



Navigating Free Expression in India: Constitutional Rights and Digital Challenges

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DOI : <https://doi.org/10.36676/urr.v12.i1.1554>

Accepted : 14/03/2025 Published: 31/03/2025

Abstract

This paper critically evaluates the dynamic growth of the right to freedom of speech and expression in India, as guaranteed under Article 19(1)(a) of the Indian Constitution, in light of the rapid digital revolution. It examines growing concerns, such as online misinformation, content regulation, surveillance, data privacy breaches, and limits on artistic expression. Through an interdisciplinary review of constitutional provisions, judicial interpretations, policy frameworks, case studies, regulatory platforms, and global human rights standards, this paper highlights the growing tension between safeguarding civil liberties and addressing digital risks. This study underscores the need for a nuanced balance between rights and responsibilities. The analysis calls for a recalibrated regulatory approach that balances state oversight with individual freedom, ensuring that democratic participation and accountability are preserved in India's increasingly digitized public sphere.

Keywords: media freedom, censorship, democracy, India, freedom of expression, press regulation, legal framework, Free speech in digital age

1. Introduction

Freedom of speech and expression are among the most fundamental elements of every democratic society. It not only promotes individual autonomy and personal fulfillment but also underpins political engagement, transparency, and the collective progress of free society. In the Indian constitutional framework, this freedom is legally codified in Article 19(1)(a) of the Constitution, guaranteeing the right of every citizen to freely express their thoughts, opinions, ideas and beliefs. However, this right is not absolute and it is subject to "reasonable restrictions" under Article 19(2), which empowers the state to impose constraints in the interests of the sovereignty and integrity of India, public order, morality, decency, and security of the state, among other considerations.

The jurisprudential development of Article 19(1)(a) reflects India's broader democratic aspirations, but its implementation remains fraught with contradictions and evolving tensions. With the advent of the digital age, the contours of free speech have dramatically transformed. The emergence of social media platforms, algorithmic content curation, big data surveillance, and artificial intelligence has significantly altered the creation, dissemination, and regulation of speech. On the one hand, digital technologies have democratized information and enabled mass participation in public discourse; on the other,





they have introduced new risks, such as misinformation, hate speech, online harassment, and invasive surveillance, which challenge the boundaries of permissible expression.

Furthermore, the growth of state and self-imposed censorship in online spaces, implementation of content moderation rules by digital platforms, and rise of Internet shutdowns amid political turmoil have generated worries about the dilution of this fundamental right in practice. Legal and regulatory reactions to these changes, such as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have aroused extensive controversy regarding their proportionality, constitutionality, and consistency with worldwide human rights norms.

This study critically examines the evolving nature of freedom of speech and expression in India within the perspective of digital transformation. It investigates the historical foundations of this right, explores contemporary challenges, analyzes significant judicial interventions, and evaluates the proposed reforms. By situating these issues within both national and international legal paradigms, this study aims to contribute to a deeper understanding of how India can uphold its constitutional promise of free expression while navigating the complexities of a rapidly changing technological landscape.

2. Review of Literature

Several scholars have explored the legal, ethical, and societal dimensions of freedom of speech in India.

Govindu (2011) critically analyzes the contradictions within the constitutional right to freedom of speech. He highlights how state-imposed restrictions, both legal and informal, often dilute this right, particularly during political unrest. This study provides a valuable legal-historical framework that remains relevant in the digital age, especially in light of emerging challenges such as algorithmic bias and economic coercion (e.g., withdrawal of advertisements).

Bakshi (1989) emphasizes the significance of Article 19(1)(a) in the realm of television broadcasting, a medium historically monopolized by the state. He stressed the importance of safeguarding an uninhibited marketplace of ideas and critiqued censorship practices that distort public opinion.

Bhandari (2018) delves into the concerns surrounding digital privacy, arguing that existing Indian legal frameworks are inadequate for safeguarding personal data generated through online activities. This study calls for more robust data protection laws and heightened transparency to ensure users' rights.

Bovard (2022) discusses the need for enhanced regulation of social media platforms and advocates reforms in antitrust laws, algorithmic transparency, and accountability mechanisms. This study emphasizes that proactive policy intervention is crucial for aligning technological progress with democratic values.

