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Freedom of Speech and Expression as A Moral Right or A Legal Privilege?

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ABSTRACT

“When your freedom is denied, then what other rights are served? Does justice exist?”

Freedom is a fundamental human right; no one has the right to deny it or restrict it for others. Similarly, the expression of one’s own views is a universal right that cannot be curtailed. However, we must not use the freedom of expression to harm others. The law guarantees certain privileges regarding freedom of speech and the restrictions that apply to it. However, these privileges are not absolute and may vary depending on the context, such as hate speech, incitement to violence, or defamatory statements. It is essential to strike a balance between protecting individual expression and safeguarding the rights and safety of others within society. This chapter examines whether freedom of expression should be viewed as a universal moral right or as a legal privilege granted by the state. A moral right suggests that every person is inherently entitled to express their thoughts freely, regardless of government recognition. In contrast, a legal privilege means that free speech exists only within the boundaries defined and enforced by laws, which vary across societies.

The chapter explores both perspectives using philosophical arguments and legal frameworks such as international human rights law. It also analyzes real-world cases involving censorship, hate speech laws, and social media regulation to highlight how legal systems often place limits on expression in the name of public order or morality. The chapter argues that while freedom of expression may originate from moral principles, its practice is often shaped by political, cultural, and legal factors. Understanding this distinction is crucial for defending and responsibly exercising free speech in a diverse and changing world.

Keywords: *Hate speech, Legal right, Freedom, Moral, Privilege.*

INTRODUCTION

Many people believe that freedom of expression is essential to democratic society because it allows people to express their thoughts, question authority, and participate in the exchange of ideas. It is frequently regarded as crucial to the well-being of an open and pluralistic society as well as to individual growth and dignity. But this liberty poses a significant and intricate query: Is the right to free speech a

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legal privilege conferred by the state or other governing body, or is it a fundamental moral right that every human being possesses simply by virtue of their existence?

It follows that freedom of expression is universal, unalienable, and subject to respect independent of regional laws or political structures if it is a moral right. On the other hand, if it is a legal privilege, the rules of a given community may limit, restrict, or even remove it under specific circumstances. This problem has gained significant attention in the modern era due to discussions about hate speech, censorship, national security, and digital communication. We can gain a clearer understanding of whether freedom of expression is a restricted legal construct or a true moral imperative by looking at the philosophical underpinnings of human rights, the role of legislation in defining civil freedoms, and actual instances of its application or restriction.

FREEDOM OF SPEECH AND EXPRESSION

Generally, everyone is entitled to free speech, but the way you choose to express yourself matters far more than the freedom itself. This right will encompass the freedom to express one's thoughts and beliefs, as well as the freedom to receive and share information and ideas without hindrance from the government and beyond national boundaries. The concept of freedom of speech protects an individual's or group's ability to voice out their opinions without fear of censorship, legal action, or retaliation. Since exercising these freedoms entails obligations and responsibilities too, it may be subject to legal requirements like restrictions, or penalties that are necessary in a democratic society, for the protection of public safety, territorial integrity, or national security; to prevent disorder or criminal activity; to protect morals or health; to protect the rights or reputation of others; to prevent the disclosure of information received in confidence; or to preserve the authority and impartiality of the judiciary.

IMPORTANT ELEMENTS

Speech: The act of expressing thoughts, opinions, and ideas orally.

Expression: This is broader than words and include media, gestures, artistic skill, symbolic acts, etc.

Freedom - without any unjust restrictions allowing individuals to communicate freely.

INTERNATIONAL LEGAL FRAMEWORK¹:**(a) Universal Declaration of Human Rights under Article 19**

Everyone has the right to freedom of speech & expression; this right includes freedom to hold opinions without interference and to seek, receive, impart information, thoughts and techniques through any media and regardless of frontiers.

(b) International Covenant on Civil and Political Rights (ICCPR) under Article 19

These covenants asserts that everyone has the right to hold opinions without interference and freedom of expression, including the ability to seek, receive, and impart information and ideas. However, exercising these rights may be limited to uphold others' rights and safeguard public order, national security, morals, or health.

