

EMOJIS AND THE CONSTITUTIONAL LANGUAGE OF EXPRESSION: REINTERPRETING ARTICLE 19(1)(a) IN INDIA'S DIGITAL SEMIOTIC ERA



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Abstract

While Indian jurisprudence on freedom of expression has been evolving yet it has limited exposure to the ambit of visual forms of expression. This limited focus highlights an ambiguity in the interpretation of digital symbols like emojis. In the digital age, the use of emojis has just like using alphabets in a text or script. The problem of interpretation due to its varied meaning, cross platform diversity makes the real expressive freedom fragile. This article aims to analyse the philosophy behind freedom of expression from theoretical and preambular lens to understand its various dimensions. Followed by the transformative role of Indian judiciary will be analysed in expanding the scope of freedom. A comparative insight in the discussion is adopted to get a global understanding of the approach regarding emojis. This article analyses the gap and proposes a technologically aware semiotic test that contextualises the digital parity and clears ambiguity. This framework aims to restore the expressive autonomy of the citizens at the digital space thereby protecting freedom of expression from the tyranny of State and algorithm.

Key Words: *Emojis, Preambular, Transformative, Semiotic, Digital Parity, Expressive Autonomy.*

I. Introduction

The notion of expression predates the emergence of language which is quite evident by the usage of cave paintings, gestures, rituals and varied art from as earliest tools of communication in the human civilization. Unlike language,

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these tools of communication are not bound by a rigid script, rather it is driven by the idea which one seeks to express. It is implied that expression is not merely linguistic rather it is symbolic and emotional which reflects human consciousness. Expression, in these circumstances, includes a remarkable variety of forms: spoken language, written text, imagery, symbols, gestures, music, art, performance¹, and, increasingly, interactive and digital media. In idealistic sense a free man has a tendency to express in its fullest sense with least barriers. This human impulse of externalizing the thought and emotion has remained constant over the cycle of time whether it is prehistoric cave walls or Smartphone screens. The evolution of these visual forms of expression culminates today in digital communication as emojis.²

In the digital era, the transformation of technology has changed the dynamics of communication as it encompasses text messages, memes, GIFs, emojis etc. Amongst all other digital forms of expression emojis are most commonly used as a tool of communication to express which is not only ornamental but carries emotional, cultural meanings. Even though the usage of emojis has been increasing day by day but there is an ambiguity in their meanings which differs across various users based on their culture, age, context etc., also there are variances across different platforms which even complicate their interpretation. The ambiguity if not addressed constitutionally, might result in constraining the very freedom of expression which is embodied regarding emojis.

India's constitutional vision has already been accommodative regarding broad, visual and symbolic forms of communication. The same is guaranteed by the freedom of speech and expression under Article 19(1) (a) of the Indian Constitution³ which acts as the lifeblood of democratic order. The transformative role of judiciary has helped to keep the freedom in line with the dynamics of the society. From recognizing it as essential for democracy to recognition of online speech it has broadened the freedom of expression in the interest

¹Freedom of expression includes freedom of publication of books, musical performances and use of radio, film, and T.V, see: T.K. Tope, CONSTITUTIONAL LAW OF INDIA 117 (1992).

²Every form whether it is verbal, visual, or symbolic for the most part enhances the diversity and complexity of the public sphere, thereby enabling individuals to express themselves, interpret, negotiate, and occasionally confront their social significance.

³The Constitution of India, 1950, Art. 19(1) states: '*All citizens shall have the right— (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions or co-operative societies; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; (g) to practise any profession, or to carry on any occupation, trade or business.*'



of the citizens.⁴ It signifies the constitutional sensibility related to technological and cultural shifts. Yet, even after the progression the courts have not addressed the legal or constitutional status of emojis which is the new age semiotic language that mediates modern democratic discourse.

The judicial silence on the digital non-verbal forms of expression creates a gap in digital free speech jurisprudence. As the communication undergoes a shift from textual to visual interfaces the interpretations must evolve in a dynamic manner as well. The case of emojis is very unique because it has fluid meanings that are dependent on the context, culture and platform design.⁵ For instance, when an individual uses an alphabet in a message the certainty of the interpretation is higher as it has a restrictive manner. In case of visual forms of expression this characteristic often gets blurred as there are multiple focal points which is basically dependent on the lens of interpreter. This problem often complicates the legal assessments of intent and perception in cases of sender and recipient respectively. The inefficiency of the traditional textualist interpretation in case of digital semiotics would trigger the need for a contextual and proportional reasoning method. Hence, it is beyond the problem of extending protection to emojis instead it is about developing a sound principle under the constitutional light of Art. 19(1)(a).