Boyd (1972) explores the historical and legal foundations of film censorship in India. He critiques the paradox between societal conservatism and constitutional liberties, arguing that censorship norms are heavily influenced by colonial and Victorian-era values. His work reflects the ongoing tension between creative expression and the moral regulation of such expression.





Dhavan (2005) focuses on the relationship between information dissemination and democratic integrity. He critiques the judiciary's reliance on restrictive doctrines rooted in colonial traditions and argues that legal interpretations often fail to consider the socio-economic realities impacting press freedom.

Dhavan (1984) examines the interplay between judiciary, media, and free expression, particularly through contempt of court cases. He advocates for balanced contempt proceedings that uphold judicial authority without suppressing legitimate criticism.

Dhavan (1987) shifts focus to religious freedom and its intersection with freedom of expression. He discusses the judiciary's cautious approach to defining religious rights and notes the state's increasing encroachment under the guise of public order and reform.

Govindu and other scholars' analyses collectively suggest that India's free speech regime, while constitutionally sound, often falters in practice because of executive overreach, societal intolerance, and technological disruption.

Greitens (2013) examines how authoritarian regimes use information and communication technologies (ICTs) not just for censorship, but as strategic tools for control, surveillance, and propaganda. Using case studies of China and North Korea, the author shows that ICT policies vary widely and reflect regime-specific goals. In China, digital governance is decentralized and complex, while in North Korea, limited ICT access still enhances state control. The study challenges the assumption that ICTs inherently promote democratization and argues for a context-specific analysis of how authoritarian governments adapt technology to maintain power.

Haqqi (1959) analyzes the foundational challenges and enduring resilience of parliamentary democracy in India. Writing during a period of democratic backsliding across Asia, he identifies key obstacles such as poverty, illiteracy, communalism, and sectional loyalties. Despite these impediments, Haqqi expresses optimism about India's democratic future, citing the influence of British colonial legacies—such as legal equality, English education, and local governance—as key enablers. He also underscores India's early post-independence achievements through democratic processes. Notably, his foresight regarding India's political stability beyond the Nehru era and the emphasis on structural reforms in land, economy, and social cohesion remain remarkably relevant, offering lasting insights into the prospects of Indian democracy.

Harber (n.d.) examines the post-apartheid evolution of South Africa's media, focusing on private media, public broadcasting, and community media. While the private sector has diversified in ownership and staffing, it faces political criticism and economic pressures that undermine daily journalism. Public broadcasting, particularly the SABC, has undergone transformation but remains hindered by structural inefficiencies and political interference. Community media has expanded with institutional support but struggles with sustainability and content production. Harber highlights enduring challenges, including unequal media access, tension between political power and press freedom, and the digital divide. The study underscores that while media transformation has progressed, significant gaps remain in equity, accountability, and public participation.





Hurley (2004) explores the relationship between imitation, violence shown on media, and freedom of speech through an interdisciplinary lens. Drawing on cognitive science and neuroscience, she highlights imitation as a complex, automatic process central to learning and behavior, involving mechanisms such as mirror neurons and the “chameleon effect.” She then presents empirical evidence linking exposure to media violence with increased aggression, noting that these effects often bypass conscious reasoning. In discussing legal implications, Hurley argues that violent entertainment deserves less protection under free speech doctrines than political or journalistic content, as it contributes to harm through unconscious imitation. Her proposal for an “ecological approach to responsibility” challenges conventional liberal views of autonomy, emphasizing shared responsibility for harm in media environments. The paper contributes a nuanced ethical and scientific basis for reconsidering how media violence is treated in public discourse and regulation.

Jain (1998) examines the sociological dimensions of electronic media in shaping reality and cultural representation within contemporary Indian society and its diaspora. The article analyzes how electronic media constructs and communicates societal narratives, influencing perceptions of identity, modernity, and tradition. By incorporating both domestic and diasporic contexts, Jain offers a comparative perspective on media’s role in negotiating cultural continuity and change amid globalization. Published during a time of economic liberalization and media expansion in India, the study provides a valuable lens into how media representations affect collective self-understanding, especially within transnational Indian communities. The article contributes to media and diaspora studies by highlighting the media’s dual role as a mirror and mediator of social reality.

