



CRITICAL ANALYSIS OF FREE SPEECH UNDER THE CONSTITUTION OF INDIA : A CONTEMPORARY OUTLOOK

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CHAPTER I: INTRODUCTION

1. INTRODUCTION

India's independence constitution's essential rights sec. The contest included freedom of expression between 1947 and 1950. This essay will illustrate how Indian form designers were motivated by universal and special concerns. These reasons show free speech's local and worldwide history. These artists discussed free speech and its cultural and economic constraints. This complicated process involved a lot of back-and-forth as proponents of a broad right to free speech defended themselves against several previous erns that may have advocated significantly curtailing or abandoning free speech and expression.¹ This sophisticated approach required much back-and-forth. This pivotal period's free speech struggles shaped constitutional history. India's post-colonial republic has promoted free expression for 60 years.

Although one argument predominated, both universal and particularistic arguments helped popularize free speech and a fundamental right to free expression. The paper's main point. Demonstrate that generic comments gained popular favor more than specialized ones. Colonial reasons backed free speech. Nationalists and intellectuals advocated for free speech. These secondary notions were often combined with local and distinctive contexts.

¹ Solji J. Sorabjee, *Freedom of Expression in India*, 47 IJLJ 3 (1996).

As the architects of Independent India created the rights clauses, the urgent social, political, and economic circumstances of mid-20th-century India severely undermined universal grounds for free expression. Responding, they limited rights. Crime and violence prevented voting. This does not mean universal forces backed free speech or particularistic reasons constantly opposed it. It's complicated. Free speech in India is also supported by special grounds.

India is one of the few Asian nations with a tradition of free speech and leadership. South Korea and Taiwan are constitutional democracies. Singapore and Malaysia, despite their developed economies, continue to fight constitutional democracy (including the right to free speech). It's Chinese-like.

Free speech is under discussion. The "argument from the truth," "argument from democracy," and "argument from self-fulfillment" are acknowledged by Frederick Schauer, a renowned contemporary philosopher (or autonomy). The argument from the truth fosters open discussion, free exchange of ideas, freedom of investigation, and freedom of criticism, which uncovers facts. Schauer draws from Mill, Popper, and Milton.

Today's democratic view is that freedom of expression is crucial in a society where only the people can make life-changing decisions. Public conversation and government criticism are favored. Aristotelian pleasure and the ideal life emphasize self-fulfillment via intellectual advancement. This rational purpose requires language. This stance supports free speech regardless of societal benefits. Eric Barendt has added a fourth issue, government mistrust, to the three. Barendt thinks Schauer's logic illustrates how communication may fight governments' inclination to censor radical or disruptive ideas. This brief assessment of current free speech law's conceptual foundations sets the stage for India's free speech discussion. This summary prepares readers. As we'll discover, most eventgoers cared about efficiency. Others had backgrounds that made them aware of intellectual and moral challenges beyond their immediate needs. They occasionally justified words with reasoning. They also gave general and regional factors. Literature seldom gives these arguments. In diverse democracies, free speech protects minorities.

Democratic and civilized governments obey the law. Eliminating discretionary subjectivity maintains the law and equalizes people and institutions. No one is above the law. Courts emphasize law. The Indian Constitution mandates judicial enforcement of law worldwide. Democracy's third and most important pillar is the judiciary. The judicial system must maintain the courts' dignity and authority to fulfill its duties.

The Indian Constitution's architects believed judicial dignity was fundamental to democracy and the rule of law. The judiciary may safeguard the court's majesty and consider contempt charges. Contempt of court may be punished by the Court of Records. India may have embraced English contempt laws. The Privy Council declared in 1883 that India's Chartered High Courts might conduct summary contempt if judges or court members were scandalized. Indian law gave the Court of Records contempt powers. This assured Court of Record functioning. Indian Supreme Court and State High Courts may penalize contempt under Secs. 129 and 215. Secs 129 and 215 allow the Supreme and High Courts to penalize contempt. This authority is apart from other hate statutes.

