
FREEDOM OF SPEECH AND EXPRESSION: A RIGHT WITH RESPONSIBILITIES

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“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” - Universal Declaration of Human Rights, Article 19

ABSTRACT

The freedom of speech and expression is universally recognised as a basic human right and a cornerstone of democracy. At the international level, freedom of speech and expression is enshrined as a human right under Article 19 of the Universal Declaration of Human Rights, 1948. This international recognition of freedom of expression has had a substantial influence on the constitutional development of democratic states, including India. Because a democracy without freedom of speech and expression is a democracy in form, not in substance, or become a hollow framework. Democracy attains significance only when citizens have the right to speak, to debate or to criticise without any fear of being prosecuted. In India, this fundamental aspect of democracy is enshrined as a fundamental right under Article 19(1)(a) of the Constitution with some reasonable restrictions, because a right exercised without any limitation endangers public order, decency and morality and even the stability of democracy itself. The present paper seeks to analyse the significance of reasonable restrictions in dealing with emerging challenges such as **hate speech, defamation, media trials, obscenity, threats to national integrity and sovereignty and other contemporary issues affecting society**. In this context, the Constitution strikes a balance between individual liberties and the collective interests of society by empowering the State to impose reasonable restrictions and ensuring that citizens can exercise their right to freedom of speech expression responsibly without compromising public order, morality, or the integrity of democracy.

Keywords: reasonable restrictions, hate speech, media, defamation, democracy.

Meaning of freedom of speech and expression:

The **Preamble** of the Indian Constitution lays the foundation of the freedom of speech and expression by securing to all citizens **liberty of thought, expression, belief, faith, and worship**. This constitutional vision is further incorporated as a fundamental right under **Article 19(1)(a)**, in the form of the right to freedom of speech and expression.

The right to freedom of “speech” means citizens have the right to express their opinion, views and ideas and even criticise without any fear. Right to “expression” means you can express your speech in any form, whether verbal, written, published or in the form of symbols, art, movies, banners, or even silence. In **Bijoe Emmanuel v. State of Kerala**¹ The Supreme Court held that freedom of speech and expression also includes the right not to speak or withhold their expressions.

Constitutional Nature:

The right of speech and expression is not absolute or unlimited. It comes with some reasonable restrictions.

The right to Freedom of speech and expression is provided exclusively to citizens and not to non-citizens, as stated in **Anwar Ali v. State of J&K**².

The right to freedom of speech and expression is provided only to natural persons, not artificial or juristic persons. In case **R.C cooper v. Union of India**³ The Supreme Court held that “company” is a juristic person and cannot claim rights enshrined under Article 19(1)(a).

Right to speech and expression also includes “**right to information**”, because the right to speak is meaningless unless you have the right to know was stated in **People's Union for Civil Liberties v. Union of India**⁴.

Right to speech and expression is also provided to the **media** same as common citizen was stated in **Indian Express Newspaper v. Union of India (1986)**.

¹ *Bijoe Emmanuel v. State of Kerala* (1986) 3 S.C 748

² *Anwar Ali Sarkar v. State of West Bengal*, A.I.R. 1952 S.C. 75

³ *R.C. Cooper v. Union of India*, A.I.R 1970 S.C 564

⁴ *People's Union for Civil Liberties & Anr. v. Union of India*, A.I.R 2003 S.C 2363

Reasonable restriction:

As mentioned above, fundamental rights under the Indian Constitution are not absolute or unlimited, because Unlimited or absolute rights, if left unchecked, have the potential to create chaos, disorder, and even tyranny. Unrestricted freedom of speech leads to the spread of hateful speech, contempt of court, defamation, and incitement to violence, thereby threatening public harmony and democratic stability. The Constitution, therefore, recognises freedom not as an absolute concept. Thus, reasonable restrictions do not undermine freedom of speech but preserve the rights of others and the interests of society at large.

