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Freedom of Speech and Expression v. Regulating Vulgarity Online

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Introduction

Think about what it truly means to express yourself. In India, our Constitution, especially Article 19(1)(a), gives us this important right – the freedom to express our thoughts and opinions. This idea is super impactful because it lets us share our thoughts and feelings in so many different ways. A democracy really needs this to succeed, it helps us grow as individuals, and it gives us the chance to seek out the truth through open and honest conversations.

But then the internet came along, and suddenly, this freedom had a whole new area to discover. This tool is super interesting for connecting and sharing, but it brings up some tough questions, especially about content that some people might find offensive or vulgar. What are some ways we can make sure we can share our thoughts openly while also maintaining a safe and respectful onlinespace?

This article will talk about India's balancing act from a legal point of view and how it affects society. We're going to talk about how far free speech goes, what the laws really say about obscenity and vulgarity, and why people have different ideas about whether online content should be controlled. We will talk about important Indian court cases that have changed the way we think about these issues. Some of these cases are new and are in the news right now. We will talk about how online platforms are used and how hard it is to find an answer that works for everyone in our country, which is very different.

The very beginning of our Constitution makes a point of stressing how important freedom is for our thoughts and the way we say them. This really shows how important freedom of speech was to the people who started our country. The Supreme Court has said that this right includes more than just the ability to speak out. It also includes the right to get information. They linked

it to our basic right to life under Article 21, which means that having access to information is important for making choices and living with dignity.

Understanding India's Constitutional Free Speech

Our Constitution, in Article 19(1)(a), clearly states that every single citizen has the right to freedom of speech and expression. This isn't just about talking face-to-face; it covers all the ways we communicate – through our words, our writing, pictures, and yes, even what we share on the internet. This right isn't just about sharing your own thoughts; it also means you're free to share the opinions of others. The Supreme Court has even interpreted this article to include other important freedoms, like the freedom of the press, the right to advertise your business, and the right to get information, because these are all part of how we express ourselves effectively. It's also important to remember, as the Supreme Court has said in cases like *Bijoe Emmanuel v. State of Kerala*¹, that the right to speak also includes the right to *not* speak, the right to remain silent.

However, this freedom isn't unlimited. Article 19(2) says that the government can make laws to put 'reasonable restrictions' on this right. These restrictions are only allowed for specific reasons, like if it affects the security of the country, our relationships with other nations, public order (which means more than just a minor disturbance), decency or morality (this is where laws about obscenity comes in), preventing contempt of court, avoiding defamation, stopping people from encouraging others to commit crimes, and protecting India's sovereignty and integrity.

The Supreme Court has consistently emphasized that these restrictions must be 'reasonable,' meaning they should be necessary and not go too far in achieving their intended purpose. This makes sure that while the government has the authority to regulate speech in certain situations, it can't just do it arbitrarily and has to have a good reason that serves the public interest. The fact that 'morality and decency' are listed as valid reasons to restrict free speech is really central to the whole discussion about online vulgarity. This clause provides the basic legal justification

¹ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

for laws and court decisions that aim to regulate content considered obscene or vulgar, whether it's in the real world or online. Also, the Supreme Court has made a clear distinction between 'public order' and 'law and order.' You can only restrict free speech when there's a serious threat to public peace and security, not just because someone might be offended. So, to regulate online vulgarity under the idea of public order, you'd have to demonstrate a real and immediate danger to society, not just a potential offense to someone's personal sensitivities.

Legal Interpretations of Online Vulgarity and Obscenity

Indian law primarily deals with the idea of "obscenity" through specific laws and how the courts have interpreted them over time, especially as the internet has become such a dominant force in our lives. Sections 292 to 294 of the Indian Penal Code (IPC), which have now been brought together under Section 294 of the Bharatiya Nyaya Sanhita (BNS) of 2023, make it illegal to sell, share, or publicly display obscene books, pamphlets, pictures, and other items, and this definitely includes digital content. Additionally, Section 67 of the Information Technology Act, 2000, specifically targets the act of publishing or sending obscene material online, and it often carries stricter penalties than the BNS.

