



A CRITICAL ANALYSIS ON CONSTITUTIONAL LIMITS IN DIGITAL CONTENT BLOCKING: A DOCTRINAL STUDY ON SECTION 69A OF INFORMATION TECHNOLOGY ACT,2000

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ABSTRACT

The internet has become more dominant in our daily life, where people share their ideas, opinions, comments and this has been changed how free speech works in India. In our Indian constitution under Article 19(1)(a) says that every individual has rights to freedom of speech and expression. However, the makers of the Indian constitution could not imagine about the impact of today's digital world. To deal with current online problems, our government uses Section 69A of the Information Technology Act,2000. This legal provision allows to block the digital content for reasons like public order, national security and morality. In 2015, the Supreme Court upheld this section 69A of the Information Technology Act,2000, in the Shreya Singhal case. Still, there is a serious concern about this power being used in practice. For example, blocking orders for digital content may usually kept secret, if proper legal procedure was not followed strictly means the blocking orders may passes by the authority and sometimes the entire websites or large amounts of content are blocked instead of just removing the problematic part of the content, they will block the whole connecting network. Because of these decisions people are affecting and they don't get a proper chance to challenge them in court. At last, people may feel afraid to express their opinion, ideas on digital platform. This paper critically examines how the rules for blocking digital content actually works in India also it explains the concept of proportionality which courts uses to decide whether the restrictions are fair or excessive, and it highlights the problems on current system. It also compares India's approach with that of the United States, the United Kingdom, and the European union. The paper concludes practical way to better balance government control with right to free speech in the today's digital world.

Keywords: Freedom of Speech, Section 69A, Information Technology Act, Doctrine of Proportionality, Content Blocking, Chilling Effect, Digital Rights, Article 19.

INTRODUCTION

The freedom of speech is one of the most essential rights in a democracy. In India, this right comes under Article 19(1)(a) of the Indian Constitution. This right allows every individual to share their ideas, opinion also they have rights to question the government, and take part in public life. After independence, this right was mainly executed through newspaper, public protests, television and radio. The courts developed strong principles to protect freedom of speech. There are many landmark cases like *Romesh Thappar v. State of Madras* in 1950 and *Bennett Coleman & v. Union of India* in 1973 these cases made it clear that any restriction on speech must be reasonable, limited and based on India Constitution.

With the growth of digital world, everything has changed. Today, in social media, online news, and digital platforms have become the main spaces where people express their views, discusses the issues, and raise their voices on digital world. Because of this huge changes, the government's power to control speech has also moved to online. In 2008 Amendment of Information Technology Act introduced the section 69A which allows central government to block online content for certain reasons like national security and public order. However, this power is very broad, and the process is often not transparent. This raises an important question: Whether the strong protection for free speech that existed earlier still being properly followed in digital world?

This paper explains the legal framework, it discusses the main problem in India that is how law is applied, and how courts have responded. It also compares India's approach with other countries and suggests possible improvements. The main argument of this paper is that, while section 69A itself is not unconstitutional, the way it is used in practice often secretive, excessive and difficult to challenge does not fully meet the standards required by the constitution.

CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. ARTICLE 19(1)(a) AND THE REASONABLE RESTRICTIONS UNDER ARTICLE 19(2)

Article 19(1)(a) of Indian constitution guarantees every citizen has right to freedom of speech and expression. Overtime, supreme court has interpreted the right in wide manner. It is not limited in just speaking or writing, it includes the right to receive information, share ideas or opinion and communicating on different platforms, it includes the internet as recognized in 2020 case *Anuradha Bhasin v. Union of India*.

Article 19(2) of Indian constitution allows state to restrict on speech for certain reasons like defamation, national security, public order, decency. However, the restriction on speech must be "reasonable". This should not be arbitrary or excessive; it must be limited on what is necessary to address the issue. In India, the courts have generally taken a strict approach on examining such restrictions.

In *Shreya Singhal v. Union of India*, the supreme court has clarified two important conditions on restriction. First, it should be comes under one of the grounds mentioned in Article 19(2) of Indian constitution. Second, it must be proportionate, it should not go beyond what is required. Also, law or action should not be too much or unnecessary. If a law is unclear, too wide, or confusing, it will not be accepted as valid under Indian constitution.

B. SECTION 69A OF THE INFORMATION TECHNOLOGY ACT,2000

Section 69A was introduced into the Information Technology Act in 2008 amendment. It allows the central government to block access to online content if it feels that such action is needed for reasons similar to those mentioned under Article 19(2), such as national security or public order. This power covers all kinds of content available on the internet.

The procedure for blocking content is given in the Blocking Rules of 2009. As per these rules, a government officer first looks into requests for blocking content, and then a committee reviews the matter. Although the reasons for blocking are supposed to be written down, the final orders are not made public and are kept confidential.

This system made some serious concerns. First, the words used in the law, like “necessary or expedient”, give the government very broad powers, even wider than what the constitution allows under reasonable restrictions. Second, the whole process is handled only within the government, without any involvement of courts or any independent body. Third, there is a lack of transparency, because blocking orders are kept secret. As a result, people who are affected usually do not know why the content was blocked, and this makes it very difficult for them to question or challenge such decisions.

