



Preserving Free Speech in India

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Why in News?

In **Ranveer Allahbadia v. Union of India (2025)**, the Supreme Court made observations suggesting the need for new regulatory mechanisms for online content. This has revived the constitutional debate on whether **courts should protect free speech or inadvertently assume a regulatory role**.

What is Free Speech?

Freedom of speech and expression is the right to express opinions, ideas, beliefs, and information through:

o Speech, writing, art, print, and **digital platforms**.

It is a **cornerstone of democracy**, enabling:

o Dissent and debate

o Government accountability

o Informed citizen choice

o Marketplace of ideas

Constitutional Framework

Article 19(1)(a)

- Guarantees freedom of speech and expression to **all citizens**.

Article 19(2): Reasonable Restrictions

- Permits restrictions **only** on specific grounds:

o Sovereignty and integrity of India

o Security of the State

o Friendly relations with foreign States

o Public order

o Decency or morality

o Defamation

o Contempt of court

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o Incitement to an offence

Key Constitutional Principle:

The grounds under Article 19(2) are **exhaustive, not illustrative**.

Role of Courts in Free Speech Adjudication

1. Constitutional Umpire, Not Regulator

- Courts must:

o Test the **constitutionality of restrictions**

o Assess **reasonableness and proportionality**

- Courts should **not design regulatory frameworks or policy solutions**.

2. Guardian Against Prior Restraint

- Judicial role includes preventing:

o Pre-censorship

o Blanket or vague controls

- Speech can be restricted **only after demonstrable harm** and strict constitutional scrutiny.

3. Separation of Powers

- **Legislature & Executive** ? Law-making and regulation
- **Judiciary** ? Interpretation, review, and protection of rights
- Judicial overreach risks converting courts into **de facto regulators**.

4. Balancing Rights Within Article 19(2)

- Courts may balance speech with other interests **only within enumerated grounds**.
- Judicial creativity **cannot expand** restriction grounds.

Key Judicial Precedents

1 Shreya Singhal v. Union of India (2015):

o Struck down **Section 66A of IT Act** for vagueness.

o Highlighted **chilling effect** on free speech.

2 Sahara India v. SEBI (2012):

o Pre-censorship is impermissible.

o Postponement of publication allowed **only as a last resort** under strict tests.

3 Kaushal Kishor v. State of UP (2023):

o Constitution Bench held that:

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§Article 19(2) grounds are **exhaustive**

§Courts cannot introduce new speech restrictions.

4Common Cause v. Union of India (2008):

oWarned courts against attempting to solve **policy and governance problems** beyond institutional competence.

5Adarsh Cooperative Housing Society v. Union of India (2018):

oRefused to mandate content disclaimers.

oReaffirmed that **content regulation lies with statutory authorities**, not courts.