The term “*reasonable*” implies that such restrictions must not be arbitrary or excessive, and it is imposed to ensure that the purpose or objective for which the right was created is effectively achieved. In **Chintaman Rao v. State of Madhya Pradesh** ⁵The Supreme Court held that a restriction can be considered reasonable only when it strikes a proper balance between individual liberty and social control and must have a direct and proximate nexus to the objective to be achieved.

Article 19(2) – Reasonable Restrictions on Freedom of Speech and Expression-The State may **impose reasonable restrictions** on the exercise of the right conferred by **Article 19(1)(a)** (freedom of speech and expression) 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
- Contempt of court
- Defamation

⁵ *Chintaman Rao v. State of Madhya Pradesh*, A.I.R 1951 S.C 118 research

- Incitement to an offence

The landmark case of **Romesh Thapar v. State of Madras** ⁶ laid the foundation for understanding **reasonable restrictions** on freedom of speech under **Article 19(1)(a)** of the Indian Constitution.

In response to Romesh Thapar v. State of Madras, 1950 case, the government introduced **the First Constitutional Amendment Act in 1951**, adding “reasonable restrictions” to Article 19(1)(a) in free speech, including grounds like –

public order,

incitement to an offence, and

friendly relations with foreign states.

The 16th Constitutional Amendment Act of 1963 strengthened India's unity by adding restrictions to free speech (Article 19) for safeguarding national sovereignty and integrity

Grounds like decency, morality, defamation, and contempt were gradually included through judicial interpretation and legislation, not directly by a constitutional amendment.

Contemporary Challenges to Freedom of Speech and Expression

Freedom of speech and expression is often misused, as while exercising this right, individuals tend to exceed its permissible limits and thereby violate the rights and privacy of others. Such misuse of freedom of speech can be seen in various forms, which are explained hereinafter...

1. Hate speech

Britannica defines hate speech as *speech or expression that denigrates a person or persons on the basis of (alleged) membership in a social group identified by attributes such as race, ethnicity, gender, sexual orientation, religion, age, physical or mental disability, and others*. Hate speech refers to any form of expression—whether verbal, written, or symbolic—that promotes hatred, enmity, or discriminatory feelings against individuals or groups on the basis

⁶ *Romesh Thapar v. State of Madras*, A.I.R 1950 S.C 124

of race, caste, gender, religion, or other protected characteristics. The impact of hate speech extends beyond the targeted individuals and adversely affects society at large by undermining social harmony and public order. Although hate speech is not explicitly enumerated as a separate ground of restriction, it falls within the permissible limits on freedom of speech and expression under considerations such as public order, morality, and decency. This understanding has evolved through various judicial interpretations, wherein courts have recognised the necessity of regulating hate speech to preserve constitutional values and social cohesion.

Ramji Lal Modi v. State of Uttar Pradesh⁷, The Supreme Court upheld restrictions on speech that had a tendency to disturb public order by promoting religious hatred.

Pravasi Bhalai Sangathan v. Union of India⁸, The Supreme Court did not penalise hate speech as it does not exist in any of the pre-existing legislation in India. Instead, the Supreme Court requested the Law Commission to address this issue in order to avoid stepping into the forum of judicial overreach.

The Law Commission of India Report No. 267 titled “Hate speech”

The commission considered the laws on hate speech in various jurisdictions, judicial pronouncements of the Supreme Court and High Court, and analysed the existing provisions relevant to the subject matter.

Consequently, the commission suggested an amendment to Indian Penal Code 1860 by adding new provisions on “**Prohibiting incitement to hatred**” following section 153B IPC and “**Causing fear, alarm, provocation of violence in certain cases**” following section 505 IPC. Despite these recommendations, Parliament has not enacted these proposed sections into the IPC.

Shreya Singhal v. Union of India⁹, where the Court struck down 66A of the Information Technology Act, 2000, as unconstitutional. It further clarifies that only speech inciting “imminent” violence or public disorder can be restricted.

⁷ *Ramji Lal Modi v. State of Uttar Pradesh*, A.I.R 1957 S.C 620

⁸ *Pravasi Bhalai Sangathan v. Union of India & Ors.*, A.I.R 2014 S.C 1591

⁹ *Shreya Singhal v. Union of India*, A.I.R 2015 S.C 1523

Amish Devgan v. Union of India¹⁰, The Supreme Court clarified that hate speech is not protected if it undermines dignity or incites hostility.