(c) African Charter on Human and People's Rights under Article 9

The African Commission on Human and Peoples' Rights passed resolution 169 on November 24, 2010, aiming to repeal the criminal defamation laws in Africa. The resolution emphasizes that these laws interfere with freedom of expression and hinder the media's role as a watchdog. It calls on States Parties to the African Charter to repeal these laws and adhere to freedom of expression provisions in the African Charter, Declaration, and other regional and international instruments. It also urges States Parties to refrain from imposing general restrictions that violate the right to freedom of expression. The resolution aims to ensure that journalists and media practitioners can practice their profession without fear and in good faith.

(d) European Convention for the Protection of Human Rights and Fundamental Freedoms: Article 10

Everyone is entitled to freedom of speech. This right will encompass the freedom to express one's thoughts and beliefs, as well as the freedom to receive and share information and ideas without hindrance from the government and beyond national boundaries. States may still require license for television, film, and broadcasting businesses in spite of this article.

Because exercising these freedoms entails obligations and responsibilities, it may be subject to legal requirements, restrictions, or penalties that are required in a

¹ UNESCO, *International Standards on Freedom of Expression* (2024), available at: https://www.unesco.org/sites/default/files/medias/fichiers/2024/01/international_standards_on_freedom_of_expression_eng.pdf (last visited on Jun. 7, 2025).

democratic society for the sake of public safety, territorial integrity, or national security.

The American Convention on Human Rights states that everyone has the right to freedom of thought and expression, including the ability to seek, receive, and impart information and ideas. This right is not subject to prior censorship but may be imposed later to ensure respect for others' rights and protect national security, public order, or public health. However, public entertainment may be subject to prior censorship for moral protection. Promoting national, racial, or religious hatred and propaganda for war is considered a crime with legal penalties.

(e) Declaration on Human Rights in ASEAN

There isn't an established regional human rights organization in Asia. However, the ten countries that comprise the Association of Southeast Asian Nations (ASEAN) formally formed the ASEAN Intergovernmental Commission on Human Rights (AICHR) on October 23, 2009, during the 15th ASEAN Summit². Additionally, the organization adopted a Human Rights Declaration that provides the following safeguards for freedom of expression: Everyone has the right to freedom of expression and opinion, which includes the freedom to seek, receive, and disseminate information, whether verbally, in writing, or by any other medium of their choosing, as well as the freedom to hold opinions without hindrance³.

Tristan Donoso v. Panama⁴

It is a right of each person, and it would not be just to restrict it to a group of individuals or those with certain professions. As the Inter-American Court of Human Rights (I/A Court H.R.) emphasized in this case that the American Convention on Human Rights ensures the right to freedom of expression to “*every individual, irrespective of any other consideration; so, such guarantee should not be limited to a given profession or group of individuals. Freedom of expression is an essential element of the freedom of the press, although they are not synonymous and exercise of the first does not condition exercise of the second.*”

² INFLIBNET, “International and Regional Instruments on Free Speech and Expression”, available at: <https://ebooks.inflibnet.ac.in/hrdp03/chapter/international-and-regional-instruments-on-free-speech-and-expression/> (last visited on Jun. 17, 2025).

³ Elizabeth F. Defeis, “Freedom of Speech and International Norms: A Response to Hate Speech” 29 *Stanford Journal of International Law* 57 (1992).

⁴ Inter-American Court of Human Rights, Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (1985), available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_193_esp.pdf (last visited on July 7, 2025).

FREEDOM OF SPEECH IS A MORAL OR LEGAL PRIVILEGE IN INDIA?

Generally speaking, Moral rights are the rights with are connected feelings or emotions of a persons. In India, to uphold the Moral Right of a person in our constitution itself we have inserted the Article 19(1)(a) of COI, 1950. This article will give a voice to express your moral values, thoughts by the way of expression. At that same time, it is legally binding in nature. Similarly, the right to freedom of speech and expression is guaranteed to all Indian citizens by Article 19(1) (a) of the Constitution. The Preamble in our constitution is impliedly denotes the moral right for speech and expression, which makes a solemn commitment to ensuring that every person has the freedom to think and express themselves, serves as the inspiration for this article. Only Indian citizens are eligible for this privilege; foreigners are not. It involves the freedom to use any medium words of speaking, writing, printing, pictures, films, etc., to voice one's thoughts and opinions on any subject. However, this right is not unqualified, and it gives the government the authority to enact laws that place appropriate limitations. It permits the government to create laws that set reasonable limitations, but it is not absolute.

