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What is Speech? Can Unfettered Speech Be a Threat to Democratic Principles?

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The Constitution of India starts with the Preamble, from which it can be understood that the people are the sovereign in this country, meaning India is a democratic nation where the rule of law governs. Every individual is guaranteed many rights to protect their dignity and maintain peace in society. Freedom of speech and expression is one such right that protects the opinions of people and helps them to express their thoughts freely. This article is an attempt to explain the meaning of speech and the importance of freedom of speech and expression in a society. Since the Indian Constitution does not state what all rights are included under this freedom, the honourable Supreme Court has always come forward with various interpretations and thereby widened the horizon of freedom of speech and expression protected under Article 19 of the Constitution. It has also been discussed whether the right of free speech should be completely unfettered or whether certain reasonable restrictions are required.

Keywords: *free speech, expression, reasonable restriction.*

INTRODUCTION

“If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.”

— **George Washington**

In a democracy, it is the people who hold power, and their power is secured with certain rights and liberties provided to them. Freedom of speech and expression is one of those rights guaranteed under Article 19(1)(a)¹ of the Constitution of India to Indian citizens. It gives liberty to share one's opinions, thoughts or ideas without any prejudice through different means. But in certain reasonable conditions, this freedom can be controlled by the state. The right can only be controlled reasonably and legitimately, not beyond the restrictions given under Article 19(2)² of the Constitution of India. Thus, a balance must be maintained between this freedom and reasonable restrictions.

Freedom of speech and expression is the most significant human right, even guaranteed internationally under the International Covenant on Civil and Political Rights (ICCPR)³ and the Universal Declaration of Human Rights (UDHR).⁴ Having no voice or freedom of speech would lead to the death of democracy, as it is the foundational rock of a democratic society.

But sometimes, people misuse this liberty, leading to hatred and conflict, which must be avoided, as every right comes with a duty, and it should be protected. Similarly, if the state unnecessarily puts restrictions on this freedom, then conflicts also arise in society as individuals feel their rights are not secured. Thus, for the betterment of a society, the state must always protect the rights of its individuals and attempt to widen the horizon of their independence.

The scope of freedom of speech and expression has been broadened by the active participation of the judiciary through its judgments, as the court has explicitly explained in its judgment what can and cannot be made a part of free speech. Therefore, the court participated in evolving the concept of freedom of speech and expression.

¹ Constitution of India 1950, art 19(1)(a)

² Constitution of India 1950, art 19(2)

³ International Covenant on Civil and Political Rights 1976

⁴ Universal Declaration of Human Rights 1948

WHAT IS SPEECH?

According to Merriam-Webster, “speech is the communication or expression of thoughts in spoken words, or it is something that is spoken, usually a public discourse.”⁵

This speech is protected under Article 19(1)(a) of the Indian Constitution,⁶ which guarantees the right to freedom of speech and expression, which permits citizens to express their thoughts and opinions freely through various means or platforms. For instance, in the case of *Sakal Papers v Union of India*,⁷ the court emphasised the significance of freedom of the press and held that the state cannot control the quantity and content of a newspaper as it would curtail their freedom of speech and expression. So, the newspaper agency has the freedom of deciding what and how much to publish in the paper, unless it infringes the restrictions that are provided under the Indian Constitution.

In *Shreya Singhal v Union of India*,⁸ the honourable court added another facet to Article 19. In this case, section 66A of the Information Technology Act of 2000 was held unconstitutional as the language of this section was too vague and violated Article 19(1)(a).⁹ Also, freedom of speech can only be controlled under the restrictions mentioned in Article 19(2),¹⁰ and the conditions mentioned in it do not fall under section 66A of the Information Technology Act of 2000, thus struck down by the court.

Freedom of speech and expression is not completely unfettered, and it comes with certain restrictions. But it can only be restricted under the grounds mentioned under Article 19(2),¹¹ including “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.”¹²

⁵ ‘Speech’ (Merriam Webster) <<https://www.merriam-webster.com/dictionary/speech#dictionary-entry-1>> accessed 27 October 2025

⁶ Constitution of India 1950

⁷ *Sakal Papers v Union of India* (1962) 3 SCR 842

⁸ *Shreya Singhal v Union of India* (2015) 5 SCC 1

⁹ Constitution of India 1950, art 19(1)(a)

¹⁰ Constitution of India 1950, art 19(2)

¹¹ *Ibid*

¹² Constitution of India 1950

The Supreme Court has also pronounced judgements where it was held that the right of freedom of speech and expression can only be restricted under Article 19(2). For instance, in the case of *Kaushal Kishore v State of Uttar Pradesh & Ors*¹³, the court held that Article 19(2) provides limited grounds to restrict free speech and expression; if this freedom is restricted beyond these restrictions, then it is legally unjustified. The court referred the case of *Express Newspapers (Private) Ltd v The Union of India and Ors*¹⁴, where it was held that any restriction beyond that of Article 19(2) is not considered to restrict the freedom of speech and expression.

