
FREEDOM OF SPEECH AND EXPRESSION AS THE CONSTITUTIONAL BASIS OF THE RIGHT TO PROTEST: A COMPARATIVE GLOBAL ANALYSIS

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ABSTRACT

One of the main pillars of democracy is the freedom of speech and expression, which guarantees people the right to actively participate in public conversation and to openly express themselves. The comparative analysis that follows looks at different approaches to defending this fundamental freedom in the UK, USA, and India. The United States Constitution's first amendment serves as a powerful barrier against government interference with free expression. This legal framework, which places a strong emphasis on individual speech and the ability to express anything, regardless of how controversial or hurtful it may be, has been greatly influenced by American history. In the UK, the right is regarded as one of the fundamental freedoms, along with speech and expression, notwithstanding some limitations. These rights are granted by the Indian Constitution, which also permits "reasonable restrictions" in article 19(2) for the defense of societal interests.

A thorough analysis of the country's historical context, which is based on the Indian struggle for independence and a dedication to equal rights, is necessary to comprehend its viewpoint on free expression. This paper examines how these methods have evolved in response to pertinent legal and judicial decisions. It addresses some of the contemporary problems associated with the digital era, such as incorrect information and hate speech on the internet. These difficulties lead to different approaches in the democracies of both nations.

Keywords: Freedom of speech, right to protest, constitutional law, dissent, democracy, comparative constitutionalism, human rights.

Introduction:

Every democratic society is built on the foundation of freedom of speech and expression. The freedom to express oneself and learn from others is at the heart of free speech. It is said to be the initial prerequisite for freedom.¹ It is seen to be the foundation of all other liberties. It is one of the most significant fundamental rights protected against repression or control by the state.

Article 19(1)(a) of the Constitution guarantees this basic right to freedom of speech and expression. Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) both acknowledge freedom of expression as a human right. Since the right to free expression is not unqualified, Article 19(2) permits limitations. However, the only way to limit freedom of expression is through legislation. It also covers the freedom to disseminate, print, and promote the knowledge.

The right to protest is a fundamental democratic tool through which citizens communicate grievances, influence public policy, and hold governments accountable. Throughout history, protests have shaped constitutional democracies and social justice movements. From anti-colonial struggles and civil rights movements to contemporary climate activism and digital campaigns, protests have remained central to political transformation. A "right to protest" is commonly acknowledged as arising from interrelated constitutional provisions including freedom of speech and expression, freedom of assembly, freedom of association, and personal liberty, even though many constitutions do not specifically mention it. Since protest is fundamentally a communication act intended to transmit disagreement, criticism, or demands, freedom of speech and expression serves as the fundamental value.

Around the world, constitutional democracies acknowledge that dissent is a necessary part of democratic government rather than being anti-national. The judiciary has consistently emphasized that if individuals are prevented from openly expressing disapproval of official policy, their fundamental rights become meaningless. At the same time, governments frequently control protests for reasons including national security, traffic control, public order, and violence prevention. As a result, there is a constitutional conflict between governmental power and civil liberty.

¹ Dheerendra Patanjali, "Freedom of Speech and Expression, India v America - A Study"

Through a comparative analysis of several countries, the current research seeks to analyze how freedom of speech and expression serves as the fundamental foundation for the right to protest. It looks at international human rights concepts controlling protest rights, significant court rulings, and constitutional requirements. The increasing difficulties brought about by authoritarian inclinations, digital limitations, surveillance technology, and the abuse of criminal laws against demonstrators are also examined in this study.

Research Objectives

1. To examine the constitutional relationship between freedom of speech and expression and the right to protest.
2. To analyse comparative constitutional approaches toward protest rights in different jurisdictions.
3. To study landmark judicial decisions relating to freedom of expression and public protest.
4. To evaluate the extent to which states may legitimately restrict protests.
5. To examine emerging challenges affecting protest rights in the modern era.

Research Methodology:

The paper follows a doctrinal and comparative research methodology. It relies upon constitutional provisions, statutes, judicial precedents, scholarly writings, and international human rights instruments. Comparative analysis has been conducted with reference to India, the United States, the United Kingdom, and South Africa, along with international legal standards under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Meaning & Scope of Freedom of Speech & Expression:

The right to freedom of speech and expression is guaranteed to all people under Article 19(1)(a). Only Indian citizens are eligible for this privilege; foreign immigrants and other non-citizens are not.² Right to free speech and expression refers to the freedom to openly express

² Hans Muller of Nuremburg v. Supdt., Presidency Jail, Calcutta, AIR 1955 SC 367. Also see State of Gujrat v.

