ALGORITHMIC SPEECH AND ARTICLE 19(1)(a): RETHINKING FREE EXPRESSION IN THE PLATFORM ERA

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ABSTRACT

The algorithm serves as the initial communication Indians hear when they start their day because it replaces all other possible morning speakers. Social media platforms enable users to perform one-touch interactions, which determine their feed content, search results, and trending list and recommendation system outputs. The public discourse intermediaries who operate without visibility have become the most influential force which now shapes how democracy operates through their untested impact on democratic dialogue.

The paper examines how speech algorithms, together with their embedded prejudices and platform content blocking mechanisms, create new criteria which determine what people can express. The right to free speech no longer guarantees that people will actually hear our messages because modern speech depends on platforms which control how many people will view and interact with our content. The article uses worldwide data about algorithmic oversight and platform control systems to demonstrate that India must immediately modify its Article 19(1)(a) legal framework because of computational governance requirements.

I. INTRODUCTION

Public discussions in India used to develop through newspaper headlines and television debates, as well as the discussions which took place in educational spaces, professional environments, and residential areas. Most Indians now receive their first exposure to information through algorithms, which function as their primary source of information. The process of scrolling through Instagram and YouTube and searching on Google depends on hidden computational systems which determine which content appears, which information disappears, and which stories will dominate all others.

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The digital revolution in India established new speech options which surpassed every previous communication system. The public space upholds democratic values because it enables free expression, yet users have no control over displayed content because algorithms function through user engagement metrics and revenue optimisation algorithms. The systems operate through user visibility management, which hides content, but they do not provide explanations about their operations or demonstrate any accountability.

The Media operations transformation needs Article 19(1)(a) to change because this provision protects citizens from censorship by ensuring their right to free speech and expression. The constitutional framers viewed censorship as a state activity which they could track and oppose through judicial oversight. The current guardians of free speech operate through private social media platforms, which use hidden algorithms to make fast decisions that create extensive effects. Users fail to identify satirical content, which results in its removal from platforms, while users who disagree with others experience unexpected changes in their content visibility.

II. THE RISE OF ALGORITHMIC SPEECH

The Indian online public space has experienced an extremely fast-paced evolution during the past ten years, which has created difficulties for legal frameworks to adapt. Public speech used to exist through institutions which people could identify, such as newspapers, broadcasters, and publishers that followed set ethical, editorial, and legal guidelines. The present information distribution system depends on algorithms which operate as hidden computer codes that decide which content to distribute and which voices to amplify while generating new stories through their automated operations. The change has brought about the development of algorithmic speech, which scholars identify as a new method of expressive power that platforms use through their recommendation and ranking system operations.

Public discourse structures its organisation through three distinct mechanisms, which algorithms operate. The system first identifies which content elements have increased popularity, which results in specific posts becoming visible in trending lists and recommended feed sections. The system operates to select blocked content without users understanding how these decisions are made. The third element determines content presentation through its use of terms which include "sensitive",

"misinformation", and "low-quality". The algorithm determines speech direction in every situation, regardless of who created the system. The media environment now operates through computational systems which replace human control to show content based on data patterns, predictive models, and user engagement metrics.

The mediation process occurs millions of times daily for users who access the platform in India. Social media platforms enable political video distribution because their predictive algorithms determine user engagement by showing that viewers will watch videos for longer periods. The algorithm fails to recognise regional linguistic differences, which leads it to incorrectly identify posts about caste discrimination as hate speech. The automated filters which detect misinformation fail to recognise satirical content because they cannot identify when information is presented in an ironic manner.

III. ARTICLE 19(1)(a) IN A WORLD OF PRIVATE GATEKEEPERS

The Constitution grants citizens their right to free speech and expression through Article 19(1)(a) which Indians consider their most essential democratic freedom. The Indian constitutional system has used state action as its main method to analyze this freedom by determining if State-imposed limitations comply with Article 19(2). The classical system displayed censorship through official government control which operated as a structured system. The current digital world system creates problems which lead people to question everything they know about these subjects. The current most important barriers to free speech emerge from private digital platforms which control access and visibility and distribution power through their algorithm-based management systems.