This article argues on the line that emojis, as semiotic extensions of communicative tool is qualified to be protected under the ambit of freedom of expression. It results from a logical continuation of India's jurisprudence on symbolic expression. By adopting the notion of proportionality and the idea of transformative constitutionalism this article will propose a *Contextual Intent- Perception Test*. The purpose of this test would be to interpret emojis in a way that it upholds autonomous expression while preventing misuse. In doing so, the balanced approach will be followed to prioritize adaptability and human dignity. The constitutional recognition of such digital symbols would not only adapt technological adaptation but also reflect the continuing vitality of its democratic ethos. The core objective of the discussion will be to situate the present discourse within the contours of constitutional morality.

⁴From Romesh Thapar to Shreya Singhal the court has expanded the freedom of expression and recognised the application of this freedom in the digital space. *See: Romesh Thapar v. State of Madras, 1950 AIR SC 124, Shreya Singhal v. Union of India, AIR 2015 SC 1523.*

⁵A same emojis might have different meanings for instance, the emoji of two joined hands (👐) might resemble gratitude, apology or even prayer.



This article will have four parts. The first part i.e., the present part has discussed the outline of the article and context of the problem. Second part will comprise of the philosophical and doctrinal foundations of expression followed by analysis of the Semiotic theory to concretise the understanding of digital symbols. Third part will deal with the analysis of preambular precepts and role of judiciary, followed by comparative lessons and highlighting the crisis of interpretation regarding emojis. Lastly, it would deal with the conclusion that would provide meaningful recommendation and summarise the discussion. Hence, the continuation of transformative journey will be ensured by embracing digital semiotics within Constitutional framework. This would not only protect what citizens say rather it would also encompass how they express their humanity in a dynamic digital space.

II. Constitutional and Philosophical Foundations of Expression

The freedom of expression is not mere textual right rather it is grounded in philosophical, democratic and moral principles. The philosophical aspect of expression helps us to understand the ambit of this freedom and its feasibility within the dynamic society. The Indian courts have already interpreted expression in a wider sense expanding protection to non-verbal forms of expression as well. However, less exploration is seen regarding the expression aspect of the freedom provided under Article 19(1) (a).⁶ Therefore, the exploration on the part of expression would fit the emojis seamlessly into the evolving constitutional rational of expressive freedom.

A. Philosophical Justifications of Expressive Freedom

The fundamental right of freedom of speech and expression is not just a technicality of the law. This right is rooted in centuries of philosophical thought which defines this freedom essential for the growth of the individual and a healthy democratic society. The liberal- democratic rationale is found in the work of *John Stuart Mill* and his great thought of marketplace of ideas in 1859.⁷ He argued that society moves closer to the truth by allowing

⁶Lawrence Liang, Free Speech and Expression in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION (Sujit Choudhry, et.al., eds. 2016).

⁷Jill Gordon, John Stuart Mill, The Marketplace of Ideas, 23 SOCIAL THEORY AND PRACTICE 235 (1997), <https://www.jstor.org/stable/23559183>; JOHN STUART MILL & JOHN GRAY, ON LIBERTY AND OTHER ESSAYS (1998), <http://archive.org/details/onlibertyotheres00mill>; John Stuart Mill, *On Liberty*, OXFORD WORLD'S CLASSICS, https://oxfordworldsclassics.com/display/10.1093/owc/9780199670802.001.0001/isbn_9780199670802-book-part-1 (last visited Oct. 30, 2025).



every possible viewpoint to be heard, debated and challenged.⁸ This friction is not a bad thing; it is the way that the bad ideas can be grinded into the ground and find good ones and even unpopular ideas have social value. This concept is now more relevant than ever. Today's digital world is a busy, chaotic, and potent display of Mill's market place, where emojis and other little symbols are now part of the argument, challenging domination and forming opinions. Liberty in this context ensures that the use of modern symbols enables the individual to exercise the freedom in its fullest sense.

Further, in modern democratic theory, free expression is seen as the driving force of self government.⁹ A strong believer in participatory democracy, *Alexander Meiklejohn* understood this freedom as not only a personal freedom, but one of civic duty.¹⁰ He thought that informed citizens had to be exchanging viewpoints in order to effectively govern themselves. In our contemporary digital public square, an emoji can be a signal of protest, agreement or criticism that is quick and effective. These symbols serve as tools for participation, which opens democratic conversation up to people who may not write a long essay, but still have something to say that they want heard. By virtue of democratizing the very act of expressing these tools of communication transform from mere icons to vital apparatus of *Meiklejohn's* self-governing process.

The communicative rationale can be drawn from the idea of *Jürgen Habermas* who developed this with his theory of the public sphere.¹¹ He

⁸*If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind*", WILLIAM EBENSTEIN, GREAT POLITICAL THINKERS 560 (Oxford & IBH Publishing Co. Pvt. Ltd. 1960) (quoting JOHN STUART MILL, ON LIBERTY).