The legal understanding of what is obscene has been shaped by various tests that Indian courts have developed and applied. Initially, Indian courts adopted what's known as the Hicklin Test, which came from a British case in 1868 (*Queen v. Hicklin*) and was endorsed by our Supreme Court in *Ranjit D. Udeshi v. State of Maharashtra* (1964)². This test basically said that something was obscene if it had the tendency to corrupt the minds of people who were susceptible to immoral influences, often looking at it from the viewpoint of the most vulnerable individuals. However, this test was later considered outdated and too restrictive.

A significant change occurred when the Supreme Court, in *Aveek Sarkar v. State of West Bengal* (2014)³, moved away from the Hicklin Test and adopted the more modern Community Standards Test. This test evaluates obscenity from the perspective of an average person, using

² *Ranjit D. Udeshi v. State of Maharashtra*, 1964 SCC Online SC 52

³ *Aveek Sarkar v. State of W.B.*, 2014 SCC Online Cal 18815

the standards of today's community. It considers whether the main theme of the content, when viewed as a whole, appeals to a shameful or unhealthy interest in sex, and whether it depicts sexual acts in a way that is clearly offensive and lacks any serious artistic, literary, political, or scientific value. While the Miller Test is used in some other countries, particularly the United States, the Community Standards Test has become the standard we generally use in India now.

Recent court decisions have further clarified how we understand obscenity in the digital age. For instance, in the *Apoorva Arora & Anr. Etc. v. State (Govt. Of NCT of Delhi) & Anr* (2024)⁴ case, the Supreme Court made it clear that simply using vulgar language or swear words doesn't automatically make something obscene. Obscenity is content that evokes sexual and lusty feelings, not only disagreeable words, the court stressed.

Obscenity has legal definitions and norms, while "vulgarity" is more general. Vulgarity usually disgusts, but it doesn't always contaminate morality like obscenity does. Instead of explicit sexual content to arouse unhealthy sexual drives, vulgarity may involve harsh language or crude humour. The Supreme Court ruled in 1985's *Samaresh Bose v. Amal Mitra*⁵ that vulgarity and obscenity are distinct concepts. The courts adopted a more contextual and modern definition of obscenity as society's attitudes of expression and sexuality changed from the Hicklin Test to the Community Standards Test. What was obscene under stronger standards may not be under wider communal standards. Also noteworthy is the Supreme Court's recent distinction between vulgarity and obscenity in *College Romance*⁶. It argues that using strong or offensive language online without a clear element of sexual explicitness designed to stimulate amorous thoughts in an average person may not be enough to violate obscenity laws. This distinction is essential for preserving the right to free speech in artistic and creative works where vulgarity may be employed for a variety of purposes without being considered obscene.

Arguments in favour of regulating online vulgarity

⁴ *Apoorva Arora & Ors. v. State (Govt. of NCT of Delhi) and Ors.*, (2024) 6SCC 181

⁵ *Samaresh Bose v. Amal Mitra*, (1985) 4 SCC 289

⁶ Available at <https://theprint.in/judiciary/hc-equated-profanities-with-obscenity-sc-quashes-criminal-case-against-tvf-show-college-romance/2008718/>

Online vulgarity control is typically justified by the need to maintain public order, morality, and respect online. Vulgarity online, especially if it promotes violence, hatred, or unlawful activity, could undermine public peace, according to proponents of regulation. Mass distribution of offensive content could upend society.

Online vulgarity may impair morality, especially among young individuals still forming their values, which worries society. Exposure to vulgar and obscene information can lower moral standards and shape children and teens' perspectives on relationships, sexuality, and respect. Regulation supporters emphasise the need to create a safe, respectful online world without cyberbullying, harassment, or objectification, especially of women. Unregulated profanity can make the internet hostile and impair privacy.

Unregulated online obscene content is a recent Supreme Court of India complaint. The *Ranveer Allahbadia incident* made the court question why obscene and potentially insulting content isn't better regulated while allowing free speech⁷. This court approach reflects a growing worry about internet platforms being misused and a need for better content control to defend public decency and morality, especially for younger generations. Regulators said India's 'cultural sensibilities' must be respected. Our distinct religious, social, and cultural values may require a different approach to defining and regulating vulgarity and obscenity than in other countries.