C. IT (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

The 2021 rules place a number of duties on intermediaries like social media platforms, online news sites, and other digital services. They are expected to take down illegal content quickly, follow instructions given by the government, and create proper systems to deal with user complaints.

At the same time, these rules have been criticised for a couple of reasons. First, platforms may end up removing more content than actually required because they are afraid of losing their legal protection, known as “safe harbour”, if they do not follow the rules strictly. Second, the rules require strong systems and resources for compliance, which smaller platforms may find difficult to handle. Because of this, even content that is legal may sometimes be taken down, which can affect people’s freedom to express themselves online.

ISSUES AND CHALLENGES IN THE CURRENT SYSTEM

A. LACK OF TRANSPARENCY AND ACCOUNTABILITY

One of the biggest problems in the present system is the lack of transparency. Most of the time, the blocking orders are not made in public, and the reason behind it are not shared. In many cases, the person who is affected does not know about the order passed until their content becomes unavailable.

This is not a procedural issue, but it is a constitutional concern. When an individual’s fundamental rights are restricted, the decision should be transparent so that it can be questioned. If the government acts in secrecy, people cannot know whether the action was taken for a valid reason or for some other purpose.

For example, during the farmer’s protests in 2021 most of social media accounts of journalists, activists and others were restricted without any proper explanation. Many of them came to know about it only after their content was blocked. In sensitive situations like elections or protests, such lack of transparency creates a risk that these powers may be used to silent criticism instead of addressing the real harm.

B. DISPROPORTIONATE RESTRICTIONS AND OVERBREATH

The supreme court ordered that any restrictions on fundamental rights must follow the principle of proportionality. This means the action taken should be necessary, reasonable, and not more than what is needed. It should also affect as little lawful activity as possible.

In the case of online content, this means that the government should block only the specific harmful content, instead of taking broader actions like blocking entire websites or accounts. Restrictions should also be for a limited time and not continue indefinitely.

However, in practice, this standard is often not followed. Sometimes, entire websites are blocked because of a few problematic posts. In other cases, whole social media accounts are suspended instead of removing specific content. There have also been situations where internet services were shut down completely in certain areas for long periods in the name of maintaining public order.

Such actions affect a large amount of lawful content and go beyond what is actually necessary. This makes them excessive and difficult to justify under constitutional standards.

C. CHILLING EFFECT ON DIGITAL SPEECH

The term “chilling effect” refers to a situation where people hesitate to express their views because they are afraid of facing legal trouble. The Supreme Court has also recognised this idea in *Shreya Singhal v. Union of India*.

This problem is even more serious in the online space. Since decisions to block content are not made openly, people do not clearly know what kind of posts or opinions might lead to action against them. The rules are often unclear, and the way they are enforced is not always predictable. At the same time, the consequences such as losing access to one’s account, reduced reach, or possible legal action can be quite serious.

Because of this uncertainty, many people prefer to remain silent or avoid sharing their opinions, especially on sensitive issues like government policies, protests, or political matters. As a result, fewer ideas and viewpoints are expressed, which affects open discussion in society. This ultimately goes against the main purpose of protecting freedom of speech under the Constitution.

D. INADEQUATE PROCEDURAL SAFEGUARDS AND LIMITED JUDICIAL OVERSIGHT

Even though the law provides a system to review blocking decisions, this process is handled only within the government and does not have the independence that a court would provide. In most situations, the person affected is not given an opportunity to explain their side before their content is blocked.

It is possible to go to court afterwards, but in reality, this is not easy. Since blocking orders are usually kept secret, people often do not know the exact reason why their content was restricted. Without this information, it becomes very difficult to properly challenge the decision.

The system works in a way where the government makes the decision and also reviews it internally, with very little external or judicial control. Because of this, it does not fully follow the basic principles of fairness and natural justice, and it raises concerns about whether such restrictions truly meet the standards required under the Constitution.

THE JUDICIARY CONTRIBUTION ON DIGITAL FREE SPEECH

Even though the current legal system has several problems, the courts in India have played an important role in protecting freedom of speech, especially in the online space. Through some important judgments, they have tried to make sure that people’s rights are not misused or restricted unfairly.

In *Shreya Singhal v. Union of India* (2015), the Supreme Court removed Section 66A of the IT Act. This law punished people for posting content online that was considered “offensive” or “threatening.” The Court found that these words were not clearly defined and could be used in a wrong way to target even normal and lawful speech. It also said that such a law can create fear in people’s minds and stop them from speaking freely. However, the Court allowed Section 69A to continue, but only because it had some safeguards. At the same time, the Court clearly stated that these safeguards must be properly followed. This case made it clear that speech on the internet is just as important as speech in real life.