WHAT IS FREE SPEECH?

In simplest words, free speech or freedom of speech is to speak or express your opinions or thoughts freely, but it does not mean to hurt anyone's sentiments. That is, this freedom to express yourself in multiple ways comes with a responsibility.

Article 19 of the Indian Constitution¹⁵ ensures freedom of speech and expression to its citizens in the form of a fundamental right, but it also protects against the misuse of this freedom, which means certain reasonable restrictions are implemented over this right.

In the UK, Article 10 of the 1998 Human Rights Act¹⁶ protects our right to freedom of expression: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."

Every right comes with a duty, and this freedom also follows an obligation for the protection of one's nation. Consequently, this speech can be restricted in certain conditions, for example, if there is any threat to national security, territorial integrity or public safety, or to prevent crime or for the protection of rights, etc.¹⁷

¹³ *Kaushal Kishore v State of Uttar Pradesh & Ors* (2023) 4 SCC 1

¹⁴ *Express Newspapers (Private) Ltd v The Union of India and Ors* (1958) AIR 756

¹⁵ Constitution of India 1950, art 19

¹⁶ Human Rights Act 1998, art 10

¹⁷ *Ibid*

In the case of *Schenck v U.S.*¹⁸, it was clearly stated that the right of freedom of speech can be restricted to protect the security of a state; that is, if the expressed opinion poses any threat to society, then the state can curtail this right.

The freedom of speech and expression can be exercised in different forms and through various means. The following are some forms in which this right can be exercised –

- Right to the Press
- Right to Know/ Information
- Right to Publish
- Right to Broadcast
- Right to Silence
- Right to Share Opinions
- Right to Peaceful Protest, etc.

These are a few ways through which speech and expression can be exercised through digital or print means. This list is not exhaustive and subject to changing circumstances that as the law is always evolving, and if any situation arises in future, the court can interpret and include other rights under free speech and expression as well.

HATE SPEECH

Article 19 of the Indian Constitution provides for the freedom of speech, but can this right be used to create conflicts, hatred or violence in a society? No, freedom is given to protect an individual's right in a society and not to create any sort of disruptions.

Any kind of speech or expression that creates an environment of social conflicts or violence is hate speech. This does not include criticism, but the moment that criticism converts into hatred, inciting violence and disrupting the peace of a society, it moves outside the protection of fundamental rights guaranteed under Article 19.

The UN Strategy and Plan of Action on Hate Speech defines hate speech as “any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory

¹⁸ *Schenck v US* [1919] 249 US 47

language with reference to a person or a group based on who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.”¹⁹

Hate speech may lead to hate crimes, badly affecting an individual and shaking the core of a democratic society. In this digital era, it has become easier to spread hate speech and incite violence as the information is disseminated faster. Therefore, every person must responsibly act and only share relevant information that does not support any kind of violence, as we should always exercise our rights responsibly.

SIGNIFICANCE OF FREE SPEECH

For the circulation of information in a democratic society, the free flow of expression is necessary. Free speech and expression are as important for our minds as feeding our bodies because a social person cannot control their hunger for knowledge.

The International Covenant on Civil and Political Rights (ICCPR) recognises the right to free speech under the international human rights law, and the Universal Declaration of Human Rights (UDHR) recognises freedom of expression as a human right under Article 19. But this right is not absolute and can be restricted in certain cases.²⁰ Article 19(1)(a) of the Indian Constitution also protects this privilege of free speech and can also put restrictions under Article 19 (2) if required.

The Preamble of the Constitution clarifies that the people are the sovereign in our nation, and a democracy makes it important for the people to express their views regarding everything that takes place in society. Without unfettered speech, the public sovereign will not be powerful enough to question the actions of the governing party in a country, and this may result in a weak democratic society because democracy aims to have divergent views, ethnicity, different cultures, religions, and independence, that is, a plural society with a certain level of tolerance. Thus, for the growth of a nation, the right of free expression must be respected.