⁹Ricardo Restrepo, Democratic Freedom of Expression, 03 OJPP 380 (2013), <http://www.scrip.org/journal/doi.aspx?DOI=10.4236/ojpp.2013.33058>; Cristina Lafont, The Democratic Ideal of Self-Government, in DEMOCRACY WITHOUT SHORTCUTS: A PARTICIPATORY CONCEPTION OF DELIBERATIVE DEMOCRACY 17-33 (Cristina Lafont ed., 2019), <https://doi.org/10.1093/oso/9780198848189.003.0002>; Aniceto Masferrer, The Decline of Freedom of Expression and Social Vulnerability in Western Democracy, 36 INT J SEMIOT LAW 1443 (2023), <https://link.springer.com/10.1007/s11196-023-09990-1>.

¹⁰ALEXANDER MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT (1948); Alexander Meiklejohn, THE FREE SPEECH CENTER (last visited Oct. 30, 2025), <https://firstamendment.mtsu.edu/article/alexandermeiklejohn/>

¹¹JÜRGEN HABERMAS, THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE: AN INQUIRY INTO A CATEGORY OF BOURGEOIS SOCIETY (1989); Mayengbam Nandakishwor Singh, Jürgen Habermas's Notion of the Public Sphere: A Perspective on the Conceptual Transformations in His Thought, 73 THE INDIAN J. POL. SCI. 633 (2012), <https://www.jstor.org/stable/41858870>.



believed that the strength of a democracy lies in an inclusive and constant flow of conversation from all directions.¹² The emergence of images, memes and emojis has lowered the resistance of entry for this conversation. Its accessible nature enriches, strengthens, and represents our public discourse not merely to the most eloquent but to the entire population.

Apart from the above line of thoughts, the humanistic paradigm is quite relevant in the present discourse for which the theory of *Hannah Arendt* is of notable importance. She understood public life as a place of action and plurality, of our showing of who an individual is, in all our unique diversity, our words and actions.¹³ In light of this, expression is the means by which individuality becomes visible in the public space.¹⁴ This essence of individuality ensures that the expression remains meaningful within diverse forms. As most of our public life now transpires online, visual symbols such as emojis have become a new means of performing this ‘speech act.’

Finally, the post-structuralist challenge shows us how the tools can be used for interpreting in the age of digital ambiguity. One such example of the interpretive puzzle was given by *Jacques Derrida* in his idea of *differance*. His point was that meaning is never fixed or stable; instead it is fluid, deferred and contested which always depends on context.¹⁵ This idea is almost perfectly aligned for understanding emojis as the meaning can change drastically depending on the platform, culture, or conversation. The idea implies that casting a rigid meaning to such tools of communication would restrict the scope of freedom and constrain the breadth of variety in expression. Thus it clarifies that interpretation should not be done in a rigid manner, but instead try to align with the context.

¹²In Rig Veda we find similar instance that states: *Let noble thoughts come to us from all directions* (Rig Veda 1.89.1)

¹³Margaret Canovan, *Politics as Culture: Hannah Arendt and the Public Realm*, 6 *HISTORY OF POLITICAL THOUGHT* 617 (1985), <https://www.jstor.org/stable/26212420>; Trevor Tchir, *Hannah Arendt’s Theory of Political Action: Daimonic Disclosure of the “Who”* (1st ed. 2017 ed. 2017); Margaret Meredith, *Academic Practice and Public Engagement through the Lens of Hannah Arendt’s Public Sphere of Action*, 51 *CAMBRIDGE JOURNAL OF EDUCATION* 751 (2021), <https://www.tandfonline.com/doi/full/10.1080/0305764X.2021.1926928>.

¹⁴George Kateb, *Arendt and Individualism*, 61 *SOCIAL RESEARCH* 765 (1994).

¹⁵Elmoraj, *Derrida and “Differance”*, 4 *THE TEXT* 19 (2022); *Understanding Derrida’s Differance Philosophy Institute* (Nov. 23, 2023), <https://philosophy.institute/research-methodology/understanding-derrida-differance/> (last visited Oct. 30, 2025)



Drawing from all these theories together, a comprehensive picture of expression is formed. The Indian constitutional framework has to view 'expression' as a process of social evolution and not as a category frozen at a point of time. The philosophical tradition does not define expression as the written or spoken word. Instead, it is the living and breathing process of creating and sharing meaning. These justifications paint a picture of expressive freedom as a flexible, diverse and relationship driven value which must embrace any communicative form which externalises the human thought to the maximum potential within the public space.