The Bhartiya Nyaya Sanhita 2023 does not distinctly define hate speech as a separate crime, nor does it prescribe specific punishment solely for hate speech. But, if a particular speech or expression or leads to the commission of the hereinafter mentioned act, then it would be penalised.-

An act endangering the sovereignty, unity and integrity of India.

Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to the maintenance of harmony.

Imputations and assertions prejudicial to national integration.

Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

Uttering words, etc., with deliberate intent to wound the religious feelings of any person.

The **India Hate Lab** (IHL) 2024 report meticulously documents this rise, revealing 1,165 verified instances of in-person hate speech events, representing a staggering 74.4% increase from the 668 incidents recorded in 2023. “**In-person hate speech events**” refers to incidents that took place at political rallies, religious processions, protest marches and cultural gatherings.¹¹

These observations indicate that **mere reliance on existing laws is insufficient**, and there is an urgent need for **a separate, well-defined legislative framework** to address hate speech, ensuring both the protection of targeted groups and the safeguarding of the fundamental right to freedom of speech.

2. Defamation

Reputation is a valuable and fundamental right that an individual possesses. It is an intrinsic aspect of one’s personality. The law recognises reputation as worthy of protection. Defamation

¹⁰*Amish Devgan v. Union of India & Ors.*, A.I.R 2021 S.C 1916

¹¹ *India Hate Lab, Hate Speech Events in India: Annual Report* (2024)

occurs when a person intentionally makes false statements concerning another. Such statements are made with malice and without lawful justification. It harms or lowers the person's reputation in the eyes of society. It can be against an individual, a deceased, a company, or any other recognised entity.

Dixon v. Holden¹², In this case, the court held that a man's reputation is his property and, if possible, more valuable than other property.

Types of Defamation:

Slander-It refers to defamation, which is in transient form, such as words, gestures, symbols, etc.

Libel- it refers to defamation, which in written or permanent form, such as books, newspapers, pictures, etc.

Subramaniam Swamy v. Union of India¹³, In this case constitutional validity of sections 499 and 500 of the Indian Penal Code, 1860, was challenged, but the Supreme Court upheld the validity of these provisions and stated that it is not against freedom of speech and expression.

According to **Section-356 of BNS, 2023**

- Whenever any person, by words, by signs or by visible representations,

Illustration: A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation.

- makes or publishes in any manner,

Illustration: A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation.

- Any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said to defame that

¹² *Dixon v. Holden*, (1869) L.R. 7 Eq. 488 (Eng.).

¹³ *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221 (India).

person.

Illustration: A says “Z is an honest man; he never stole B’s watch”; intending to cause it to be believed that Z did steal B’s watch.

Explanation 1.— **Defamation of deceased person**, if the imputation would harm the reputation of that person if living, and is intended to hurt the feelings of his family or other near relatives.

Explanation 2.— **Defamation of a company or association**, if the imputation would harm the reputation of any company or an association or collection of persons as such.

Priya Parameswaran Pillai v. Union of India¹⁴, In this case, Priya, an environmental activist, wrote in her blog that Essar group’s power project casuses environment degredation. Then a suit of defamation was filed by Essar Group. This case highlighted the tension between the right to reputation and freedom of speech under Article 19(1)(a). Then Supreme Court held that **bona fide criticism on matters of public interest does not amount to defamation** and that criminal defamation should not be misused to stifle lawful criticism and dissent.

Explanation 3.— **Defamation by innuendo** means **indirect defamation** if imputation is expressed as an alternative, a question, a suggestion, or even ironically or sarcastically, may still amount to defamation if a reasonable person considers it as defamatory.

Innuendo means **indirect defamation**, where a statement appears innocent at first instance, but becomes defamatory when it is interpreted in a particular context or circumstances.