¹⁹ ‘What Is Hate Speech?’ (United Nations) <<https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>> accessed 27 October 2025

²⁰ Tejaswini Kaushal, ‘A Bird’s Eye View of the Right to Freedom of Speech and Expression in India’ (*Manupatra*, 16 February 2023) <<https://articles.manupatra.com/article-details/A-Bird-s-Eye-View-of-the-Right-to-Freedom-of-Speech-and-Expression-in-India>> accessed 27 October 2025

Independence of speech empowers the citizens of a state as it is the bedrock of a democratic society, and in the absence of this right, those in power could not be held accountable. And thus, freedom of speech and expression is a significant right that must be ensured by every nation for its citizens.

The following are the main reasons signifying the necessity of freedom of speech and expression:

- It protects the rights of individuals from divergent societies as people from different communities get a chance to keep their views through different channels, and if the powerful entities of a state try to suppress the thoughts of a specific community, then others can raise their voices freely in support of their friends, which would ultimately lead to unity and fraternity.
- It helps to keep different thoughts and ideas flowing in a society and provides a platform for open debates and discussion. People with different ideas come forward, and the exchange of opinions results in a learning experience as one gets to know about those perspectives that they may never have experienced or known for a long time.
- Another important reason is to hold those people accountable who are given the responsibility of a nation's growth; otherwise, they would make decisions as per their own whims and fancies.

Since it's the citizens of a nation who choose their representatives, they have a right to question their actions, as it could have an impact on society.²¹

- For a democratic nation, it is essential that all the organs of state work efficiently in their respective areas, and if they breach their powers, there must be someone who can remind them of their limits. Therefore, strong and independent journalism must be given space to grow without any bias or prejudice, as this is the most pivotal pillar of a democratic society.
- Freedom of speech and expression helps people to make their decisions independently without any coercion, and in a democracy, liberty of opinions provides a wide range of ideas to have a better understanding of various areas.

²¹ Eleanor Brooks, 'Why Is Freedom of Speech Important in a Democracy: 5 Reasons' (*Liberties*, 01 April 2022) <<https://www.liberties.eu/en/stories/why-is-freedom-of-speech-important/44136>> accessed 27 October 2025

- But this opportunity to access different views must not lead to spreading hate towards anyone, and thus, this liberty must not be exploited, and it should be used very responsibly.

If there is an absence of free speech and expression, then those who are suppressed would never be able to come forward with their opinions, and the minority faction of the society would be devoid of this independence. And if a specific section of society is neglected, their needs or voices are left unheard, then there would be no growth in that society, which eventually leads to hate and no respect for the nation. Thus, to avoid such feelings, every person must be respected and given liberty of expression.

CASES RELATED TO FREEDOM OF SPEECH AND EXPRESSION

Every citizen is ensured certain rights in a democratic society, and those rights come with responsibilities. The Indian Constitution guarantees freedom of speech and expression to the citizens of India, but the document does not clearly specify what kind of rights are included under the fundamental right of freedom of speech. Therefore, the honourable Supreme Court has given landmark judgments explaining the nature of this right. The court, through its various judgments, has widened the scope of Article 19(1)(a) and recognised different rights that form a part of freedom of speech and expression. It has not only included rights but also different ways and platforms for speech and expression.

The following are the judgments pronounced by the Honourable Apex Court related to Article 19(1)(a) –

Romesh Thapar v State of Madras:²² Freedom of speech and expression means disseminating your opinions freely, and this freedom can only be curtailed under reasonable circumstances provided under Article 19(2).²³ The court in this case clearly held that the circulation of ideas is a part of this fundamental right, as expressing one's thoughts or opinions without circulation would be futile. Consequently, the freedom of publication ensures the proper circulation of ideas through newspapers or any other means.

²² *Romesh Thapar v State of Madras* AIR 1950 SC 124

²³ Constitution of India 1950, art 19(2)

Bennett Coleman & Co. v Union of India:²⁴ The honourable court in this case recognised that the freedom of the press is not limited only to what content to be published, but it should be wide enough to include the kind of structure and quantity of content the publisher wishes to publish. The state cannot put up a restriction on the content of the newspaper agency and the number of pages unless it infringes the conditions mentioned under Article 19(2) of the Indian Constitution.