In *Anuradha Bhasin v. Union of India* (2020), the Supreme Court looked at the issue of internet shutdowns in Jammu and Kashmir. The Court said that using the internet is an important part of exercising freedom of speech today. It also said that any restriction on internet access must be reasonable and should not be more than what is necessary. Another important point the Court made was that such orders must be made public, so that people know about them and can challenge them if needed. This was an important step towards making the system more open, even though it is not always followed properly.

In *K.S. Puttaswamy v. Union of India* (2017), the Supreme Court recognised the right to privacy as a fundamental right. It also gave a clear method to check whether any restriction on rights is valid. According to this, there must be a proper

law behind the action, the action must have a valid reason, it should not be excessive, and there must be proper safeguards to prevent misuse. This method is now used in cases involving digital laws as well.

Overall, these judgments have helped in strengthening the protection of free speech in the digital age. They show that just because communication happens online, it does not mean the protection of rights becomes weaker. They also highlight that any restriction must be fair, limited, and open to review. However, even though the courts have clearly explained these principles, they are not always followed properly in practice, which remains a major concern.

COMPARATIVE ANALYSIS

A. United States: Strong Focus on Free Speech

In the United States, freedom of speech is given very high importance. The First Amendment of the Constitution clearly says that the government should not make laws that limit speech or the press. Because of this, courts are very strict when the government tries to control what people say. The government must show a very strong reason and also prove that the restriction is limited and necessary.

There is also a law called Section 230 of the Communications Decency Act, which protects online platforms from being held responsible for what user post. This makes it difficult to take action against platforms for user content. Overall, the US system gives more importance to protecting free speech, even if it means that some harmful or controversial content may remain online.

B. United Kingdom: Balanced Regulation

The United Kingdom follows a more balanced approach. It allows restrictions on speech for reasons like public safety, national security, and protecting people's rights. At the same time, there is proper supervision by independent bodies like Ofcom.

The Online Safety Act, which started being implemented from 2024, requires platforms to take responsibility for harmful content. They must take steps to prevent harm and not just act after something goes wrong. It also allows users to challenge decisions if their content is removed. Compared to India, the UK system is more open and includes independent checks, which helps prevent misuse.

C. European Union: Clear Rules and Transparency

The European Union has introduced the Digital Services Act (DSA), which provides a detailed system for regulating online platforms. Under this law, large platforms must regularly check and report risks, keep records of content removal decisions, and make this information available. Users are also given proper ways to challenge such decisions, and independent authorities monitor the process.

The EU approach focuses on maintaining a balance between control and freedom. Instead of only restricting content, it tries to ensure fairness through clear procedures and transparency. This approach can be useful for India, especially in making blocking decisions more open, ensuring independent review, and giving users better protection.

D. Key Lessons for India

From this comparison, it is clear that India currently gives wide powers to the government but lacks enough transparency. The US system may not fully fit India because Indian law allows certain reasonable restrictions on speech. However, the EU model is more suitable, as it focuses on transparency, accountability, and fair procedures, which match India's constitutional values.

The main idea for India is not to copy any one country completely, but to learn from them. By making decisions more transparent, introducing independent oversight, and giving people a proper chance to challenge restrictions, India can create a system that better protects both regulation and freedom of speech.

RECOMMENDATIONS FOR REFORM

1. Make blocking orders open to the public

As a general rule, blocking orders should be made public. Only in serious cases like national security should they be kept confidential. The government should clearly state the reason, what content is blocked, and for how long.

2. Give people a fair chance

Before blocking content, the person affected should be informed and given an opportunity to respond. In urgent situations, this can be done soon after the action. Also, every decision should include clear written reasons.

3. Set up an independent body

There should be an independent authority where people can challenge blocking orders. This body should also ensure that the government follows proper procedures.

4. Limit government discretion

The law should be changed to remove vague terms like “expedient” and instead follow the idea of “reasonable restrictions,” so that powers are not too wide.

5. Clarify important terms

The words like “public order,” “decency,” and “morality” should be clearly explained to avoid confusion or misuse.

6. Protect platforms from over-removal pressure

The rules for intermediaries should be improved so that platforms are not forced to remove too much content out of fear. If they act honestly and follow proper steps, they should be protected.

CONCLUSION

The growth of the internet has created a real challenge in balancing two important things. On one side, the government needs to control harmful content that can affect security, public order, or society. On the other side, every citizen has the right to freely express their thoughts and opinions, even on digital platforms.

Section 69A was introduced to help the government deal with harmful online content. In theory, this is acceptable if it is used carefully and with proper safeguards. But in reality, there are many issues. Blocking orders are usually kept secret, proper procedures are not always followed, actions are often too wide, and people find it difficult to challenge such decisions.

Because of this, people become careful about what they say online. Journalists, activists, and even common people may avoid speaking openly, especially on sensitive issues. This reduces open discussion and affects the healthy functioning of a democracy.

The suggestions given in this paper are simple and practical. They are based on existing legal principles and examples from other countries. What is really needed is proper implementation and a commitment to follow these principles.

In the end, protecting freedom of speech in the digital world is very important. It is not just a legal issue, but a basic requirement for a strong democracy.

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