Cassidy v. Daily Mirror Newspapers Ltd.¹⁵, In this case, Mr. Cassidy had married Mrs Cassidy, but they were not living together. A newspaper published a photograph of Mr. Cassdy with Miss X showing that they are getting engaged. Then Mrs. Cassady file a suit against the newspaper for defamation and contended that through this publication general public implied that Mrs Cassady is not his wife and considered him as an immoral woman living with him in sin. The court held this statement appears innocent on prima facie, but when it is interpreted in a particular context, then it becomes defamatory for Mrs Cassidy.

¹⁴ *Priya Parameswaran Pillai v. Union of India*, A.I.R. 2015 Del. 217.

¹⁵ *Cassidy v. Daily Mirror Newspapers Ltd*, [1929] 2 K.B. 331

Explanation 4.—An imputation is said to harm a person's reputation if an imputation directly or indirectly, in the lower the moral or intellectual character of that person in the estimation of others, because it lies in the eyes of others, not in oneself.

There are several **exceptions** to defamation, which are mentioned below-

- Any statement that is true and for the public good. A mere true statement cannot be treated as an exception.
- Any statement regarding the conduct of a public servant in the discharge of his duties in good faith.
- Any statement that remarks on the conduct of individuals who participate in public affairs or controversies, such as politicians, activist etc.
- Publication of reports and proceedings of courts
- Any statement regarding the merit of the case and the conduct of the witness in good faith.
- Fair criticism of any literary, artistic or other public performance.
- Censure(disapproval) by a legal authority over their subordinate in good faith.
- Accusation made in good faith based on genuine belief and evidence.
- Imputation made in good faith by a person for the protection of his or others' interest.
- Statement made to caution or warn the public against potential harm¹⁶.

3. Obscenity

The word obscene comes from the Latin word "*obscenus*", which means foul, repulsive, Obscenity refers to any material, whether expressed orally, in writing, by visual representation, or through gestures, which tends to deprave or corrupt the minds of persons likely to be exposed to it, by depicting sexual content with the intention of arousing lustful or immoral thoughts, and which is offensive to prevailing standards of public morality and

¹⁶ *Bhartiya Nyaya Sanhita*, 2023.

decency.

Obscenity is treated as an offence under Sections 294 to 296 of the Bharatiya Nyaya Sanhita; however, these provisions do not clearly define what constitutes 'obscene' material, nor do they distinctly demarcate the line at which expression or creativity crosses into obscenity. Owing to this legislative ambiguity, Indian law does not provide a precise definition of the term 'obscene,' and consequently, the Indian legal system has relied on judicial interpretation, with the first test adopted to determine obscenity being the **Hicklin test**. According to the Hicklin test, if any material **depraves or corrupts the minds of vulnerable o persons**, such as children rather than adults. It focuses on the **isolated passages** test it means even a small portion of a work could render the entire material obscene, ignoring its overall theme or purpose.

Illustration -A novel addressing sexual exploitation could be declared obscene due to a single explicit paragraph, despite its social message.

Aveek Sarkar v. State of West Bengal¹⁷, in this case, a German magazine *STERN* published a photograph of Boris Becker, a famous tennis player, **posing nude** with his dark-skinned fiancée. The photograph was republished in an Indian magazine along with an article discussing **racism and racial discrimination**. Then a case was filed against this nude photograph under Section 292 of the IPC. The Supreme Court held that the photograph **was not obscene**, it convey a **social message against racism** and Court emphasized that **nudity by itself does not amount to obscenity**.

After 2014 there is shift from **Hicklin test** to **Community Standards Test**. The Community Standards Test focuses on the overall theme or purpose of a work, not on any single portion, to decide whether it violates the prevailing standards of the community.

4. Contempt of court

Article 19(1)(a) of the Constitution guarantees the Right to Freedom of Speech and Expression. This right includes the freedom to scrutinize and criticize judicial proceedings, but only within reasonable and limited bounds.

It does not permit criticism that is intended to demean the court, insult judges, or undermine

¹⁷*Aveek Sarkar v. State of W.B.*, (2014) 4 S.C.C. 257 (India).

the authority and dignity of the judiciary. Such acts may amount to contempt of court. Contempt of court means disobedience or non-compliance with a court's order, or showing disrespect that lowers the authority or dignity of the court.