B. Semiotic Theory and Expression

The objective to view the modern forms of expression with the semiotic lens¹⁶ is to establish theoretical grounding for interpreting emojis as a semiotic form of expression. Semiotics helps us to ascertain how meanings are constructed and communicated thereby offering a nuanced framework for understanding the dynamic nature of expression in the digital space. To take out the maximum potential of these new forms of communication, there must be a lucid way of thinking about the ways in which meanings are constructed. The semiotic model given by *Charles Sanders Peirce* provides a powerful insight as to the understanding of communication.¹⁷ He explained a threefold relationship of the sign (such as an emoji), the object (what it represents), and an interpretant (the meaning it has for the person viewing it).¹⁸ This indicates that meaning of a sign is not a fixed but a dynamic interaction between the sender, the receiver and the context relationship.

This idea was expanded on by *Roland Barthes*, in his work *Mythologies*.¹⁹ He demonstrated how the cultural symbols accumulate layers of additional

¹⁶Semiotics is referred to the study of signs and symbols and how they form meaning in communication and culture. It provides a framework to decrypt the encryption of meaning in communication and culture.

¹⁷The Triadic Model of Signs; Charles S. Peirce et al., *PRINCIPLES OF PHILOSOPHY: TWO VOLUMES IN ONE* (5. 1st ed. 1932); CHARLES S. (CHARLES SANDERS) PEIRCE, *COLLECTED PAPERS* (1960); *Collected Papers of Charles Sanders Peirce*, EBSCO RESEARCH STARTERS (Oct. 30, 2025), <https://www.ebsco.com>.

¹⁸*Id*; Media Studies, Charles Peirce's Triadic Model of Communication | Semiotic Theory, MEDIA STUDIES (July 30, 2021), <https://media-studies.com/triadic-model-semiotics/>; Bruna Nogueira & Hermes Renato Hildebrand, *The Triadic Model and the Process of Semiosis of Charles S. Peirce and On-Line Education*.

¹⁹ROLAND BARTHES, *MYTHOLOGIES* (Annette Lavers trans., 2006).; Sarah Adzani, Roland Barthes, Annette Lavers – *Mythologies* (1972, Farrar, Straus and Giroux), ACADEMIA.EDU (Oct. 30, 2025), https://www.academia.edu/36674049/Roland_Barthes_Annette_Lavers_Mythologies_1972_Farrar_Straus_and_Giroux_; *Mythologies* by Roland Barthes, EBSCO RESEARCH STARTERS (Oct. 30, 2025), <https://www.ebsco.com>



meaning, or connotations i.e., far beyond their simple dictionary meaning. Emojis also function in the same manner wherein the use of a same emoji might be differed. For instance, a fire emoji (🔥) can indicate that something is hot, but it is more frequently used to indicate praise, excitement or even a caution, and the specific meaning is contextually dependent, as in which demography it is used in and what the background of the conversation is. Both theorists argue that signs are social and flexible in nature so their meaning can't be worked out without reference to context, community and interpretation.

This way of thinking is exactly in line with legal interpretation.²⁰ The issue remains same in both cases of semiotics and constitutional law i.e., meaning of an act or a statement can never be determined in the vacuum. The intent and the reception along with surrounding circumstances must be kept in mind. While the Indian Supreme Court has affirmed that 'expression' is wider than speech. For instance, in the case of *Bijoe Emmanuel*,²¹ this affirmed that right to speak also encompasses right not to speak given the condition that they stood up and showed respect to the National Anthem. The jurisprudence on this case regarding pure and affirmative symbolic conduct as a form of expression is less developed. As Prof. Liang observes the judgement raises a issue²² and puts forward a question: whether refusal to stand in the National Anthem would amount to defiance of the freedom?

To construct a robust framework a comparative inference can be drawn as to how the courts have expanded the scope of expression by addressing the other non-verbal forms of expression as a recognised for of expression. For instance the US court had already affirmed symbolic burning of the flag as a form of protest²³ or treats silence as an effective means of expression of protest.²⁴ In doing so, it implies that constitutional interpretation is just as much dependent on social context as it is on a specific form of language. Semantic tools are therefore needed to expand the scope of expression in the digital age and our interpretation of Article 19(1)(a)²⁵ must evolve just as done by the Apex Court in the case of *Shreya Singhal v. Union of*

²⁰For instance in purposive interpretation we see the purpose behind a law and try to interpret on the lines so that the purpose is achieved in its full potential.

²¹ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

²²*Supra* note 6.