TATA Press v MTNL:²⁵ In this case, the court held that people have the right to commercial information under Article 19(1)(a) and commercial advertisements are a part of freedom of the press.

People's Union for Civil Liberties v Union of India:²⁶ The court in this case expanded the scope of Article 19(1)(a) and held that the right to know or information is a part of freedom of free speech and expression. In a democracy, people have a right to know the criminal history, assets, educational qualifications or liabilities of the electoral candidates before voting so that they can decide whether the candidate is capable enough to be their representative or not. Thus, the court held that voters have a right to information about electoral candidates.

National Legal Services Authority v Union of India:²⁷ The court in this case held that a transgender person has a right to express their gender identity by various methods like speech, clothes, mannerism, etc. and their right of expression is also protected and guaranteed under Article 19(1)(a).

These are a few landmark cases where the Honourable Supreme Court has explained the concept of freedom of speech and expression. But the court has never gone against the restrictions mentioned under Article 19. In this digital world, a new dimension has emerged, where people raise their voices and share thoughts through social media platforms, which is the fastest way of disseminating their ideas, and this rapid growth of online platforms has also become a source of spreading fake information, resulting in hate speech. Thus, it becomes necessary to monitor these platforms to avoid any disturbance in society and maintain equilibrium in a society.

²⁴ *Bennett Coleman & Co. v Union of India* AIR 1973 SC 106

²⁵ *TATA Press v MTNL* AIR 1995 SC 2438

²⁶ *People's Union for Civil Liberties v Union of India* (2003) 4 SCC 399

²⁷ *National Legal Services Authority v Union of India* AIR 2014 SC 1863

COMPARATIVE ANALYSIS OF FREEDOM OF SPEECH WITH THE U.S.A. AND THE UK

All democratic societies protect the basic rights of their people, and freedom of speech and expression is guaranteed to citizens so that they can raise their voices about anything and everything that happens in a society.

United States of America: In the USA, the First Amendment protects the freedom of speech and expression of its citizens, as the Congress is not allowed to make laws that would infringe the right of free speech²⁸, and this has also been clarified through various judgments of the U.S. Supreme Court. For example, the court in the case of *West Virginia Board of Education v Barnette*²⁹ held that not to speak, specifically the right not to salute the flag, is also a part of free speech and expression.³⁰

The US Supreme Court has also held that burning the flag in protest is a form of free speech and expression.³¹ This freedom can only be restricted in certain cases, which has also been explicitly stated by the Supreme Court in its various judgments. For example, the court has clearly stated that making or distributing obscene material³², inciting imminent lawless action³³, burning draft cards as an anti-war protest³⁴, allowing students to make an obscene speech at a school-sponsored event³⁵, etc., is not included in freedom of speech and expression and should not be supported by anyone.

United Kingdom: Unlike the U.S.A., the United Kingdom did not have any specific right that guaranteed freedom of speech and expression; it was only after the Human Rights Act, 1998, which included freedom of thought, *conscience and religion under Article 9 and freedom of expression under Article 10*.³⁶ These rights were incorporated from the European Convention

²⁸ The Constitution of the United States 1789

²⁹ *West Virginia Board of Education v Barnette* (1943) 319 US 624

³⁰ 'What Does Free Speech Mean?' (United States Courts) <<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does-free-speech-mean>> accessed 27 October 2025

³¹ *Texas v Johnson* [1989] 491 US 397

³² *Roth v United States* [1957] 354 US 476

³³ *Brandenburg v Ohio* [1969] 395 US 444

³⁴ *United States v O'Brien* [1968] 391 US 367

³⁵ *Bethel School District v Fraser* [1986] 478 US 675

³⁶ Human Rights Act 1998

on Human Rights (ECHR), and this treaty was introduced for the protection of human rights and freedoms.

Human Rights Act does provide the freedom of thoughts and expression but under Article 10 it also states that this freedom can be restricted under specific conditions including “protection national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”³⁷ For example, in the case of *Norwood v United Kingdom*³⁸, the court clearly held that freedom of expression does not include spreading hate towards any religious community and attacking someone’s religious sentiments under the guise of freedom of expression is not acceptable and violates Article 10(2) of the Human Rights Act, 1998.

It can be understood from the above cases that the right of free speech and expression comes with a duty, and it is not a completely unfettered right, as reasonable restrictions can be implemented if required to protect the peace in a society. Similarly, in India also this right is also guaranteed as a fundamental right, but restrictions can be put up if required.