As per **Black's Law Dictionary**, "contempt of court refers to any act to embarrass, obstruct or hinder the court of law in the administration of justice or anything which is done to reduce its authority or its reputation or dignity. It generally means willfully disobeying lawful orders or failing to comply with directions of the court of law".

As per **Articles 129 and 215** of the Constitution of India, the Supreme Court and the High Courts, respectively, are courts of record and are empowered to punish for their own contempt.

Section 2 of the Contempt of Court Act, 1971, classified it into two types:

Civil Contempt- Section 2(b) of the Contempt of Court Act 1971 defines civil contempt as wilful disobedience of a court's judgment, decree, direction, order, writ, or any other process of a court, or wilful breach of an undertaking given to a court.

Criminal Contempt- Section 2(c) of the Contempt of Court Act 1971 defines criminal contempt as the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which:

scandalises or lowers the authority of any court, or

prejudices or interferes with the due course of any judicial proceeding, or

interferes with or obstructs the administration of justice in any other manner.

Illustration: **Throwing a shoe or ink at a judge** during court proceedings.

Section 12 of the Contempt of Court Act 1971 provides for simple imprisonment for a term that may extend to 6 months or a fine which may extend up to 2000 Rs or both.

5. Media trial

The media is often regarded as the **fourth pillar of democracy** because it plays a crucial role in informing the public and acting as a watchdog over the functioning of the government.

Although the Constitution of India does not expressly mention freedom of the press, it has been consistently held that the freedom of speech and expression guaranteed under Article 19(1)(a) includes the right to freedom of the press and media. The media has the right and responsibility to disseminate information and news to the public in a fair, unbiased, and responsible manner, enabling citizens to form informed opinions.

However, in the present era, especially in **high-profile cases**, the media often goes beyond its legitimate role. By giving excessive coverage and expressing opinions on ongoing investigations, the media sometimes conducts what is known as a “**media trial.**” Such reporting, even before a matter reaches the court, tends to influence public perception by pre-judging who is the accused and who is the victim. This practice undermines the principle of a **fair trial** and interferes with the administration of justice, which is contrary to the ideals of a democratic society.

Manu Sharma v.State (Jessica Lal Murder Case)¹⁸, The Court acknowledged the role of the media in highlighting injustice but warned that excessive media coverage can influence public opinion and potentially affect the fairness of judicial proceedings.

State of Maharashtra v. Mohd. Ajmal Kasab¹⁹, The Supreme Court observed that extensive media coverage had the potential to prejudice the accused’s right to a fair trial and emphasized the need for media self-regulation.

Nilesh Navalakha v. Union of India (Bhim Koregaon Case)²⁰, The Court reiterated that media trials can damage the presumption of innocence and should not influence ongoing investigations or judicial processes.

Conclusion

This paper has examined that while Article 19(1)(a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression, this right is **not absolute in nature**. The exercise of free speech does not imply unrestricted liberty to say or publish anything without accountability. Every individual’s right must be exercised within a framework that

¹⁸ *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*, (2010) 6 S.C.C. 1 (India).

¹⁹ *State of Maharashtra v. Mohd. Ajmal Mohammad Amir Kasab @ Abu Mujahid*, (2012) 9 S.C.C. 1 (India).

²⁰ *Nilesh Navalakha v. Union of India*, 2021 SCC OnLine Bom 56 (India).

does not infringe upon the rights of others.

Where one person enjoys the right to freedom of speech and expression, another equally possesses the right to reputation, the right to a fair trial, and the presumption of innocence, all of which form an integral part of Article 21. Therefore, a harmonious balance between these competing rights is essential to ensure justice and fairness in a democratic society. It is for this reason that the Constitution provides for reasonable restrictions under Article 19(2), enabling the State to regulate speech in the interests of public order, morality, and the administration of justice. Such a balanced and restrained approach is necessary to prevent the misuse of free speech, particularly in the context of media trials, and to uphold the rule of law.