Jariwala(1996) traces the judicial evolution of freedom of speech and expression in India through the lens of television broadcasting, particularly focusing on Doordarshan. Examining key legal cases from 1988 to 1995, the author highlights how the Indian judiciary progressively expanded constitutional protections to include the right to broadcast and receive information via electronic media. Landmark cases such as Tamas, Honi Anthoni, and the Cricket Association ruling illustrate the courts’ efforts to balance state control with media pluralism. The 1995 Supreme Court decision emphasized that airwaves are public property, advocating for diversified access and viewer rights. The study underscores the increasing importance of audiovisual media in democratic discourse and raises the possibility that broadcast rights may rival or even surpass traditional press freedom in significance amid rapid technological change.

Joseph (2015) critically examines the concept of media pluralism, arguing that the sheer number of media outlets does not ensure diversity of voices or viewpoints. She emphasizes that true pluralism encompasses ownership diversity, cultural and political representation, and equitable access for marginalized communities. The paper contrasts two key approaches to media pluralism—the neo-liberal “marketplace of ideas” and the Habermasian public sphere—highlighting their implications for media regulation. Joseph advocates for a more expansive and democratic understanding of pluralism that includes editorial independence, content diversity, and fair distribution of communicative power. Her focus on





“communicative abundance” challenges conventional metrics and calls for assessing media systems based on their capacity to represent varied social groups and lived experiences.

Kalathil (2020) analyzes the increasing sophistication of authoritarian regimes—especially China and Russia—in leveraging digital platforms for global influence operations. The study outlines how disinformation, narrative manipulation, and coordinated harassment campaigns are used to undermine democratic institutions and reshape international norms. The paper highlights how the erosion of traditional media and the rise of digital connectivity have created fertile ground for these operations. The COVID-19 pandemic, the author notes, further accelerated authoritarian digital strategies. Importantly, Kalathil argues that such influence efforts are not merely image-building exercises but reflect existential battles over ideological dominance in the global order. The convergence of tactics among regimes suggests a coordinated and growing challenge to democratic values, necessitating collaborative countermeasures involving governments, media, civil society, and tech platforms.

Kornbluh and Goodman (n.d.) offer a strategic policy roadmap to protect digital democracy from the escalating threat of disinformation campaigns and declining trust in democratic institutions. They detail how politically motivated actors exploit digital platforms through tactics such as microtargeted ads, amplification networks, and digital astroturfing to distort public discourse and undermine legitimate journalism. The authors propose a three-part solution: dampening the noise (e.g., reforming ad targeting and privacy protections), boosting the signal (e.g., funding local news and public digital infrastructure), and creating accountability (e.g., platform transparency and a Digital Democracy Agency). A key contribution is their rejection of the binary between platform self-regulation and government censorship, advocating instead for a flexible, transparent regulatory model that empowers users and promotes public interest journalism. Their vision of a “PBS of the Internet,” funded by platform ad revenue, underscores the need to rebuild trust in the digital information ecosystem.

Kringen (2012) investigates the role of social media in political mobilization, focusing on insights from the Arab Spring. He emphasizes that while social media can facilitate protest coordination and amplify opposition messages, its effectiveness depends on a government's ability to suppress or co-opt these platforms. The study underscores social media's value in broadening support post-protest rather than offering consistent early warnings. Key challenges include understanding evolving opposition strategies, emotional mobilization, and the fleeting nature of digital activism. Kringen introduces the concept of “micro-mobilizations,” rapid, decentralized actions that may catch governments off guard, especially under economic and legitimacy strains. He also explores the importance of international attention and support in sustaining digital activism, offering a nuanced framework for analyzing social media's influence across different stages of mobilization.

Malhan(1953) analyses the evolution and relevance of press freedom in India, highlighting its essential role in upholding democratic administration. It recounts the historical progression from colonial-era press restrictions to post-independence constitutional safeguards under Article 19(1)(a), including the establishment of “reasonable





restrictions” through the First Amendment of 1951. The study highlights the dual purpose of the press—as a distributor of information and a forum for varied viewpoints—and explores its obligations, including accuracy, impartiality, and ethical reporting. Key concerns such as contempt of court, contempt of legislature, media monopolization, and the need for self-regulation are examined. A key insight is the delicate balance between press freedom and responsible journalism, advocating not only for protection from state interference but also for a self-imposed ethical framework. The document concludes that a free press in a democracy like India must actively uphold public interest while safeguarding its independence.