one's own beliefs and viewpoints through speech, writing, printing, images, or any other medium. As a result, it encompasses the expression of one's thoughts via any visual representation or communicative medium, including gestures, signs, and the like.³ The four main particular objectives of freedom of expression are as follows: (1) it aids in achieving self-fulfillment (2) it facilitates the pursuit of truth (3) it increases a person's ability to participate in decision-making and (4) it offers a way to create a fair balance between societal change and stability. Everyone in society ought to be allowed to develop their own opinions and openly share them with others. All things considered, the people's right to know is the essential idea at play here. Therefore, everyone who believes in the involvement of people in the government should generously support freedom of speech and expression. The government should be extra cautious when imposing taxes on subjects of concern since society has a specific stake in the freedom of speech and expression.⁴ Newspaper sector as opposed to imposing taxes on other issues. Public demonstrations are part of the right to free speech and expression, but they are not protected by Article 19(1)(a) if they are political, religious, social, or otherwise disruptive to the public, act as nuisances, or clearly pose a threat of tangible public or private mischief. Commercial and creative speech are not specifically included in Indian law. Nonetheless, Indian law is evolving, and the Supreme Court has decided that "commercial speech" cannot be excluded from Article 19(1)(a). "Commercial speech" was ruled to be a component of the freedom of speech and expression under the Constitution. The freedom to receive, read, and hear commercial speech is guaranteed to Indian citizens. Painting, signing, dancing, writing, poetry, and literature are examples of creative expression that fall within the category of freedom of speech and expression.

It is significant to notice that the right to receive and distribute information has been included to the scope of the freedom of speech and expression found in Article 19(1)(a) of the constitution. In *State of Uttar Pradesh v. Raj Narain*, the Supreme Court ruled that Article 19(1)(a) of the Constitution protects citizens' rights to information about matters of public concern as well as their freedom of speech and expression. The freedom to get and distribute information is covered by Article 19(1)(a), according to the ruling in *Secretary, Ministry of*

Ambica Mills Ltd., AIR 1974 SC 1300.

³ A.K. Gopalan v. State of Madras, AIR 1950 SC 27. Also see *Collector of Malabar v. Erimal Ebrahim Hajee*, AIR 1957 SC 688.

⁴ *Indian Express Newspaper v. Union of India*, (1985) 1 SCC 641; *Reliance Petro-chemicals limited v. Indian Newspapers (Bombay) Pvt. Ltd.*, AIR 1989 SC 190.

Information and Broadcasting, Govt. of India v. Cricket Association of Bengal.

Origin & Significance:

In India, the right to free speech and expression is highly valued. The preamble of the constitution itself guarantees all people, among other things, freedom of opinion, speech, religion, faith, and worship, which makes its significance readily apparent. The Preamble of the Constitution contains the constitutional importance of the right to free speech, which is translated into a basic and human right in Article 19(1)(a) as "freedom of speech and expression."

The right to free speech and expression has a long history. It is present in the contemporary international human rights treaty. The concept of free speech is said to have first appeared in the late sixth or early fifth century BC.⁵ The Roman Republic's ideals included the freedom of speech and freedom of religion. Early human rights documents contain concepts related to freedom of expression. England's 1689 Bill of Rights created the constitutional right to freedom of speech and expression. The French Revolution of 1789 established the intrinsic right to free speech. In his dissent in *Abrams v. United States*, one of the first rulings to interpret and shape the doctrine that would eventually occupy a nearly sacred place in America's national identity, Justice Oliver Wendell Holmes suggested that free speech has been an experiment from the beginning.

It has a strong connection to democracy. Freedom of expression is a fundamental aspect of the US Constitution, as stated in the First Amendment.

The adoption of a constitutional clause is an important event. It has a magnetic pull. Adoption, according to some academics, crystallizes a principle. One of the demands of the European Enlightenment on the State, which originated in England within the context of common law precedents, is the freedom to speak and propagate one's opinions. The freedom of the press is one of the main pillars of liberty and cannot be curtailed by autocratic governments, according to section 12 of the Virginia Bill of Rights, 1776. "Everyone has right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and import information and ideas through media and regardless of frontiers," according

⁵ M. P. Charlesworth (March 1943). "Freedom of speech in Republican Rome". *The Classical Review*. The Classical Association. 57 (1): 49.

to Article 19 of the Universal Declaration of Human Rights.

J. Bhagwati highlighted the importance of the right to free speech and expression in *Maneka Gandhi v. Union of India*⁶ as, “Since it is the only way to rectify government activity in a democratic system, free debate and open discussion are fundamental to democracy. If democracy is defined as “government of the people, by the people,” then it is clear that every citizen must have the right to take part in the democratic process, and free and open discussion of public issues is crucial to enabling him to exercise his right to make an informed decision.