The **following aspects are included** in Article 19(1) (a) as freedom of speech will extend to:

- Freedom of Press
- Freedom of Commercial Speech
- Right to Broadcast
- Right to Information
- Right to Criticize with reasonable restriction
- Right to expression beyond national boundaries
- Right not to speak or right to silence

At that same time, article 19(2), COI, 1950 has exercise certain rights is, however, subject to reasonable restrictions for certain purposes imposed under Article 19(2) **states that** nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, **or avoid the State from making any law, in so far as such law** imposes reasonable restrictions on the exercise of the right conferred **by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public**

order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

In *Romesh Thappar v. State of Madras (1950)*, the Supreme Court (SC) noted that press freedom is the cornerstone of all democratic institutions. Democracy can thrive through the vigilant eye of the Legislature and the care and guidance of public opinion and press. Freedom of speech includes the right to propagate one's views through print media or other communication channels, subject to reasonable restrictions imposed under Article 19(2). The case was one of the earliest cases to be decided by the Supreme Court declaring freedom of press as a part of freedom of speech and expression. All democratic organizations are built on the foundation of freedom of the press and of speech because public education cannot exist without free political discourse.

In *Indian Express v. Union of India*⁵, the Supreme Court has held that the Press plays a significant role in the democratic machinery. The courts have an obligation to protect press freedom and declare any legislation or government measures that restrict it unconstitutional. Publication, circulation, and resistance to pre-censorship are all included in the freedom of the press. In *Sakal Papers Ltd. v. Union of India*, the Daily Newspapers (Price and Page) Order, 1960, and the Newsprint Control Order, which fixed the maximum number of pages, were struck down by the Supreme Court of India. In *Brij Bhushan v. State of Delhi*⁶, the validity of an order imposing pre-censorship on an English Weekly of Delhi was also struck down.

RIGHT TO EXPRESSION BEYOND THE NATIONAL BOUNDARIES

In *Maneka Gandhi v. Union of India (1978)*⁷: The SC held that the freedom of speech and expression is **not confined to National boundaries**. The Supreme Court of India expanded the protection scope of Article 19(1)(a) of the Indian Constitution, affirming that freedom of speech and expression extends beyond territorial boundaries and includes international communication. The court ruled that impounding Gandhi's passport curtailed her ability to speak, receive information, and travel abroad, violating due process. The Court emphasized that

⁵ (1985) 1 SCC 641.

⁶ 1950 AIR 129.

⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, available at: <https://indiankanoon.org/doc/43475503/> (last visited on July 5, 2025).

freedom of speech and expression is exercisable not only within India but also outside, and that procedure under Article 21 must be just, fair, and reasonable⁸. This decision solidified the need for transparency, accountability, and reasoned justification in executive acts impinging on free speech, reinforcing the democratic ideal of democracy based on free debate and open discussion.

In *Shreya Singhal v. Union of India (2015)*⁹, the Supreme Court of India struck down Section 66A of the IT Act, 2000, on March 24, 2015, for violating the fundamental right to freedom of speech and expression under Article 19(1)(a). The ruling criminalized sending “grossly offensive,” “menacing,” or persistent messages causing “annoyance,” “inconvenience,” or “insult” via electronic communication. The court ruled that its vague and overbroad phrasing lacked precise definitions and allowed for arbitrary enforcement and a chilling effect on legitimate speech, factors incompatible with the “reasonable restrictions” permitted under Article 19(2). The bench, comprising Justices Chelameshwar and Nariman, emphasized the distinction between discussion/advocacy and incitement, clarifying that legitimate expression cannot be suppressed unless it directly incites public disorder. The ruling served as a judicial bulwark for digital free speech, anchoring online expression firmly within constitutional protections. However, enforcement remained an issue, with Section 66A being misused in “zombie” prosecutions even years later. In essence, the ruling marks a watershed moment in Indian jurisprudence, abolishing a vague law that threatened free expression and laying down firm benchmarks for all laws that seek to regulate online speech.

