditional constitutional framework. Article 19 primarily regulates State restrictions, while contemporary digital speech is increasingly controlled by private platforms through content moderation, account suspension, and algorithmic visibility.⁵¹

This creates the next constitutional challenge: when private platforms become central spaces for democratic participation, how should their power over political expression be reconciled with constitutional values of liberty, dignity, transparency, and accountability?⁵²

⁴⁵ *Kaushal Kishor v. State of Uttar Pradesh*, (2023) 4 SCC 1.

⁴⁶ Jack M. Balkin, "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society," 79 N.Y.U. L. Rev. 1, 1–3 (2004).

⁴⁷ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1; *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

⁴⁸ Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* 1–15 (Oxford University Press 2016).

⁴⁹ Neil M. Richards, *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age* 1–20 (Oxford University Press 2015).

⁵⁰ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

⁵¹ Jack M. Balkin, "Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation," 51 U.C.D. L. Rev. 1149, 1150–55 (2018).

⁵² Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* 1–23 (Yale University Press 2018).

8 PLATFORM GOVERNANCE, ALGORITHMIC AMPLIFICATION AND PRIVATE POWER

The constitutional analysis of digital dissent cannot end with State restrictions. Much of contemporary political discourse occurs on privately owned platforms that influence what speech is visible, how widely it circulates, and which narratives receive public attention. Through content moderation, recommendation systems, account restrictions, and algorithms, platforms exercise significant control over the practical conditions in which freedom of expression is exercised.⁵³

This becomes particularly important during student protests. Social media can enable students to circulate information, document injuries, organise demonstrations, and reach audiences beyond geographical boundaries. However, algorithmic systems may also amplify content that generates strong emotional engagement, allowing inflammatory or misleading material to spread rapidly. The same technological architecture that makes legitimate dissent visible can therefore magnify misinformation and digital harm.⁵⁴

Content moderation creates a further constitutional difficulty. Private platforms may remove material under their community standards even where the expression does not fall within the grounds recognised under Article 19(2). Conversely, legally permissible political expression may still be restricted by private platform rules. This demonstrates the distinction between State censorship and private moderation. Article 19(2) primarily governs State restrictions, while private platforms operate through their contractual relationships with users. Nevertheless, when these platforms become essential spaces for political participation, their decisions acquire broader democratic significance.⁵⁵

The problem is particularly visible in the circulation of harmful content. As demonstrated by the “RIP” post concerning a living public official, content may be screenshotted, reposted, shared across groups, and reproduced on different platforms even after the original post is removed. Legal responsibility therefore becomes difficult to determine. The creator, deliberate amplifier, and person who unknowingly forwards content may not possess the same intention or degree of responsibility.⁵⁶

Digital constitutionalism must consequently examine not only who has the formal power to restrict speech, but who has the practical power to determine whether speech is heard. This does not require treating private platforms as identical to the State. Rather, where platforms function as major spaces of democratic participation, greater transparency in content moderation, accessible review mechanisms, and accountability in algorithmic decision-making become necessary.⁵⁷

The future of online dissent therefore requires safeguards against both excessive State intervention and arbitrary private control, ensuring that the digital public sphere remains consistent with liberty, dignity, transparency, accountability, and democratic participation.⁵⁸

⁵³ José van Dijck, Thomas Poell & Martijn de Waal, *The Platform Society: Public Values in a Connective World* 1–10 (Oxford University Press 2018).

⁵⁴ Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* 1–11 (PublicAffairs 2019).

⁵⁵ Kate Klonick, “The New Governors: The People, Rules, and Processes Governing Online Speech,” 131 Harv. L. Rev. 1598, 1600–10 (2018).

⁵⁶ Danielle Keats Citron, “Cyber Civil Rights,” 89 B.U. L. Rev. 61, 65–75 (2009).

⁵⁷ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* 1–18 (Harvard University Press 2015).

⁵⁸ Julie E. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* 1–15 (Oxford University Press 2019).