CAN SPEECH BE A THREAT TO DEMOCRATIC PRINCIPLES?

Freedom of speech and expression ensures engagement of people in a society, as through speech, people express their thoughts about everything. But this free speech can be restricted on reasonable and legitimate grounds; consequently, no restriction can be imposed apart from those mentioned in Article 19(2).

But in today’s society, the liberty of expressing one’s views is sometimes not adjudged based on reasonable restrictions; rather, even a slight criticism leads to conflict in society. Recently, the famous actor Kamal Haasan remarked on the Kannada language, which resulted in hurting people’s sentiments, and they tore down the posters of his film, insisting to put a ban on his film “Thug Life.” The Karnataka High Court asked him to issue an apology to the masses for hurting

³⁷ Human Rights Act 1998, art 10(2)

³⁸ *Norwood v United Kingdom* Case No 23131/03

their sentiments. Here, the court did not observe or specify whether his speech violated Article 19(2) or not, but suggested that he apologise.³⁹

The Hon'ble Supreme Court intervened in this matter and stated that asking for an apology is not what the High Court is supposed to do; the judiciary plays a vital role in protecting the rule of law and due process, and thus a balance must be maintained between free speech and reasonable restrictions.⁴⁰

The society and the state must realise that everyone has a right to speak their heart out in a democracy, and a ban cannot be put on everything. Criticising the state authorities or any policy is not equivalent to hate speech or spreading violence unless it can actually lead to incitement of an offence or become a threat to national security. Certain parameters have been provided in the Indian Constitution, which must be looked upon before restricting someone's freedom of speech and not otherwise.

In today's society, dissent or having a different opinion from the majority is considered dangerous and against the state, but a democratic society is nothing without dissent, as there would be no different opinions in the absence of dissent in a democratic society. If the voice of dissent is silenced, it may result in the death of free speech and expression, as everyone would follow a single majority opinion, and the society would be left with the "herd mentality" only without any independent thoughts. This would lead society nowhere except towards destruction. Therefore, free speech cannot be a threat to democracy as it is the bedrock of a democratic society, and if people are silenced, there would be no feeling of contentment. But this speech must not infringe the restrictions mentioned in the Indian Constitution and respect the dignity of every individual.

CAN FETTERED SPEECH ERODE A DEMOCRATIC SOCIETY?

Since free speech and expression are the fundamental principles of a democratic society, they should not be restricted; otherwise, people would not be able to share their thoughts freely

³⁹ R. Sai Spandana, 'Extra-Judicial Ban on 'Thug Life' in Karnataka Is Contrary to Rule of Law, Says SC - Supreme Court Observer' (*Supreme Court Observer*, 17 June 2025) <<https://www.scobserver.in/journal/extra-judicial-ban-on-thug-life-in-karnataka-is-contrary-to-rule-of-law-says-sc/>> accessed 27 October 2025

⁴⁰ *Ibid*

without any fear. But this freedom should not also be completely unfettered, as it may lead to the expression of those things which the society does not support, for example, in today's world, the information is shared so fast that any news which could lead to violence may also be disseminated worldwide so fast, leading to violent protests, conflicts, etc. Therefore, it is necessary to put certain valid restrictions on speech and expression to protect society from any kind of destruction.

Freedom of speech and expression is the most important human right as it protects individuals from any kind of unreasonable act of the state. Therefore, it must exist so that society can prosper, but with certain reasonable and legitimate restrictions.

CONCLUSION

For a nation to grow and flourish properly every individual must feel content and respected. For this, the state must ensure that the people are able to communicate their needs and requirements properly. If their issues and problems are neglected or left unheard, a feeling of dissatisfaction stays, which might lead to unease and no respect towards the state. Therefore, the fulfilment of basic requirements or needs of citizens is the most important.

For proper communication in a society, the citizens are thus given freedom of speech and expression so that they can express their thoughts freely without any influence. Free speech and expression are the most basic human rights that must be ensured by every nation. The Constitution of India guarantees this right under Article 19, and it also provides certain legitimate restrictions to manage the right properly.

This right has developed a lot from the time when it was first introduced, as the Apex Court has included several forms through its judgments. A country that respects its citizens and ensures basic rights grows positively as the people stay happy and content, contributing to the development of society.