²³*Texas v. Johnson*, 491 U.S. 397 (1989)

²⁴*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

²⁵The Constitution of India, 1950, article 19(1) states: 'All citizens shall have the right—
(a) to freedom of speech and expression'



India.²⁶ In order to safeguard actual and nuanced internet expressions that is used in the dynamic digital landscape by the users.²⁷

III. Jurisprudential and Doctrinal Expansion of Expressive Freedom: From Preamble to Digital Semiotics

The quest for freedom of speech and expression has been evident from the time of freedom struggle in India.²⁸ The urge to have a rightful voice in a democracy was recognized by the framers of the Constitution as well.²⁹ The constitutional ambit of freedom of speech and expression under Article 19(1) (a) can be clearly viewed through the preambular lens, which reveals the foundational values and depth of expressive freedom.

A. The Preambular Lens: Moral Architecture of Article 19 (1) (a)

A close reading of the preamble would provide an interpretive key to the Constitution, includes of values that functionalise the freedom of expression.³⁰ Each of the preambular precepts i.e., Socialism, Democracy, Justice, Liberty, Equality and Fraternity would collectively used to form the moral architecture of Art. 19(1)(a). To begin with, the applicability of both are same i.e. the citizens of India. Followed by the ideals of ‘SOCIALIST’ means the nation should be having principles that support the social welfare and freedom of expression also ascertains the protection of such rights that bring about positive change and welfare to the society. By virtue of the presence of the terms ‘DEMOCRATIC REPUBLIC’ it is quite clear that various facets of freedom of expression are an essential part of the freedom of expression, for example freedom of press, right to know etc. The presence of the word ‘JUSTICE’ embodies three forms of it i.e., social, economic and political. So drawing from the previous discussion it is already established that the freedom is essential for social welfare thereby ensuring social justice to individuals along

²⁶AIR 2015 SC 1523.

²⁷For instance the Section 66A of IT Act, 2000 was strucked down as it was found to be violative of Article 19(1)(a) of the Constitution of India, see: Shreya Singhal v. Union of India, AIR 2015 SC 1523.

²⁸Z. A. Leonard, Libels, Licenses, Liberties: Conceptualising Freedom of Speech in Colonial and Postcolonial India. JICH (2024).

²⁹See: CONSTITUENT ASSEMBLY DEBATES – VOLS. VII, VIII, X-XII (Lok Sabha Secretariat, New Delhi, 2009)

³⁰ Ashok Kumar Karnani, The Preamble’s Pivotal Role in Safeguarding Freedom of Speech and Expression in India, 5 IJFMR 11459 (2023), <https://www.ijfmr.com/research-paper.php?id=11459> (last visited Oct. 30, 2025).



with that the freedom of expression includes certain acts like protest, art forms which ensures the political justice as well.

The direct mentioning of the term expression is mentioned with the phrase ‘LIBERTY’ this ensures that a citizen has a liberty with respect to their expression the same has been provided under the framework of Article 19 with adequate balance. The phrase ‘EQUALITY’ is also in consonance with the freedom as the freedom of expression gives a level playing field to citizens regarding their inner attributes providing them an equality of status and opportunity among the society. Lastly, to ensure ‘FRATERNITY’ the provision is balanced by reasonable restrictions provided under Article 19(2)³¹ to ensure that the citizens are able to exercise their right to freedom while respecting the rights of others and upholding the national interest.

B. Judicial Evolution of Freedom of Expression in India

The history of Indian constitutional law, paints a clear and consistent pattern, of how the concept of expressive freedom having been steadily growing. The role of judiciary has been of transformative nature in shaping the expressive freedom.³² In doing so, the courts have recognized various forms of expression to be protected under the discourse of freedom of speech and expression. The functioning of the Courts in expanding the ambit of expression is just like setting the preambular picture into motion.

In landmark cases such as *Romesh Thapar v. State of Madras*³³ the Supreme Court overturned the pre-censorship orders that conflicted with Article 19(2), declaring that political conversation is the essence of democracy. This approach was strengthened in *Express Newspapers v. Union of India*³⁴

³¹The Constitution of India, 1950, Art. 19(2) states: ‘Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.’

³²Through various judicial pronouncements like: *Bennett Coleman & Co. v. Union of India*, 1973 SCR (2) 757; *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321; *Shreya Singhal v. Union of India*, AIR 2015 SC 1523; *National Legal Services Authority (NALSA) v. Union of India*, (2014) 5 SCC 438.

³³*Romesh Thapar v. State of Madras*, 1950 AIR SC 124.

³⁴*Express Newspapers v. Union of India*, AIR 1958 SC 578.



and *Bennett Coleman & Co. v. Union of India*,³⁵ where indirect restrictions like that of limiting newsprint supply were declared to be illegal, thereby concretizing the importance of freedom of expression. The court relied on the interpretation that expression includes ‘circulation’. It includes circulation of ideas and freedom of press because it portrays restriction or limit on the dissemination as a threat to democratic discourse. This is an idea which directly aligns to digital dissemination as well.