Mathew(2016) examines the First Amendment to the Indian Constitution, implemented in 1951 under Prime Minister Jawaharlal Nehru, and its implications for the right to freedom of speech and expression. Prompted by the Supreme Court rulings that limited the state's capacity to restrain speech under Article 19(1)(a), the amendment added the concept of “reasonable restrictions” on free expression in the interests of public order, state security, and national sovereignty. It also created the Ninth Schedule to shield certain laws from judicial review and clarified provisions related to social equity. The document contextualizes the amendment within post-independence governance challenges and draws a striking parallel between British-era censorship and early restrictions imposed by Indian leaders. It reveals how the ideals of free expression were tempered by the realities of state-building, illustrating the early use of constitutional amendments to navigate judicial constraints on executive power.

Mishra(2008) presents a comparative examination of media freedom across numerous Asian countries, demonstrating a constant contradiction between constitutional promises and repressive government policies. While many nations ostensibly protect freedom of expression, they simultaneously apply legislative and institutional constraints that hinder press autonomy. The report emphasises varied challenges: China’s centralized censorship, India’s politicization of media, Pakistan’s legal repression and journalist intimidation, Nepal’s royal restrictions, Singapore’s approach of “constructive journalism,” and Malaysia’s politically owned media ecosystem. A key insight is the paradox of expanding media infrastructure alongside declining press freedoms, particularly in Pakistan. Additionally, the paper showcases technological resilience among journalists and activists, such as Indonesia’s innovative use of mailing lists and fax machines to bypass censorship. The document underscores the broader struggle for media independence in environments where state control and public dissent continuously collide.

Misra (1966) offers a critical examination of India’s sedition law, focusing on the Supreme Court’s decision in *Kedar Nath Singh v. State of Bihar*, which upheld the constitutionality of *Section 124-A* of the Indian Penal Code. Tracing the colonial origins and judicial interpretations of sedition, the paper explores how the post-independence constitutional framework—particularly Article 19—has shaped the law’s application. Misra critiques the Court’s narrow construction limiting sedition to incitement to violence or public disorder, arguing that this interpretation diverges from the statute’s original intent and reflects inadequate statutory reasoning. The paper highlights the enduring tension between





safeguarding free expression and maintaining national security in a democratic context. It questions the continued relevance of colonial sedition laws in modern India and calls for legal reform to align criminal statutes with democratic values and constitutional protections.

Kruthika (n.d.) explores net neutrality in the Indian legal context through the lens of the doctrine of compelled speech. Drawing on U.S. jurisprudence, the author argues that enforcing net neutrality does not violate the freedom of speech of Internet Service Providers (ISPs), but rather upholds the constitutional right of consumers to receive information under Article 19(1)(a) of the Constitution of India. The paper distinguishes between ideological and commercial speech, noting that certain forms of compelled commercial speech are permissible in the interest of public access and consumer rights. A novel contribution is the introduction of the concept of “compelled perception,” suggesting that if ISPs prioritize or restrict content, they effectively limit users’ access to diverse viewpoints, undermining the foundational values of free expression. The paper reframes the net neutrality debate by asserting that consumer rights to information—not ISP speech claims—should be the central focus of legal and regulatory frameworks.

O’CONNOR (2019) examines the transformation of propaganda in the digital age, focusing on how social media has blurred the traditional distinction between disinformation (intentional falsehoods) and misinformation (unintentional sharing of false content). Using the example of Russia’s Internet Research Agency (IRA) during the 2016 U.S. election, the authors show how disinformation is crafted to be virally shared, effectively becoming misinformation as it spreads peer-to-peer. The paper argues that “propaganda” is a more accurate term for such influence operations, encompassing tactics like trust-building, strategic framing, and selective truth-sharing. A key insight is the framing of digital propaganda as an “asymmetric arms race,” with manipulators constantly adapting their strategies. The authors advocate for holding social media platforms accountable for designing algorithmic systems capable of identifying and mitigating propaganda, rather than penalizing users who unknowingly disseminate misleading content.