RIGHT TO INFORMATION UNDER ARTICLE 19

The freedom of speech includes the ability to receive information as well as the ability to publish, disseminate, and express opinions. The Supreme Court held this in a number of rulings that addressed the right to information in a variety of contexts, ranging from ads that provide citizens with essential information about life-saving medications to sports fans’ rights to watch cricket and voters’ rights to be aware of the backgrounds of political candidates. “One-sided information,

⁸ BarErudite, “Landmark Ruling on Personal Liberty and the Procedure Established by Law: Maneka Gandhi vs. Union of India”, available at: <https://barerudite.org/landmark-ruling-on-personal-liberty-and-the-procedure-established-by-law-maneka-gandhi-vs-union-of-india/> (last visited on Jun. 11, 2025).

⁹ E-Justice India, “Case Review: Shreya Singhal v. Union of India”, available at: <https://www.ejusticeindia.com/case-review-shreya-singhal-v-union-of-india/> (last visited on Jun. 12, 2025).

disinformation, misinformation, and non-information all equally create an uninformed citizenry which makes democracy a farce,” the Supreme Court noted in *Union of India v. Association for Democratic Reforms*¹⁰. The right to transmit and receive information, including the freedom to express one’s beliefs, is a component of freedom of speech and expression.

THE ABILITY TO CRITIQUE

According to the ruling in *S. Rangarajan v. P. Jagjivan Ram*¹¹, Everyone is fundamentally entitled to voice their thoughts on any topic of public interest. Open criticism of government policies and activities does not justify speech restrictions. As detrimental to democracy as it is to the individual is intolerance. In a democracy, everyone is not required to sing the same song.

RIGHT TO SILENCE OR THE RIGHT TO REFRAIN FROM SPEAKING

In the *Bijoe Emmanuel v. State of Kerala*¹² case, three pupils were dismissed from the school for refusing to perform the national anthem in the National Anthem case. But when the national anthem began to play, the kids stood up in defence. On the grounds that singing the national anthem constituted their fundamental responsibility, the Kerala High Court confirmed the students’ expulsion after the validity of the expulsion was contested. The Supreme Court, however, decided that the students had not broken the Prevention of Insults to National Honour Act, 1971, in an appeal against the Kerala High Court’s decision. Furthermore, no law could limit their fundamental freedom under Article 19(1)(a).

SECURITY OF THE STATE

For the sake of state security, reasonable limitations on the right to free speech and expression can be put in place. It is important to distinguish between public order and security of state. The term “security of state” refers to severe and exacerbated types of public unrest, such as rebellion, insurrection, and war against the state (or a portion of it). *Union of India v. People’s Union for Civil Liberties (PUCL)*. In order to combat the widespread instances of telephone tapping, the People’s Union for Civil Liberty filed a public interest lawsuit (PIL) under Article 32 of the Indian

¹⁰ 5 SCC 294 2002.

¹¹ (1989) 2 SCC 574.

¹² AIR 1986 3 SC 615.

Constitution in the matter of *People's Union for Civil Liberty v. Union of India*¹³, Section 5(2) of the Indian Telegraph Act of 1885 was contested as being invalid.

FRIENDLY RELATIONSHIP WITH STATES

The Constitution (First Amendment) Act of June 18, 1951, introduced a new ground for limitations on freedom of speech and expression under Article 19(2). This clause, unique to India, was introduced by Prime Minister Nehru in response to Supreme Court decisions that narrowly interpreted permissible speech restrictions, limiting government control over politically sensitive propaganda. The primary objective was to curtail malicious or false propaganda against nations friendly to India, as highlighted by concerns over Syama Prasad Mookerjee's provocative statements regarding Pakistan, which threatened post-Partition diplomatic stability. For a restriction to be valid, it must be enacted through proper legislation, clearly targeted, and reasonably connected to an actual risk of harm to diplomatic ties. Though rarely invoked, this provision aligns with Article 51's Directive Principles, which call for maintaining "just and honorable relations between nations," reflecting the framers' intention to balance free expression with India's global responsibilities. Incitement to an offense - The Constitution (First Amendment) Act of 1951 added this ground as well. Additionally, the Constitution forbids anybody from saying anything that encourages others to commit crimes.