9 BALANCING ONLINE DISSENT WITH PUBLIC ORDER AND DIGITAL REGULATION

The regulation of online dissent requires a balance between the protection of political expression and the State's responsibility to maintain public order and protect the rights of others. This tension is particularly visible during student protests, where social media may be used to organise peaceful demonstrations, document events, communicate demands, and mobilise public support. Such activities ordinarily fall within Article 19(1)(a), and criticism of government action cannot, by itself, be treated as a threat to public order.⁵⁹

At the same time, digital platforms can facilitate calls for violence, threats, or deliberately false information capable of producing immediate disorder. Article 19(2) therefore permits reasonable restrictions where constitutionally recognised grounds are genuinely involved. The essential distinction is between dissent and disorder. A constitutional democracy must tolerate disagreement, controversy, and even uncomfortable political expression; otherwise, public order could become a justification for suppressing legitimate opposition.⁶⁰

The principle of proportionality provides the necessary safeguard. A restriction must pursue a legitimate objective, have a rational connection with that objective, and interfere with the right no more than necessary. This is particularly important in the digital environment because restrictions can affect enormous amounts of lawful expression beyond the content that authorities seek to regulate.⁶¹

Internet shutdowns illustrate this problem. Restricting internet access affects not only political speech but also education, employment, emergency communication, journalism, and access to information. Similarly, removing a specific post, suspending an account, restricting particular content, and blocking an entire platform are fundamentally different measures. Constitutional regulation must therefore favour targeted intervention over collective restriction.⁶²

Misinformation presents a further challenge. False information concerning arrests, injuries, police action, or government decisions during protests may generate fear and hostility. However, giving authorities unrestricted power to determine what constitutes “false” information could itself threaten freedom of expression, particularly where government accounts are contested. Restrictions should therefore have identifiable legal authority, provide adequate reasons, and remain subject to review.⁶³

The same principle applies to the earlier “RIP” post. A deliberately degrading statement concerning a living individual may raise legitimate concerns regarding dignity and reputation, but treating every person who subsequently shared the post identically to its creator could be disproportionate. Responsibility should consider intention, knowledge, context, participation, and actual harm.⁶⁴

Ultimately, reasonable restriction cannot mean maximum restriction. The existence of a legitimate governmental concern does not justify every regulatory response. Online dissent should remain protected unless expression crosses a constitutionally recognised boundary, and any intervention must remain

⁵⁹ Yochai Benkler, Robert Faris & Hal Roberts, *Network Propaganda: Manipulation, Disinformation, and Radicalization in American Politics* 1–20 (Oxford University Press 2018).

⁶⁰ David Kaye, *Speech Police: The Global Struggle to Govern the Internet* 1–18 (Columbia Global Reports 2019).

⁶¹ Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* 131–45 (Cambridge University Press 2012).

⁶² Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.

⁶³ Claire Wardle & Hossein Derakhshan, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making* 5–15 (Council of Europe Report DGI(2017)09, 2017).

⁶⁴ Ronald Dworkin, *Taking Rights Seriously* 184–205 (Harvard University Press 1977).

lawful, necessary, proportionate, and accountable. Freedom of expression must remain the starting point, while restriction remains the carefully justified exception.

10 THE FUTURE OF ARTICLE 19 IN THE DIGITAL AGE

The future of Article 19(1)(a) depends on ensuring that constitutional protection remains meaningful as democratic participation increasingly moves online. This does not require creating a separate right to digital expression. Rather, existing constitutional guarantees must be applied to the technologies through which individuals now communicate, organise, criticise, and dissent.⁶⁵

Political expression must remain at the centre of this framework. Online criticism of government policies, public officials, and institutions should receive strong constitutional protection, even where it is controversial or unpopular. At the same time, digital constitutionalism must recognise that online expression can produce significant harm to dignity, privacy, reputation, and public order. The appropriate response is therefore not unrestricted speech or excessive censorship, but context-sensitive and proportionate regulation.⁶⁶

