

# Gag Orders in India: Judicial Discretion vs Constitutional Freedoms

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## Abstract

Gag orders lie at the centre of a critical constitutional tension in India—balancing judicial discretion with the citizen’s right to freedom of speech. While such orders are framed as safeguards of fair trial and judicial integrity, they increasingly operate as tools of suppression, especially in the age of digital media. This paper interrogates the legal foundations, judicial trends and philosophical implications of gag orders. Through a detailed examination of constitutional jurisprudence and the Ranveer Allahbadia case, it argues for codified limits on judicial discretion that preserve democratic values without compromising justice.

**Keywords:** Gag order, speech and expression, reasonable restrictions, media trials, judicial overreach, fundamental right, digital silencing.

## Introduction

In India’s constitutional democracy, the judiciary functions not only as an adjudicator but as the guardian of fundamental rights. Among these, freedom of speech under Article 19(1)(a) is paramount. Yet this right is not absolute. Article 19(2) permits the State to impose “reasonable restrictions” in the interests of public order, morality and judicial integrity. Gag orders—judicial or administrative measures that prohibit public discussion of ongoing legal matters—are one such restriction.

Though ostensibly intended to protect fair trial rights, gag orders increasingly encroach on democratic discourse. The rise of real-time journalism and influencer-led commentary has led courts to exercise greater control over public speech. However, in the absence of codified standards, gag orders risk becoming arbitrary and chilling, thereby eroding constitutional morality.

## The Nature and Legal Foundations of Gag Orders

Gag orders are not defined under any specific Indian statute but draw legitimacy from a combination of legal sources. Courts often rely on:

- Section 144 of the Criminal Procedure Code (CrPC): Allows district magistrates to prevent public gatherings or speech that could endanger public tranquillity.
- The Contempt of Courts Act 1971: Penalises speech that scandalises the court or prejudices judicial proceedings.
- Article 19(2) of the Constitution: Justifies restrictions on freedom of expression in the interests of public order, decency or contempt of court.

The Supreme Court in *Sahara India Real Estate Corporation Ltd v SEBI* (2012) recognised that “postponement orders” may be necessary in high-profile cases. However, it emphasised that such orders

must be temporary, narrowly tailored and grounded in necessity.

Despite these principles, lower courts have often issued sweeping gag orders—frequently oral and unreasoned—that curtail speech without due process. These orders tend to disregard the constitutional requirement that all speech restrictions must be precise, proportionate and justified.

### **The Constitutional Challenge**

Any restriction on speech must conform to the tripartite test of legality, necessity and proportionality—a doctrine laid down in *Modern Dental College v State of Madhya Pradesh* (2016) and reaffirmed in *KS Puttaswamy v Union of India* (2017).

In *Shreya Singhal v Union of India* (2015), the Supreme Court struck down Section 66A of the Information Technology Act for its vagueness and chilling effect on digital speech. The Court held that restrictions on online speech must be specific, narrowly drawn and demonstrably necessary.

Similarly, in *S Rangarajan v P Jagjivan Ram* (1989), the Court clarified that anticipated danger must not be remote or speculative. Restrictions on speech must be based on clear and imminent threats to justice or public order—not on subjective discomfort.

Yet recent gag orders have failed to meet these constitutional benchmarks. They are frequently preventive, overbroad and lacking in judicial reasoning—raising doubts about their validity under Article 19(2).

### **Media Trials and Judicial Overreach**

Indian courts have repeatedly expressed concern about “media trials”—sensationalist reportage that could prejudice public opinion and judicial outcomes. While this is a legitimate concern, judicial responses have sometimes veered into overreach.

A striking example is the 2024 Allahabad High Court gag order, which prohibited the media and the parties involved from discussing a politically sensitive criminal case. The order was issued without a written judgment or any clear duration. This undermined both transparency and accountability.

Such orders compromise the public’s right to know, particularly in cases involving public interest. They also create a perception of judicial opacity and selective silencing, especially when passed without open hearings or detailed justifications.

Courts must recognise that gag orders which are passed without procedural safeguards or temporal limits violate not only individual rights but also public confidence in judicial integrity.

### **Digital Silencing: The Ranveer Allahbadia Case**

On 18 February 2025, the Supreme Court granted interim protection from arrest to podcaster and YouTuber Ranveer Allahbadia, in relation to FIRs filed against him for allegedly explicit content aired on his show *India Got Latent*. However, in an unusual move, the Court prohibited Allahbadia and his team from posting on social media platforms.

This restriction—although not formally termed a gag order—had the same effect. It amounted to a preventive restraint on digital speech, imposed without any written judgment or proportional justification. Allahbadia’s entire professional identity, revenue model and expressive function as a creator were placed under indefinite suspension.

This action contradicts the jurisprudence laid down in:

- *Rehana Fathima v State of Kerala* (2021): Where the Supreme Court stayed a bail condition that prohibited the accused from posting content online.

- Mohammed Zubair v State of Uttar Pradesh (2021): Where the Court declined to restrict a journalist from tweeting, citing the chilling effect on free speech.

In light of these precedents, the Allahbadia order sets a dangerous standard—one where bail conditions can be used to effectively silence individuals without due process.

### **Jurisprudential Perspectives**

From a jurisprudential perspective, gag orders sit uncomfortably within liberal theories of rights. John Stuart Mill's harm principle allows interference with speech only when it causes actual, not hypothetical, harm. Ronald Dworkin considered free speech intrinsic to moral personhood and political equality. Oliver Wendell Holmes Jr. in *Abrams v United States* (1919) warned against suppressing dissent in a democracy, urging instead a "marketplace of ideas".

Indian constitutional jurisprudence has largely embraced these ideals. In *R Rajagopal v State of Tamil Nadu* (1994), the Court upheld the right to publish information on public officials, even without consent, so long as it was not defamatory. In *Anuradha Bhasin v Union of India* (2020), the Court held that freedom of expression includes access to information and must not be curtailed arbitrarily.

Seen through this lens, gag orders that are passed without reasoned orders, review mechanisms or narrowly defined goals are not merely poor judicial practice—they are antithetical to constitutional morality.

### **The Chilling Effect and Informal Gagging**

A new and worrying trend is the use of non-judicial gagging tools—legal threats, takedown notices, defamation suits and cease-and-desist letters issued to silence dissent before courts are even approached. This form of lawfare disproportionately targets independent journalists, whistleblowers and digital creators, including influencers like Allahbadia.

These shadow gags do not undergo judicial scrutiny and cannot be easily challenged, yet they carry the same silencing effect. By circumventing procedural safeguards, they threaten to establish a culture of private censorship, enforced not by law but by intimidation.

### **The Way Forward: Towards a Codified Framework**

To preserve both justice and freedom, gag orders must be brought within a codified, reviewable and constitutionally compliant framework. This framework should include:

- Mandatory written orders stating the reasoning and legal basis.
- Temporal limits with defined expiry dates and review mechanisms.
- Availability of urgent appeal against gag orders.
- Consideration of less restrictive alternatives, such as in-camera hearings or anonymity of witnesses.

Courts must also be trained in media law and digital rights, to better understand the broader ramifications of their speech restrictions.

### **Conclusion**

Gag orders are meant to uphold justice—not muzzle truth. When issued in a manner that lacks transparency, proportionality and review, they risk undermining not only the right to a fair trial but also the foundational principles of free speech and open justice.

The judiciary must remember that silence does not guarantee justice, nor does noise always mean prejudice. In a constitutional democracy, the right to speak—and to hear—must remain paramount. As

India's legal landscape continues to evolve, it is essential that gag orders are used with caution, reason and an unwavering commitment to democratic values.

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