Arguments against regulating online vulgarity

We reject online vulgarity regulation because we value free expression and autonomy. This approach highlights those open discussions, including government criticism and idea sharing, are essential for democracy and social progress.

⁷ Available at <https://timesofindia.indiatimes.com/web-series/news/hindi/amid-ranveer-allahbadia-controversy-what-defines-obscene-under-the-law-and-do-we-need-stricter-online-regulations-explained/articleshow/118167116.cms>

Online vulgarity regulation is focused on censorship. Too broad or rigid restrictions could hinder creativity, satire, and dissent, limiting legitimate expression and conversation. Such prohibitions may suppress political opposition or minority groups⁸.

The subjective character of "vulgarity" is another issue. Personal preferences, culture, and changing societal norms determine vulgarity. Define vulgarity objectively and broadly for legislation is difficult.

Ambiguous or broad free expression restrictions may cause a "chilling effect". Even if their online content is legal, people and content creators may fear legal penalties. Indian Supreme Court has stressed protecting online speech from over restrictions. In *Shreya Singhal v. Union of India* (2015)⁹, Section 66A of the IT Act was overturned.

Although Section 66A was unconstitutionally ambiguous and potentially inhibit online speech, the Court stressed that any limits on basic rights must be properly stated and explicit. This verdict implies that future internet vulgarity rules will be constitutionally challenged. Online vulgarity regulation opponents also argue that in a democracy, people have the freedom to create their own judgements on public interest issues. This opinion holds that the government shouldn't operate as a moral guardian, restricting citizens' online access and expression unless it comes under Article 19(2) of the Constitution's particular exceptions. The government's job is to avoid clear harm to public order and individual rights, not to enforce a specific morality.

Landmark Cases on Free Speech and Obscenity

Several Indian Supreme Court rulings have changed the legal landscape on freedom of speech and obscenity legislation. *Ranjit D. Udeshi v. State of Maharashtra* (1964) ¹⁰upheld a bookseller's conviction for selling D.H. Lawrence's "Lady Chatterley's Lover," using the Hicklin Test to define obscenity. This case set a high Indian obscenity threshold.

⁸ Ankita Sharma, Dr. Jayendra Singh Rathore, Balancing Free Speech and Regulation: Examining the Impact of Social and Electronic Media on Freedom of Expression in India, Vol 6, No 2, 1648-1654.

⁹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

¹⁰ *Ranjit D. Udeshi v. State of Maharashtra*, 1964 SCC Online SC 52

Supreme Court's obscenity test modified from Hicklin to Community Standards in *Aveek Sarkar v. State of West Bengal* (2014). This ruling was more liberal, highlighting the need to judge obscenity by today's sensibility and the work.

S. Rangarajan v. P. Jagjivan Ram (1989)¹¹ emphasised artistic freedom and government policy criticism. The Court ruled that the government must protect free speech against violence and public unrest and that restrictions on free expression must be clear and urgent dangers to public order.

Emmanuel v. State of Kerala (1986)¹² supported free speech's right to silence. Students who refused to perform the national anthem for religious reasons highlight our Constitution's free speech¹³.

Shreya Singhal v. Union of India (2015) overturned Section 66A of the IT Act to protect online speech from vague and sweeping restrictions. Future online content control depends on this case.

Finally, *Devidas Ramachandra Tuljapurkar versus State of Maharashtra* (2015)¹⁴ proposed a controversial free speech provision for "historically respectable figures" like Gandhi. Free speech and artistic expression when they upset popular sensibilities about famous historical figures were questioned in this ruling.

These instances suggest a broader definition of free speech, especially for artistic expression and digital content. The Hicklin Test is replaced with the Community Standards Test, which modernises law. Cases like *S. Rangarajan* demonstrate that the government must defend free speech even when the public disagrees. The *Shreya Singhal* ruling showed that online expression must be free from confusing and arbitrary constraints. These judicial opinions demonstrate that while the Constitution allows regulating obscenity, banning expression, especially online, is difficult and must be founded on well-defined legal norms and a real harm to public order or morality as recognised by today's community

¹¹ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574

¹² *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

¹³ Sakshi and Aditya Raj, Case Study: *S. Rangarajan v. P. Jagjivan Ram* (1968), *International Journal of Law Management and Humanities*, Vol 6, Issue 2, 1170-1174.