In response to the Supreme Court's ruling in the Romesh Thapar case, this ground was introduced by the Constitution (First Amendment) Act, 1951. Public order is distinct from law and order and state security, according to the honourable Supreme Court by *Kishori Mohan v. State of West Bengal* stating that 'Public order' implies a feeling of serenity, safety, and peace among the peoples.

*Om Prakash v. Emperor*¹⁴ Public order is disrupted by anything that violates public tranquilly. However, public order is not always disrupted by simple criticism of the administration. A law, which punishes the deliberate utterances hurting the religious feelings of any class has been held to be valid and reasonable restriction aimed to maintaining the public order.

¹³ AIR 1997 SC 568.

¹⁴ AIR 1948 Nag, 199.

DECENCY AND MORALITY

The Indian Penal Code's sections 292 to 294 give examples of limitations on the right to free speech and expression based on decency and morality. For example, they forbid the sale, distribution, or display of offensive language. As times change, so do the moral standards. The Supreme Court affirmed the conviction of a book seller who was charged under Section 292, I.P.C., for selling and storing the book *Lady Chatterley's Lover* in the case of *Ranjit D. Udeshi v. State of Maharashtra*¹⁵.

The Supreme Court cleared the author and publisher of the Bengali novel *Prajapati* in *Samaresh Bose v. Amal Mitra* (1985), concluding that vulgarity differentiates from obscenity. Although the Court acknowledged the novel's "slang and unconventional words," it determined that they were non-obscene because they did not "deprave, debase, or corrupt" readers, which is a crucial criteria under Section 292 of the IPC. It also underlined the importance of reading the work as a whole rather than just specific portions.

In *K.A. Abbas v. Union of India* (1970)¹⁶, the Court upheld film censorship's constitutionality, stating that prior restraint under Article 19(2) is permissible to protect public morality and decency. The court emphasized the need for clear, non-arbitrary standards to balance creative freedom with societal interests. Both cases emphasize the holistic and contextual evaluation of literary works and visual media, including films.

CONTEMPT OF COURT

A person cannot violate the constitution's guarantee of free expression by disobeying the court. Section 2 of the Contempt of Courts Act of 1971 defines the term "contempt of court." According to the Act, civil or criminal contempt are referred to as contempt of court. The Supreme Court upheld the High Court's ruling in *E.M.S. Namboodripad v. T.N. Nambiar*¹⁷, finding Mr. Namboodripad guilty of contempt of court. The Chief Minister of Jammu and Kashmir was charged with contempt in *M.R. Parashar v. Farooq Abdullah*¹⁸. However, the Court rejected the petition due to a lack of evidence.

¹⁵ AIR 1965 SC 881.

¹⁶ Legal Service India, "Judicial Deliberations on Cinematic Expression: K.A. Abbas v. Union of India", *available at*: <https://www.legalserviceindia.com/legal/article-17417-judicial-deliberations-on-cinematic-expression-k-a-abbas-v-s-union-of-india-1970> (last visited on July 10, 2025).

¹⁷ AIR 1970 SC 2015.

¹⁸ 1984 2 SCC 343.

DEFAMATION

Any comment that disparages the reputation of another is prohibited by Article 19 clause (2). Sections 499 and 500 of the Indian Penal Code now include the crime of defamation. The freedom of speech is not unqualified. It does not imply that one is free to damage the reputation of another, which is protected by Article 21 of the Constitution. Even though telling the truth is a defence against defamation, it would only be effective if the statement was made “for the public good.” And the judiciary is responsible for evaluating that factual issue.

CONCLUSION

As a result, after analyzing several precedents, the court of law concluded that the legislature balanced moral and legal rights while passing the statute. We will look at the preamble and Article 19(1)(a) of the Constitution of India. It states that everyone has the right to free speech and expression, but it is regulated or limited to some level in order to maintain public morality and decency, the dignity of others, national security, and peace. As a result, the legislature’s objective in this article is clear: your moral right to freedom to express yourself is safeguarded by legal rights. So, I conclude by asserting that moral rights are intertwined with legal rights. Without legal protection, moral rights can be easily infringed by others, causing instability and disrupting the state’s ability to maintain peace.