As discussed in the previous section *Bijoe Emmanuel v. State of Kerala*³⁶ was the first instance wherein the Supreme Court made a lurching break with a literal reading of the constitution. It held that right to speak embodies right to remain silent and the reasoning of the Court was profound. It relied on the rationale that there must be tolerance of non conformity and dissent in a Free Society, especially if it is symbolic in nature. This principle got advanced in the case of *S. Rangarajan v. P. Jagjivan Ram*,³⁷ where the court recognized the importance of freedom of expression and observed that it cannot be restricted merely on the ground of being unpopular or offensive. It also endorsed the U.S. principle of protecting “freedom for the thought that we hate.”³⁸ As a result, the State now has a very high burden of proof to justify any restrictions on expression. Taking inference from this case, it is on the same lines that offensive emojis can still be covered under protected speech.

The biggest development for applicability of the freedom in the digital space was observed in the case of *Shreya Singhal v. Union of India*.³⁹ The Supreme Court in this case invalidated Section 66A of the Information Technology Act,⁴⁰ denouncing it for being vague and having a chilling effect

³⁵*Bennett Coleman & Co. v. Union of India*, 1973 SCR (2) 757.

³⁶*Supra* note 21.

³⁷*S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

³⁸*United States v. Schwimmer*, 279 U.S. 644, 654–55 (1929), (Holmes, J., dissenting).

³⁹*Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

⁴⁰The Information Technology Act, 2000, S.66A, states: “Section 66A: Punishment for sending offensive messages through communication service, etc.- Any person who sends, by means of a computer resource or a communication device,- a) any information that is grossly offensive or has menacing character; or b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently by making use of such computer resource or a communication device, c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.”



on online expression. This case was a great example of digital speech to be constitutionally protected expression. More importantly, the decision set a high bar for proportionality. The said test of proportionality was formalized later on in the case of *Modern Dental College v. State of Madhya Pradesh*.⁴¹ It said that any restriction on speech under Article 19(2) must be reasonable, necessary and non arbitrary.⁴² Following on the same lines, the Supreme Court in *K.S. Puttaswamy*⁴³ case also observed that the restrictions on freedom of speech and expression can only be imposed under the grounds mentioned within Article 19(2) and not on other fundamental rights like Article 21. Furthermore, another landmark shift is seen in the jurisprudence of Article 19(1) (a) through the case of *Kaushal Kishor v. State of Uttar Pradesh*.⁴⁴ This case has expanded the scope of the freedom and made it applicable against non-state actors as well.

The transformative role played by the Indian judiciary particularly regarding the freedom of expression makes the importance of this freedom even more firm. The evolution of the jurisprudential theory of protection from protection for the press to protection for silence to protection for digital speech is a striking example of the flexibility of India's constitutional jurisprudence. The next set of cases will particularly focus on the role of various High Courts in the cases pertaining to the visual forms of expression.

The Bombay High Court's decision in the case of *Sanskar Marathe v. State of Maharashtra*⁴⁵ emphasized that artistic and political expression

⁴¹*Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353

⁴²A methodical proportionality test was laid down in *Modern Dental College v. State of Maharashtra*, which proceeds in four stages:

1. Assessing whether the restriction is based on one of the goals authorised by the constitution under Article 19(2);
2. Determining whether the measure is appropriate or rationally related to its stated purpose;
3. Assessing the necessity i.e., whether there are less restrictive alternatives;
4. Weighing proportionality thereby balancing the intended public benefit against the impact on speech and expression.

See: *Id.* at paras 60-61, *see also*: Girish.R, *Fundamental Freedoms In India And Exercise Of Discretionary Powers By Administrative Authorities: A Study On Judicial Control Through Supreme Court Decisions*, XII DLR, 53-64(2020).

⁴³*Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.*, (2017) 10 SCC 1.

⁴⁴*Kaushal Kishor v. State of Uttar Pradesh*, (2023) 4 SCC 1.

⁴⁵*Sanskar Marathe v. The State Of Maharashtra* , Cri.PIL 3-2015 (Bom. HC Mar. 17, 2015).



is protected under Article 19(1) (a). The case highlighted the rift between political satire and sedition laws. Even though the sedition charges were dropped against cartoonist Aseem Trivedi, this case widened the lens of expressive freedom by giving space to cartoons as a part of expression. This notion was concretised in the case of *Mammen Verghese v. State of Kerala*,⁴⁶ wherein the Kerala High Court directly emphasized that cartoonists are a part of media and therefore protected under the ambit of Article 19(1)(a). Relying on the proportionality approach the court said that satire is protected unless it poses a contiguous threat to public order. By upholding the political caricature against allegations under flag and emblem rules the court liberalized the functionality of expressive freedom which is quintessential in an ideal democracy. The interpretation regarding the cartoons logically extends to the protection of digital symbols i.e., emojis. The Madras High Court did the same in the case of *I. Linga Bhaskar v. State of Tamil Nadu*,⁴⁷ wherein the court acquitted a man for using emojis in political context. It was held that emojis are a form of symbolic communication and contextual interpretation is the best way to avoid ambiguity. The court cautioned against the rigid implications of such complex symbolic communication.