Future regulation should consider the context, intention, audience, reach, and likely consequences of expression rather than treating isolated words as determinative. The same principle should inform platform governance. As private platforms increasingly influence which political content is visible, greater transparency in content moderation, accessible mechanisms to challenge removals, and accountability in algorithmic amplification are necessary to protect meaningful participation.⁶⁷

The experience of student movements demonstrates the importance of this balance. Digital platforms have enabled students to organise, document events, challenge official narratives, and reach wider audiences. Yet the same spaces expose them to surveillance, misinformation, harassment, and the rapid spread of harmful content. Regulation should address these risks without eliminating the democratic possibilities created by digital communication.⁶⁸

The future framework must therefore move beyond a purely State-centric model towards broader digital accountability. Governments, courts, platforms, and users exercise different forms of power and must operate within appropriate legal and constitutional boundaries. Restrictions under Article 19(2) must remain limited to constitutionally recognised grounds and satisfy reasonableness and proportionality, while the dignity and rights of individuals affected by digital expression must also be protected.⁶⁹

Ultimately, digital constitutionalism is not about creating an internet free from regulation, nor about granting governments or platforms unlimited control over speech. It is about ensuring that technological power remains subject to constitutional values. The central challenge is to protect dissent strongly enough to sustain democracy while ensuring that regulation of speech does not itself become more damaging to democracy than the speech it seeks to control.⁷⁰

⁶⁵ Andrew Murray, *Information Technology Law: The Law and Society* (Oxford University Press 2016).

⁶⁶ Wojciech Sadurski, *Freedom of Speech and Its Limits* (Kluwer Academic Publishers 1999).

⁶⁷ Rebecca MacKinnon, *Consent of the Networked: The Worldwide Struggle for Internet Freedom* (Basic Books 2012).

⁶⁸ Zeynep Tufekci, *Twitter and Tear Gas: The Power and Fragility of Networked Protest* (Yale University Press 2017).

⁶⁹ H. M. Seervai, *Constitutional Law of India*, vol. 2 (4th ed., Universal Law Publishing).

⁷⁰ Jack Goldsmith & Tim Wu, *Who Controls the Internet? Illusions of a Borderless World* (Oxford University Press 2006).

11 CONCLUSION

Digital platforms have transformed the way individuals participate in democratic life, making online spaces an increasingly important arena for political expression, protest, mobilisation, and dissent. Article 19(1)(a) must therefore remain meaningful regardless of the medium through which expression occurs. The experience of student-led protests demonstrates both the democratic potential of digital platforms and the risks they create through misinformation, harassment, amplification, and attacks on individual dignity.⁷¹

However, protecting online dissent does not mean treating freedom of expression as absolute. Article 19(2) permits reasonable restrictions on constitutionally recognised grounds, but such restrictions must satisfy legality, reasonableness, necessity, and proportionality. At the same time, Article 21 requires the dignity and rights of individuals affected by digital expression to be considered. The “RIP” post concerning a living public official illustrates the difficult boundary between legitimate political criticism and targeted degradation, particularly when digital virality makes accountability difficult.⁷²

The decisions in *Shreya Singhal*, *Puttaswamy*, and *Anuradha Bhasin* demonstrate that constitutional rights must adapt to technological change. Yet the challenge now extends beyond State power to private platforms and algorithms that influence what speech is visible and amplified.⁷³

Ultimately, digital constitutionalism must protect dissent without permitting either unrestricted digital harm or excessive control. Article 19 must evolve not by becoming weaker, but by becoming responsive to the new forms of power shaping expression in India’s digital democracy.⁷⁴

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⁷¹ Zeynep Tufekci, *Twitter and Tear Gas: The Power and Fragility of Networked Protest* (Yale University Press 2017).

⁷² Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press 2012).

⁷³ Rebecca MacKinnon, *Consent of the Networked: The Worldwide Struggle for Internet Freedom* (Basic Books 2012).

⁷⁴ Jack Goldsmith & Tim Wu, *Who Controls the Internet? Illusions of a Borderless World* (Oxford University Press 2006).