¹⁴ *Devidas Ramachandra Tuljapurkar v. State of Maharashtra*, (2015) 6 SCC 1

Recent Cases and Developments Online

India's rules on online material are still being changed by new court decisions and ongoing legal changes. A noteworthy case is the 2024 Supreme Court College Romance online series judgement.¹⁵ The Court quashed IT Act criminal charges against the creators, ruling that profane language doesn't render it indecent. The judgement underlined the importance of context and whether the content's principal goal is to stimulate sexual or lusty feelings in an average person. Online information should be differentiated between strong language and legally obscene materials, according to this rule.

In 2025, the Supreme Court mandated a legal inquiry following the controversial remarks made by YouTuber Ranveer Allahbadia regarding India's Got Latent.¹⁶ The court provided him with interim protection from arrest while questioning the lack of proper regulation for such content online, emphasising the persistent tension between free expression and public decency. This case shows that the judiciary still concerns about dangerous online content, even non-obscene. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have also been challenged in court due to concerns about their impact on freedom of expression, particularly digital news media regulation and the requirement to trace the first person who shared information. These concerns reflect government debates on online intermediaries and digital content¹⁷.

Digital Personal Data Protection Act, 2023, a major law reform, may indirectly affect online obscenity. This Act may affect how internet platforms handle user-generated material and allow people more control over the visibility and sharing of their data, which may contain vulgar content, by emphasising on data privacy, permission, and individual rights.

¹⁵ Available at <https://www.sconline.com/blog/post/2024/03/19/college-romance-web-series-supreme-court-quashes-obscenity-case-against-tvf/>

¹⁶ Available at <https://www.thehindu.com/news/national/india-got-latent-row-supreme-court-plea-on-ranveer-allahbadia-case-update/article69232606.ece>

¹⁷ Sumeet Guha and Dr. Shreya Matilal, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021- A Reassessment of Contours and Limits, NUJS Journal of Regulatory Studies, Vol. VIII, Issue II, 32-42.

In the College Romance case, the Supreme Court distinguished vulgarity from obscenity and allowed strong language and potentially offensive comedy online as long as they don't encourage sexual desire. This shows a shift from morality to community-defined damage or obscenity in online media control. The Supreme Court's Ranveer Allahbadia ruling highlighted the ongoing judicial debate over online expression, particularly provocative or filthy information that doesn't meet obscenity criteria. Concerns over public decency and morality in the digital realm persist despite the judiciary's protection of free expression, and new legislation and court interpretations alter the legal framework governing online content.

The shifting sand of online regulation- lessons from recent events

Recent arguments and case studies show India fails to enforce internet obscenity. The 2015 AIB Roast, in which comedians were mocked and sued for allegedly inappropriate content during a live Bollywood presentation, sparked a national debate on humour and free speech. The event highlighted questions about Indian cultural sensitivity and how far humour may go without legal or societal implications.

The religiously insensitive Amazon Prime Video web series Tandav was banned in 2021. To address public and legal concerns about religious content online and self-censorship, the series was altered. This incident also involved OTT content control.

Ranveer Allahbadia's foul language in 2025's India's Got Latent controversy highlights web content regulatory difficulties. Online content worries people, especially kids, as shown by social media and court cases. This case also raises issues about online content creators and platforms needing clearer standards.

From the AIB Roast to Tandav and India's Got Latent, online content controversies show a conflict between India's different societal sensitivities and the constitutional right to free expression. These incidents often spark disputes about online content regulation and Indian cultural norms. These case studies show that India's online vulgarity regulation is changing and inconsistent, as shown by the College Romance judgement and India's Got Latent first answers. The judiciary appears to favour freedom of expression, but it also wants to stop the spread of

damaging or obscene content, thus it evaluates cases individually based on changing community standards and judicial interpretations. Without a clear and common legal standard for online vulgarity, enforcement and interpretation can be inconsistent, leaving content providers and platforms unclear about their content's legal implications.