Democracy and Free Speech:

“Every ruler has ascended to power by the ladder of free speech, which is a contradiction in itself.

Every ruler suppresses all free speech save his own as soon as he comes to power.” – Herbert Hoover

A strong democracy and a free society have long been associated with the right to free speech and expression. For a democratic democracy, it has been deemed essential and indivisible. It is the democracy's fourth pillar. The government of the people, by the people and for the people is known as democracy. Therefore, the people control democracy, and the right to free speech and expression is crucial to the state's efficient operation. The right to free speech is a tool that allows individuals to live humanely instead of as animals. It has been said that without free speech and expression, democracy cannot exist. Maintaining equilibrium is also essential since there are corrupted individuals who misuse these privileges. The First Amendment's guarantees of free expression in the US are closely linked to democracy. Freedom of expression is a fundamental human right protected by the European Convention on Human Rights. Because it allows individuals to express themselves freely, it is referred regarded be the cornerstone of democracy. As a result, it is seen as a crucial component of democracy.

Chief Justice Patanjali Shastri noted the following in *Romesh Thappar v. State of Madras*⁷:

All democratic groups were based on freedom because without free politics
Thus, public education—which is crucial to the smooth operation of popular governance

⁶ 1978 AIR 597, 1978 SCR (2) 621

⁷ AIR 1950 SC 124:1950 SCR 594.

processes—is not feasible. Such an amplitude of freedom might lead to misuse hazards. However, it's possible that the writers of the Constitution considered Madison, who was the guiding spirit in the drafting of the Federal Constitution's First Amendment, that it is preferable to permit some of its poisonous branches to grow luxuriantly rather than trimming them away, to harm the health of those producing the right fruits.⁸

Freedom of speech and expression is an important element of democratic society. Most of the people assume that democracy is limited to voting. But it is not like that. Democracy is so much more than voting. Even after elections, even after the governments are formed, citizens still have a say in the country. They are allowed to put their views even after they have cast their votes. It does not only mean that a citizen can say things in an articulate, coherent or respectful manner. It also includes rude, offensive, incoherent and even confusing sayings. There is also reasonable restrictions on the freedom of speech and expression to regulate the state in proper manner.

The Conceptual Theory of the Right to Protest:

The capacity of people or organizations to openly voice their thoughts, concerns, or demands against social or governmental acts is known as the right to protest. Demonstrations, marches, strikes, sit-ins, internet campaigns, symbolic speech, and civil disobedience are all examples of protest.

Since protest is essentially expressive behavior, its constitutional foundation is principally found in the freedom of speech and expression. Freedom of peaceful assembly and association also provides protection for protest. Protest has a number of significant functions in constitutional democracies:

- It facilitates democratic participation.
- It acts as a check on arbitrary state power.
- It promotes political accountability.
- It protects minority voices.

⁸ K.K. Mathew, "Democracy, Equality and Freedom" in Upendra Baxi (eds.), Eastern Book Company, Lucknow, 1978, p. 98

- It strengthens public discourse.

According to political theorists like John Stuart Mill, the pursuit of truth and the avoidance of authoritarianism depend on the right to free speech. Constitutional scholars also see disagreement as democracy's "safety valve." Constitutional safeguards become symbolic rather than substantive in the absence of the freedom to protest.

International Human Rights Framework:

International human rights law strongly recognises freedom of expression and peaceful assembly as essential democratic rights.

Universal Declaration of Human Rights (1948)

Article 19 of the UDHR guarantees the right to freedom of opinion and expression, including the freedom to seek, receive, and impart information and ideas through any media. Article 20 recognises the right to peaceful assembly and association.

International Covenant on Civil and Political Rights (ICCPR)

The ICCPR provides binding legal obligations on state parties.

- Article 19 protects freedom of expression.
- Article 21 guarantees the right of peaceful assembly.
- Article 22 protects freedom of association.

In a democratic society, limitations on fundamental rights are only acceptable when they are legitimate, essential, and reasonable. The UN Human Rights Committee has made it clear that nonviolent protests are protected by the law, even if they cause problems for the government.

European Convention on Human Rights (ECHR)

Freedom of expression is safeguarded under Article 10, while freedom of assembly and association is guaranteed by Article 11. Freedom of speech include views that "offend, shock, or disturb" the state or some segments of society, according to many rulings by the European Court of Human Rights.

Therefore, peaceful protest is established by international law as a recognized human right rather than just a political privilege.

Constitutional Basis of Protest Rights in India

The "right to protest" is drawn from Articles 19(1)(a), 19(1)(b), and 19(1)(c) of the Indian Constitution, which provide freedom of speech and expression, peaceful assembly, and association, respectively.