Social media platforms together with search engines function as the main entry points which people use to express themselves. The official right to free speech exists but people can only express themselves through platform algorithms which follow contractual rules instead of constitutional protections. Search engines take away constitutional rights from users when they reduce search results for their content or completely delete it or prevent users from accessing their content through shadow-banning methods. The system creates a contradictory situation because speech

suppression through this method does not violate Article 19(1)(a) even though the State does not impose the restriction.

Courts understand how social media platforms influence public dialogue but they maintain platforms should not receive government status because this prevents them from obtaining constitutional protection for their content moderation choices. The state-action doctrine under Part III faces potential weakening because of this opposition. Platform governance has reached such a large size that it now creates major social problems which challenge the existing boundaries between public and private sectors.

The digital world which uses algorithms to choose which voices get heard requires a new definition of free speech because traditional state censorship protection no longer works. The current situation requires Article 19(1)(a) to control private organizations which perform public authority duties as controllers. The platform era requires constitutional law to adapt because it needs to maintain its ability to protect actual expression that people experience in their daily lives.

IV. WHEN VISIBILITY BECOMES A RIGHT

Digital systems now control how people express themselves because these systems use complicated algorithms which determine what becomes visible to the public. The environment demands both unrestricted speech and successful delivery of messages to the listeners. The digital public sphere now uses visibility as its main currency which determines how people influence each other through political activities and news reporting and cultural analysis. The discovery of restricted speech reveals that free expression exists as a legal right but produces unequal outcomes in practice.

The existing social inequality exists as a fundamental system rather than a random occurrence. The operation of algorithmic systems depends on their ability to predict user engagement which leads them to display content that generates the most reactions while showing sensational material and using dominant language and causing public outrage. The system tends to rank down content which presents minority perspectives and uses regional dialects and complex analysis because it considers such content less interesting.

The Indian free-speech legal system has established that speech includes all forms of communication which go beyond actual verbal expression. The Supreme Court established that Article 19(1)(a) depends on print and broadcast media access and circulation because distribution restrictions determine what information can be expressed through speech. Extending this logic to the digital sphere makes it difficult to dismiss algorithmic visibility as constitutionally irrelevant. The process of circulation became essential for print distribution yet online platforms now use algorithmic distribution systems which should not be disregarded.

The legal process needs to establish the importance of being seen while protecting free speech rights from becoming a requirement for equal media exposure. The problem requires rules which protect all content equally through simple language that prevents discrimination.

This leads to an unavoidable question: is invisible speech meaningful speech?The outcome in an algorithm-based democratic system will establish whether Article 19(1)(a) continues to serve as an operational protection for citizens or becomes a meaningless statement that lacks significance for modern digital society. The constitutional status of visibility allows for protection against private organizations which lack public accountability to alter the conditions which support free expression but it does not enable newsroom direction.

V. GLOBAL LESSONS: HOW OTHERS ARE RESPONDING

The constitutional challenges posed by algorithmic curation are not unique to India. Across jurisdictions, courts and regulators confront a common dilemma: digital platforms are private actors, yet they operate as the primary infrastructure through which public speech is distributed. Comparative responses reveal three broad approaches, each reflecting different trade-offs between platform autonomy, user protection, and democratic accountability.

A. United States: Maximum Platform Freedom

The United States governs platforms through its free speech heritage which grants private companies complete control over their editorial decisions. Most regulatory

bodies consider algorithmic curation and content moderation as editorial decisions which enable platforms to maintain their exemption from standard regulatory authority. The First Amendment prevents the State from making moderation decisions because courts have shown resistance to such State oversight according to *Moody v. NetChoice LLC.* The model grants platforms complete immunity from state interference yet it does not offer users enough defense when they want to use contractual methods to dispute their content placement and deletion choices.

B. European Union: Maximum Transparency

The European Union operates through an accountability-based system which differs from the previous model. The EU recognizes platform governance as a major danger to democratic dialogue and fundamental rights through its Digital Services Act (DSA). The framework requires platforms to maintain transparency through their procedures which include detailed explanations for content removals and viewing limitations and user complaint systems and platform risk evaluation processes and annual independent platform audits for big platforms. The system allows researchers to access platform data through managed access procedures because the EU supports algorithmic transparency as a necessary condition for free expression to function properly.