Intermediary Liability and Platform Governance

The Indian intermediary liability law and online platform governance affect the regulation of online material, especially vulgarity. Social media platforms, internet service providers, and other intermediaries that hold or transport data for others have a "safe harbour" under Section 79 of the Information Technology Act, 2000. If they meet specific standards, these platforms aren't accountable for user material. These standards include due diligence and, crucially, removing or limiting access to illegal content when companies have "actual knowledge" of it, which courts have often construed as a court order or government notification. The Supreme Court declared in *Shreya Singhal* (2015) that platforms must remove content only by court order or government notification under certain legal requirements.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 gave online platforms substantial new responsibility. For users to complain about inappropriate or obscene content, intermediaries must have robust channels. They also require large social media sites to actively remove illegal content and identify original content sharers. These new principles may change intermediary liability by requiring platforms to monitor content more.

Beyond the law, platform governance helps manage online ugliness. Most online conditions of service restrict hate speech, harassment, and sexually explicit content. Both computer and human moderators enforce these rules. However, issues about how effective and transparent these self-regulatory methods are have led to requests for increased government oversight and responsibility in content management.

Section 79 of the IT Act shields intermediaries from liability for user-generated content, but the IT Rules, 2021, compel them to filter content more. This is a growing expectation that platforms take responsibility for their obscenity and profanity. Free speech and internet safety clash in platform governance debates about self-regulation vs. government action. Self-

regulation is adaptable but inconsistent and ineffective, leading calls for more formal government authority to define standards and ensure responsibility across platforms.

Socio-Legal Challenges and the Way Forward

Free speech and internet obscenity legislation in India provide socio-legal challenges. Morality and decency, which control vulgarity and obscenity, are subjective, making regulation difficult. In diverse India, morality and ethics differ by community, making internet content restrictions problematic. According to subjectivity, minority groups may be forced to adopt majority viewpoints and valid speech that some may find offensive may be banned. Global internet access is another issue. Indian regulations on foreign-hosted online content are difficult to enforce. Foreign companies or people can be prosecuted for online content in India, but it takes time. International cooperation and internet content regulation are needed for this global characteristic.

Future digital literacy and online responsibility must be promoted. Critical thinking, media literacy, and online content impacts can help people navigate the digital environment and make educated consumption and sharing decisions.

Our approach must balance free expression and social concerns about harmful or offensive online information. Legally defining obscenity and vulgarity and making prohibitions clear and targeted may be necessary. Encourage ethical content creation and consumption online. While maintaining public morals, the court must be vigilant and not over-restrict personal liberty. Online vulgarity control is socio-legally difficult since morality and decency are subjective. India's diverse culture and civilisation make it difficult to enforce clear laws without compromising free expression. One person's vulgarity or offence may vary. National online vulgarity laws are complicated by global internet access. Indian users can easily access overseas content, complicating global company cases. Promote digital literacy and responsible online conduct, improve legislative frameworks with clear and exact definitions, expand

international cooperation, and balance free expression and genuine societal concerns in court interpretations to address these issues¹⁸.

Conclusion

Lastly, India's fight over controlling bad language online and allowing free speech shows a split in democracy states in the digital age. Even though our Constitution protects free speech, it is limited by morality and good order. The tighter Hicklin Test has been replaced by the more flexible Community Standards Test, and recent court decisions have made it clearer what content is vulgar and what content is legally obscene.

Regulating bad language online is generally justified by the need to protect kids, keep the public safe, and uphold morals. People who are against regulations are worried about things like censorship, open talk, the subjective nature of vulgarity, and limiting free speech. Ranjit D. Udeshi, Shreya Singhal, and College Romance show that the courts are still trying to balance these different interests.

It's hard to define and police filthy online material, as shown by the AIB Roast, Tandav, and India's Got Latent. The 2021 IT Rules govern intermediary liability and platform governance. They have an effect on how online material is moderated. India has a hard time balancing free speech with rules about online slander. It is very important to respect basic rights, take into account the different points of view in Indian society, and reduce digital harm and bad behaviour in public. Judicial discourse, regulatory framework changes, digital literacy development, and responsible online activity are likely to keep the internet active and safe for everyone.

¹⁸ Sen, S. (2014). Right To Free Speech and Censorship: A Jurisprudential Analysis. *Journal of the Indian Law Institute*, 56(2), 175–201.”