Ojha(2011) examines the dual reality of women’s status in India, highlighting persistent gender-based discrimination despite notable achievements by women across sectors. It reviews constitutional safeguards, legislative initiatives, and policy measures aimed at promoting women’s rights and empowerment in areas such as education, health, and political participation. The paper outlines pressing challenges including economic disparities, political underrepresentation, gender-based violence, and cultural stigmas. A central theme is the role of media in shaping societal attitudes toward women. While the media holds significant potential for advocacy and awareness, the document critiques its frequent portrayal of women through stereotypical or objectifying lenses. It urges Indian media to adopt a more responsible, gender-sensitive approach, spotlighting both women’s rights issues and positive narratives of female empowerment. A key insight is the contrast between India’s reverence for women in principle and the reality of widespread structural discrimination, calling for media reform as a catalyst for societal change.

Ram (2011) provides a critical analysis of the Indian news media within the broader context of global media challenges. While media institutions in the developed world face





crises of declining circulation and financial instability, India's print media—especially regional language newspapers—continues to grow. The author distinguishes between India's historically independent press and its state-controlled broadcast media, emphasizing the press's foundational role in democratic activism and public discourse. Ram outlines the essential functions of the media, including its informational, investigative, and agenda-setting roles, while critiquing its susceptibility to propaganda, lack of objectivity in key political issues, and ethical lapses. Despite its expanding reach, the institutional influence of Indian media has weakened, partly due to the rise of neoliberalism and shifting societal values. The paper advocates for a Leveson-style inquiry into media ethics and calls for a renewed commitment to professional standards, public interest journalism, and a socially responsible media ethos.

Saeed (2009) examines the transformative role of community media in democratizing communication and empowering marginalized communities within the Indian context. Drawing on Habermas's concept of the public sphere, the paper critiques the commercialization of mainstream media and its drift from democratic accountability. Saeed contextualizes this within global trends such as media concentration, deterritorialization, and digital inequality. Focusing on India's liberalized mediascape, the study highlights the emergence of community radio, especially following the 2006 Community Radio Policy. Through case studies like Namma Dhwani, Ujjas Radio, and DDS Radio, the paper illustrates how localized media can serve as platforms for collective voice, particularly among Dalit women and rural communities. A unique contribution is the critique of the "NGO-isation" of community media, raising concerns about sustainability and dependency on external funding. Saeed emphasizes that genuine empowerment arises from communities negotiating their own communicative power, rather than relying solely on donor-driven models.

Semwal and Khosla (2008) study the growth of the Right to Information (RTI) in India, emphasizing its essential importance in democratic administration. Anchored in Article 19(1)(a) of the Constitution, the authors contend that RTI is inherent to the right to freedom of speech and expression. They trace its evolution through key Supreme Court judgments—such as *S. Rangarajan v. P. Jagjivan Ram*, *Dinesh Trivedi v. Union of India*, and *Association for Democratic Reforms*—which enlarged the RTI's reach to embrace electoral openness and public accountability. The report also evaluates the RTI Act of 2005, underlining its role in promoting transparency, combatting corruption, and empowering citizens. A notable insight is the judiciary's evolving interpretation of RTI as not merely a legal entitlement but a fundamental human right essential for democratic participation. The paper underscores the transformative impact of judicial activism in institutionalizing RTI as a key pillar of accountable governance in India.

3. Research Methodology

This study adopts a qualitative methodology which involves the critical examination of primary legal texts (such as constitutional provisions and landmark judgments), secondary literature (journal articles and commentaries), and recent policy documents (e.g., IT Rules





2021). This study also includes comparative perspectives from international human rights frameworks to contextualize India's position globally.

4. Analysis and Findings

4.1 Background and Constitutional Framework

The Constitution of India provides the right to freedom of speech and expression under Article 19(1)(a). However, this right is not an absolute. Article 19(2) empowers the state to impose "reasonable restrictions" in the interests of public order, decency, morality, defamation, and national security. The Preamble to the Constitution further emphasizes liberty of opinions and expression as important to Indian democracy. Despite this, the interpretation and practice of free speech have been impacted by colonial legacies and historical compromises, often resulting in vague or uneven judicial and legislative responses.

4.2 Freedom of Speech in the Digital Age

The advent of the Internet has significantly altered the landscape of free speech, enabling real-time communication and wider participation in public discourse. In the landmark case *Anuradha Bhasin v. Union of India (2020)*, the Supreme Court recognized access to the Internet as essential for the practice of freedom of speech and expression. However, the regulatory framework has struggled to evolve in tandem with technological advancements, often leading to arbitrary enforcement and restrictions.