C. Global South: Maximum Vulnerability

The Global South demonstrates how algorithmic governance systems create new security threats which affect communities that use multiple languages and have divided political systems and different levels of digital competence. The two primary issues emerge because automated systems fail to execute proper content restrictions for harmful content and they mistakenly remove lawful content when they do not understand the context. International human rights organizations have repeatedly demonstrated that platforms which operate with non-transparent moderation systems and weak complaint systems establish conditions which block marginalized groups from free expression. The multiple languages of India together with its active political battles create conditions which make it difficult to achieve neutral moderation through user engagement.

VI. WHY INDIA MUST RE-THINK FREE SPEECH

The Indian free-speech legal system has maintained an extensive approach which supports democratic values. From **Romesh Thapar v. State of Madras**, which affirmed the centrality of political speech, to Secretary, **Ministry of Information & Broadcasting v. Cricket Association of Bengal**, which recognised the right to receive information as part of Article 19(1)(a), the Supreme Court has consistently treated expression as essential to democratic participation. More recently, **Justice K.S. Puttaswamy (Retd.)v. Union of India** reaffirmed privacy as a condition of individual autonomy, while **Shreya Singhal v. Union of India** robustly protected online speech against vague and overbroad censorship.

The selection process for communication standards has undergone development since the beginning until it reached its current state. The authors did not anticipate that speech would face algorithmic assessment which uses engagement metrics to determine reach while algorithms perform hidden content blocking instead of conventional blocking techniques. The constitutional framework which governed these cases depended on the belief that speech threats would emerge from state actions which courts could effectively monitor—yet algorithmic control systems challenge these fundamental beliefs.

The platform era faces its main obstacles to free expression because private companies use their ranking and recommendation systems to make decisions which limit what users can express. Free speech becomes impossible to access when organizations use their visibility controls to block people from seeing their content even though this does not involve government interference. The current legal framework protects citizens from government interference with their right to free speech but it fails to protect their speech from private organizations that control what information reaches the general public.

To preserve the substantive meaning of Article 19(1)(a), Indian constitutional law must therefore evolve. This does not require abandoning the state-action doctrine, but recognising the **positive obligation of the State** to safeguard the conditions under which speech is exercised. Where private, algorithmic power has the capacity to distort democratic participation, ensuring transparency, fairness, and non-discriminatory

access to the digital public sphere becomes part of the constitutional duty to protect free expression.

Re-thinking free speech in this manner is not a departure from established doctrine, but its logical continuation. As earlier courts adapted Article 19(1)(a) to new media and technologies, the present moment demands an interpretation responsive to the realities of algorithmic mediation. Without such adaptation, the constitutional promise of free expression risks becoming increasingly detached from the lived experience of speech in a digitally governed democracy.

VII. WHAT AN INDIAN FRAMEWORK COULD LOOK LIKE

The Indian government needs to develop a proactive system for online speech management because Article 19(1)(a) free expression rights face threats in the platform era. The platform needs to establish visibility governance through constitutional principles but it should avoid creating any rules which block promotional activities. The Indian framework needs to establish due process alongside transparent procedures which guarantee fair treatment for all speech-related matters.

(a) Transparency Mandates

The core requirement for algorithm accountability needs complete exposure of all system operations. The systems of platforms need to show their content ranking and recommendation and removal and downranking processes through straightforward and easy-to-understand language. Users and regulators need to understand the criteria which determine visibility even though proprietary source code remains protected from disclosure. The lack of transparency in algorithmic governance systems prevents outside observation of their operational activities which makes free-speech protections useless.

(b) Notice and Explanation

Users require enough information about speech restrictions which happen through removal or demotion or labeling practices. The use of automated notices which only reference standard policy terms does not fulfill the minimum requirements for fair legal procedures. A constitutional framework requires deliberate decision-making about free

expression because all moderation actions affecting political speech and public discussions must undergo thorough assessment.

(c) Disclosure of Shadow-Banning and Visibility Restrictions

Platform governance creates an essential problem because users face unannounced reach restrictions which they must accept without any warning. Users lose their ability to express themselves freely and their right to file complaints when platforms make their content unavailable through ranking adjustments or content blocking. The Indian framework requires businesses to disclose information when material details become restricted because this approach enables companies to prevent damage to their reputation through their untransparent business operations.