Article 19 and Democratic Dissent

Article 19(1)(a) guarantees freedom of speech and expression, while Article 19(1)(b) guarantees the right to assemble peacefully and without arms. Together, these provisions constitutionally protect peaceful protests. However, these rights are subject to reasonable restrictions under Articles 19(2) and 19(3) on grounds such as sovereignty, public order, morality, and security of the state.

Landmark Judicial Decisions

- **Romesh Thappar v. State of Madras (1950)**

The Supreme Court recognised freedom of speech and expression as the foundation of democratic governance. The Court held that public criticism of the government cannot be suppressed merely because it causes political discomfort.

- **Kameshwar Prasad v. State of Bihar (1962)**

The Court held that peaceful demonstrations are protected forms of speech and assembly under Article 19.

- **Ramlila Maidan Incident v. Home Secretary, Union of India (2012)**

The Supreme Court emphasised that citizens have a fundamental right to peaceful protest against governmental policies. The Court criticised excessive police force used against sleeping protestors.

- **Mazdoor Kisan Shakti Sangathan v. Union of India (2018)**

The Court acknowledged that the right to protest in public spaces is constitutionally protected,

though it must be balanced with the rights of commuters and residents.

- **Amit Sahni v. Commissioner of Police (Shaheen Bagh Case) (2020)**

The Court held that while peaceful protest is a constitutional right, public spaces and roads cannot be occupied indefinitely. The judgment attempted to balance civil liberties with public convenience.

Contemporary Concerns in India:

Discussions about internet shutdowns, sedition laws, preventative imprisonment, and limitations placed during protests have become more prevalent in India. Excessive limitations, according to critics, stifle free expression and threaten democratic dissent. In *Anuradha Bhasin v. Union of India (2020)*, the Supreme Court ruled that, especially in the digital era, internet access is essential to the right to free speech and expression. The importance of internet communication for democratic engagement was acknowledged in this ruling.

The United States: Strong Constitutional Protection for Protest:

The United States Constitution provides one of the strongest protections for freedom of speech and protest under the First Amendment.

First Amendment Framework

The First Amendment states:

“Congress shall make no law... abridging the freedom of speech... or the right of the people peaceably to assemble.”

American constitutional jurisprudence treats political speech as highly protected because democracy depends upon open criticism of government.

Conclusion:

The right to protest stands at the heart of every constitutional democracy because it represents the collective exercise of freedom of speech and expression. Across the world, constitutional systems have recognized that dissent is not a threat to democracy but an essential condition for

its survival. From the First Amendment jurisprudence in the United States, to the proportionality-based approach adopted in Europe, and the constitutional balancing framework developed in India under Article 19, the comparative global analysis demonstrates a common constitutional principle: peaceful protest is a legitimate and protected democratic activity.

At the same time, no legal system treats the right to protest as absolute. Every jurisdiction permits reasonable restrictions in the interests of public order, national security, morality, and the rights of others. However, the comparative study reveals that democratic constitutions differ not in whether restrictions may be imposed, but in the manner and extent to which such restrictions are justified and reviewed. Mature constitutional democracies increasingly rely on tests of necessity, proportionality, and reasonableness to ensure that state regulation does not become a tool for suppressing political dissent.

The Indian constitutional framework occupies a distinctive position in this discourse. While Article 19(1)(a), Article 19(1)(b), and Article 19(1)(c) collectively guarantee freedom of speech, peaceful assembly, and association, judicial interpretation has repeatedly emphasized that protest is a constitutional expression of participatory democracy. Decisions of the Supreme Court of India have affirmed that citizens possess the right to express disagreement with governmental policies, though such expression must remain peaceful and within constitutional limits. Nevertheless, contemporary challenges such as excessive use of preventive restrictions, internet shutdowns, criminalization of dissent, and broad public order measures raise important concerns regarding the shrinking democratic space for protest.

The global experience further illustrates that constitutional protection of protest rights becomes most crucial during periods of political instability, social inequality, and governmental overreach. Historical movements for civil rights, gender equality, labour reforms, environmental justice, and anti-colonial struggles have all relied upon public protest as a means of constitutional transformation. Thus, the right to protest must be viewed not merely as an extension of free speech, but as a mechanism through which constitutional morality, accountability, and democratic participation are realized in practice.

In conclusion, freedom of speech and expression forms the foundational constitutional basis of the right to protest because it enables citizens to question authority, articulate grievances, and participate actively in governance. A comparative constitutional analysis shows that while states may regulate protests to maintain order, democratic legitimacy ultimately depends upon

preserving spaces for peaceful dissent. Therefore, the true strength of a constitutional democracy lies not in the suppression of criticism, but in its capacity to tolerate, protect, and engage with dissenting voices within the framework of law and constitutional values.