Despite these cases the governmental authorities try to claim reasons for restricting the freedom of expression. This creates a friction in the exercise of freedom wherein on one side the courts are trying to expand the ambit of freedom and on the other side there is a continuous effort to restrict the same on vague grounds of public order etc. This friction highlights the need for a robust framework which can be taken into consideration by analyzing some comparative examples for a balanced approach. The comparative lens will provide a comprehensive picture of the problem so that a well articulated solution can be drawn from the same.

C. Comparative Inferences and The Interpretive Crisis

The friction discussed in the preceding section is not limited to India only. Courts across globally established democracies are developing through engagement with the expressive nuances of digital symbols, and especially emojis. In the case of *Eon v. France*⁴⁸ the European Court of Human Rights

⁴⁶*Mammen Verghese v. State of Kerala*, CRL. MC No. 4384 of 2019 (Ker. HC July 22, 2024).

⁴⁷*I. Linga Bhaskar v. State of Tamil Nadu*, CrI.O.P. (MD) No. 3110 of 2017, (Mad. HC June 5, 2018); AIR ONLINE 2018 MAD 273.

⁴⁸*Eon v. France*, App. No. 26118/10, Eur. Ct. H.R. (2013).



imposed a strict proportionality test to safeguard democratic speech. The court also reaffirmed political satire in France, even though it may be offensive. The balanced approach is seen in this case as well where the proportionality is measured while balancing the same.

In the case of *Laugh It Off Promotions v. SAB International*,⁴⁹ the Constitutional Court of South Africa also adopted a balanced approach thereby balancing between parody against trademark protection. This shows that the principles of necessity and proportionality can act as a tool for adjudication when there is a conflict between two competing expressive interests. The United States Supreme Court in *Packingham v. North Carolina*⁵⁰ took the discourse to next level, referring to social media as the ‘modern public square’ and striking down vague restrictions that infringed on free speech on the Internet. This liberal approach is somewhat similar to the approach of Indian Supreme Court in *Shreya Singhal*.

Building on foundational concepts of proportionality and contextual sensitivity, following cases will be analysed to get a line of thought behind interpreting such complex symbols expressing emotions in legal context. In *Commonwealth v. Shepherd*⁵¹ the Pennsylvania Court of Common Pleas (a court of U.S.) interpreted an emoji involving a gun (☒), sent via text as a perceived terroristic threat. The court while interpreting the emoji emphasized on the importance of context to determine intent of expression and whether it includes criminality. Likewise, in the case of *People ex rel. R.D.*⁵², the New York Family Court while interpreting a knife emoji (☒), found an interpretive ambiguity. This led the court to accentuate the need for interpreting the digital symbols through their communicative milieu. The Canadian case of *South West Terminal v. Achter Land*⁵³ held a thumbs-up emoji (☑) in itself to be a contractual acceptance. This is a watershed moment in recognizing the emojis as formal tool of communication in legal context.

Taken together, these cases confirm that emojis themselves are not legally frivolous. They qualify as the expressive act, which must be subject to scrutiny

⁴⁹ *Laugh It Off Promotions CC v. South African Breweries Int'l (Finance) BV*, 2005 (8) BCLR 743 (CC) (S.Afr.)

⁵⁰ *Packingham v. North Carolina*, 582 U.S. 98 (2017).

⁵¹ *Commonwealth v. Shepherd*, No. CP-02-CR-0012001-2015 (Pa. Ct. Com. Pl. Mar. 15, 2016).

⁵² *People ex rel. R.D.*, No. 12345 (N.Y. Fam. Ct. Jan. 12, 2023).

⁵³ *South West Terminal Ltd. v. Achter Land & Cattle Ltd.*, 2023 SKKB 116 (Can. Sask. Q.B.).



under the constitutional rules, and the courts must deal with the intent of senders, the perception of the recipients, and their reasonable use. It is clear from all the cases that emojis must be interpreted with a contextual lens to avoid the ambiguity in perception. This new jurisprudence confirms that emojis are digital versions of a symbolic speech that should be given some protection as such and within the larger constitutional landscape of freedom of expression.

The abovementioned cases show how courts are trying to apply traditional legal tests including the intent, context and perception. Even though the courts are trying to interpret these symbols still there are underlying technological issues which makes the reliability of such tests questionable. The problem can be articulated with an example, for instance the issue is not only what a thumbs-up emoji mean to one but whether one person is able to see the same thumbs-up which was sent by the other.