(d) Independent Algorithmic Audits

Large platforms need independent audits to run at scheduled times because these platforms operate as the complete system control. The audits need to check algorithm performance while they need to check bias and risk factors to determine if recommendation and moderation systems generate discriminatory effects against specific social groups who belong to particular religious groups and speak particular languages.

(e) A Necessary Constitutional Shift

Technical reforms need to be implemented with constitutional changes that will occur at the same time to fulfill their desired objectives. Article 19(1)(a) provides protection which reaches further than state censorship prevention because it maintains the fundamental components which allow people to express themselves through digital public spaces of today. The system protects three essential components which safeguard digital content accessibility and user data control and ensure all users receive equal online treatment. The interpretation requires the State to defend democratic participation through constitutional means against private speech systems but it does not make platforms into state-controlled entities.

VIII. CONCLUSION

India exists at a crucial point in its constitutional development. Private technological systems now control public opinion and democratic discourse to a degree which has never been seen before. The digital era depends on algorithms which function as invisible narrators to determine which stories will become popular while others disappear from public awareness. These systems through their ranking and recommendation and moderation functions establish operational limits which affect the free expression rights of more than million people.

The Constitution makers created Article 19(1)(a) during a time when governments used direct and recognizable methods to enforce censorship. The platform ecosystem contains its core silent operations which operate through unofficial channels that do not require official blocking or public disclosure to function. The law continues to allow speech but technology-based systems make it impossible to detect because they operate with untraceable algorithms which serve business interests instead of protecting constitutional rights. The current situation reveals how a free-speech doctrine which mainly protects against state interference and direct restrictions becomes insufficient.

The lifeblood of Indian democracy depends on freedom of speech and expression so constitutional law needs to adapt to this new development. The system needs to understand that modern censorship emerges from private algorithm-based systems which determine what users can see and access through their massive operations. The solution to this problem needs to apply existing core principles by creating systems which maintain both transparency and fairness and accountability for speech distribution.

The future stability of free expression in India will depend on the ability of constitutional law to handle technological progress. The right to speak needs protection together with the conditions which enable people to be heard because this combination will maintain democratic participation through digital platforms.

References

1. Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* (Yale Univ. Press 2018).
2. Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (PublicAffairs 2019).
3. Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard Univ. Press 2015).
4. Constituent Assembly Debates, Vol. VII (Dec. 6–7, 1948).
5. U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Rep. on Artificial Intelligence Technologies and Implications for the Information Environment, U.N. Doc. A/73/348 (Aug. 29, 2018).
6. Nick Couldry & Ulises A. Mejias, *The Costs of Connection: How Data Is Colonizing Human Life and Appropriating It for Capitalism* (Stanford Univ. Press 2019).
7. Tim Wu, *The Attention Merchants: The Epic Scramble to Get Inside Our Heads* (Alfred A. Knopf 2016).
8. Kashmir Hill, The Secretive Company That Owns Instagram's Algorithm, *Wall St. J.* (Sept. 15, 2021).
9. ARTICLE 19, *Algorithms and Expression* (2020), https://www.article19.org.
10. Amnesty Int'l, *Automated Injustice: How Algorithms Are Shaping Human Rights* (2021).
11. *Romesh Thapar v. State of Madras*, A.I.R. 1950 S.C. 124 (India).
12. *Bennett Coleman & Co. v. Union of India*, (1973) 2 S.C.C. 788 (India).
13. *Secretary, Ministry of Info. & Broad. v. Cricket Ass'n of Bengal*, (1995) 2 S.C.C. 161 (India).
14. *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).
15. *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).
16. *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).
17. Jack M. Balkin, Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation, 51 U.C. Davis L. Rev. 1149 (2018).
18. *Moody v. NetChoice, LLC*, 603 U.S. (2024).
19. Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), 2022 O.J. (L 277) 1.
20. European Comm'n, *The Digital Services Act Package* (2022).
21. U.N. Human Rights Council, Rep. of the Special Rapporteur on Minority Issues, U.N. Doc. A/HRC/49/46 (2022).
22. Daphne Keller, Who Do You Sue? State and Platform Hybrid Power Over Online Speech, Hoover Inst. (2021).
23. Anupam Chander, Free Speech and the Algorithmic Gatekeeper, 70 Vand. L. Rev. 103 (2017).