The digital space has facilitated the rapid spread of misinformation, hate speech, and online harassment, posing serious challenges to governance, law enforcement, and democratic dialogue. While digital platforms offer powerful tools for civic engagement, they also enable divisive rhetoric and echo chambers. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, initiated new compliance obligations for online platforms, raising concerns over censorship, surveillance, and lack of due process.

4.3 Freedom of the Press and Media

As the "fourth estate," the media plays a critical role in a democracy like India. However, Indian media faces growing threats, including political pressure, corporate control, and financial vulnerabilities. Instances of government-initiated content takedowns, internet shutdowns, and strategic lawsuits against journalists highlight the fragile state of press freedom in India. This erosion compromises the media's watchdog role and undermines democratic accountability.

4.4 Creative and Artistic Expression

The rise of Over-The-Top (OTT) platforms has democratized creative expression, offering new avenues for storytelling. However, these platforms have come under increased scrutiny for hosting controversial content. Regulatory interventions, often guided by moral or political concerns, challenge the balance between freedom of artistic expression and state oversight. A more nuanced regulatory framework is needed—one that fosters innovation while addressing legitimate concerns.

International legal documents, including the International Covenant on Civil and Political Rights (ICCPR), recognise freedom of expression as a fundamental human right worldwide.





The ICCPR also increasingly considers access to the Internet as vital to this right. Countries like the United States and the United Kingdom utilise relatively liberal strategies that focus on harm reduction rather than prior restriction. These examples can inform more rights-respecting methods in India.

5. Recommended Strategies for Policy Reform

- To strengthen freedom of speech and expression, especially in the digital era context, the following policy recommendations are proposed:
- Modernize Existing Laws: Revise outdated statutes to address issues such as digital misinformation, hate speech, and data privacy.
- Clarify Terminologies: Provide clear definitions for ambiguous terms like "hate speech" and "misinformation" to facilitate fair and consistent enforcement.

5.1 Strengthen Digital Rights

- Recognize Digital Expression: Formally acknowledge digital expression as part of the right to free speech.
- Promote Digital Literacy: Launch initiatives to educate citizens about responsible online behavior and their digital rights.
- Ensure Proportional Regulation: Implement tiered or risk-based regulation that respects freedom of expression while addressing harmful content.

5.2 Promote Accountability in Media

- Encourage Self-Regulation: Promote voluntary codes of conduct within media organizations to maintain ethical standards.
- Inclusive Policy-Making: Involve civil society, legal experts, and technology stakeholders in drafting legislation.
- Conduct Public Consultations: Facilitate participatory governance by seeking public input on proposed reforms.
- Establish Oversight Mechanisms: Set up independent bodies to monitor the effectiveness of policy reforms.
- Ensure Dynamic Policy Updates: Regularly revise legal and regulatory frameworks to respond to emerging digital challenges.

6. Conclusion

The right to freedom of speech and expression in India is firmly guaranteed in the Constitution, however its actual implementation faces major hurdles. These include excessive governmental control, outmoded legal frameworks, and the growth of digital risks such as misinformation, spying, and online censorship. Judicial interpretations have often shifted between defending liberty and ensuring public order, which might undermine the consistency of rights enforcement.





Case studies like *Shreya Singhal v. Union of India* (2015) show judicial efforts to strike down vague legislation (such as Section 66A of the IT Act), whereas *Anuradha Bhasin v. Union of India* (2020) underlined the relevance of Internet connectivity in practicing free expression. However, persistent material takedowns, arbitrary internet shutdowns, and confusing legislation continue to hamper expressive freedom.

To address these concerns, India must implement forward-looking reforms that:

- Recognize digital expression explicitly as a fundamental right;
- Encourage media self-regulation and protect investigative journalism from coercive pressures.
- By adopting these strategies, India can create a more supportive ecosystem for free and responsible expression. This approach balances the needs of governance with democratic ideals and aligns with global human rights standards.
- Implementing these reforms will not only safeguard constitutional freedoms but also empower citizens to participate meaningfully in democratic discourse, both offline and online.

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