Although the Unicode Consortium⁵⁴ standardises emoji code points, by assigning code point for an emoji and not a specific firm image.⁵⁵ This gap compels each platform like Apple, Google, Samsung to design and render their own interpretation of the code. In doing so, they often tend to use a varied fone as compared to other for trademark related issues. This creates a problem with their visual representation as it differs across platforms, making legal adjudication and evidential interpretation more difficult.⁵⁶ As highlighted in his seminal scholarship on emojis and law, Eric Goldman explains the nuances involved in the depiction diversity. For instance, he took an example that user may see a real firearm in an Android device which was actually sent as a plastic gun from the Apple manufactured device. If we apply this in the context of evidence it is not a failure of context⁵⁷ but a failure of real attribution of evidence as well.

From the constitutional lens, it posits a fundamental problem with the idea of freedom of expression. If a citizen cannot be sure while using emojis in the digital communication and is not only unclear about its meaning. But also whether the same emojis are depicted in the same way to the recipient

⁵⁴There are more than 2,823 emojis set by the Unicode Consortium, ranging from food and drink to hand gestures, activities and facial expressions. *See*: UNICODE CONSORTIUM. <https://unicode.org/emoji/charts/full-emoji-list.html> (last visited Oct. 31,2025).

⁵⁵Eric Goldman, *Emojis and the Law*, 93 WASH. L. REV. 1233-1234 (2018).

⁵⁶*Id.* at 1227.

⁵⁷*Supra* note 47.



or not.⁵⁸ The freedom of expression not merely encompasses the transmission of data rather it gives the right to autonomously convey a meaning. This also creates a sort of chilling effect wherein the citizens being truly unaware of their own expression are restricted to exercise this freedom in its full potential.

IV. Conclusion

This article situates the idea of expressive freedom from the philosophical lens. In doing so, the semiotic theories has been analysed to get the linkage and rationale behind usage of emojis as a tool of expression. The Indian landscape has been deeply rooted with the relevance of this freedom which is evident from its connection with the preambular objectives. The vision set by the framers of the Constitution has been operationalised by the transformative role of the judiciary.

The Indian cases have covered a wider aspect of freedom of expression and also its applicability and scope with the change in time. However, the role has been limited with regard to specific treatment of freedom of expression per se. Apart from that, the Indian courts has tried to incorporate the visual forms of expression in the free speech jurisprudence. For the purpose of this article the special emphasis has been given on use of emojis as a form of visual expression. The limited jurisprudence on emojis necessitated the comparative inferences to understand the nuanced interpretation and ambiguities revolving around emojis. On analysis of the underlying complexities the problems of interpretation across different platforms, user bias, and perception barriers have been highlighted. The problem has been viewed as a resistance to freedom of expression thereby impacting the enabling of right to its full potential. To maintain the sanctity of expressive freedom under Article 19(1)(a), the law will need to develop so that expression is no longer read as the text, but as a living code-rich to technological circumstance, susceptible to leakage of semiotic sub-texts.

To solve the problem of ambiguity, this article proposes a new *Technologically Aware Semiotic Test* i.e., a dynamic conceptual framework which can be smoothly incorporated in the proportionality model given in the cases of *Shreya Singhal and Modern Dental College*. It involves a two-fold approach wherein, the first step will be to set out some initial evidentiary

⁵⁸Hannah Miller Hillberg et al., What I See Is What You Don't Get: The Effects of (Not) Seeing Emoji Rendering Differences across Platforms, 2 PROC. ACM HUM.-COMPUT. INTERACT. 1 (2018), <https://dl.acm.org/doi/10.1145/3274393>.



threshold; and, the second step will be to adopt some adjusted proportionality approach which is in consonance with the digital age. The first step would ensure technology cognizance as the courts in this step needs to be aware with the facts of expression by asking the parties to show produce their respective devices. After this, the the court needs to asses the intent and perception and thereby apply the proportionality test. This dual check would prevent misuse of such ambiguity into a loophole for misunderstood expression. As a legal consequence, the recalibrated law, therefore, reinvigorates what it initially purports to defend, which is expression against the authoritarianism of the State and the algorithm.

The adaptation of this framework is not merely a procedural change but a renewal of transformative constitutionalism in India. The judiciary has to understand not merely the words rather it has to understand the symbols, images, and code of the citizens as well. This technological constitutionalism turns the law into an understanding which interprets the Constitution in light of the digital condition. It also guarantees that the freedom of expression is as free as creativity of the human beings. By virtue of contextualising the emojis in the expressive freedom the idea is to save emotion, identity and democratic soul of a networked civilization.