The International Covenant on Civil and Political Rights (ICCPR) guarantees similar rights, but they are subject to two main restrictions: respecting others' rights or reputations, and protecting national security, public order, public health, or morality. These legal limitations are crucial. Art. 9 of the African Charter on Human and Peoples' Rights, Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 13 of the American Conventions on Human Rights, the ASEAN Human Rights Declaration, and other regional human rights treaties protect free speech.

Book publishing, radio broadcasting, movie theaters, and television have increased the importance of free speech and expression. New issues like preserving Indian culture and values raise the question of how far one may use their right to free speech and expression.²

1.2. REVIEW OF LITERATURE

Articles like *Balram Pandey's* work³ tries to provide a critical assessment of these works and attempt to analyse the free speech provision in the Indian Constitution, providing a guide to how and why this clause has evolved and what its relevance is. The study explores critically the evolution of Art. 19 of the Constitution of India in the Constitutional Assembly, which does not clearly mention the freedom of the press, unlike the First Amendment of the United States Constitution, which does. In addition, the Supreme Court's interpretation of the free speech clause is explored. The possibility of necessary discussion in jurisprudence goes hand in hand with the possibility of conceptual analysis; if one determines that one is impossible or unsuitable while discussing law, then the other is likely to be as well. A defense of conceptual analysis in jurisprudence must certainly follow Raz's example, and in the same vein, this study aims to evaluate the numerous dimensions of free speech: Philosophy of Speech — Freedom of the Press — Contempt Power — and Censorship. Raz's argument presents a concept of "necessity" that is decidedly not Platonist, but is instead firmly rooted in a community's way of life or knowledge of itself. In this sense, paradoxical-sounding "essential truths that change throughout time" is possible. Yet, the author believes that considerable effort has to be done in expressing and explaining the conclusion that there is only one idea of law.

Also, according to *David Weissman*⁴, a fundamental component of social ontology is the acknowledgment of the damage that may be caused by unrestricted speech. The idea that suffering is confined to individuals is central to the atomist ontology.

The value of free speech as discussed by *Martin H. Redish*⁵, has only one legitimate aim that the constitutional protection of free speech serves, and he refers to it as "individual self-realization." This term was chosen in large part due to the ambiguity it possesses: it can be interpreted to mean either the development of the individual's powers and abilities — an individual "realizes" his or her full potential — or to refer to the individual's control of his or her own destiny through making decisions that affect the course

² Srinivas v. State of Madras, AIR 1931 Mad 70 (India).

³ Balram Pandey, *Is It the Problem of 'Necessity': The Freedom of Free Speech and the Constitution of India?*, SSRN (Jan. 29, 2023, 10:04 PM) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3706727

⁴ David Weissman, *Free Speech*, 27 *Metaphilosophy* 339 (1996).

⁵ Martin H. Redish, *The Value of Free Speech*, 130 *Univ PA Law Rev* 591 (1982).

of his or her life — an individual "realizes" the goals in life that he or she has set for themselves in the context of their own life. When he used the term, he intended for it to be interpreted in both of these ways at the same time. As a result of this, he had chosen it above the many other options, such as "liberty" or "autonomy" on the one hand, and "individual self-fulfillment" or "human progress" on the other.

*Kent Greenawalt*⁶, in his Art. sets out what he considers to be the most important grounds for free speech, with the concept of "free speech" intended to include both the ability to speak freely and the freedom to publish one's ideas. These are the arguments that one may use in order to evaluate whether communications fit inside a political or legal concept of free speech, as well as how extensive the protection of communications that are protected ought to be. These kinds of evaluations are carried out as part of a more extensive research that focuses primarily on the manner in which various linguistic practices influence the way in which principles of free speech might be applied to the criminalization of conduct. This research endeavors to investigate the appropriate limits of freedom of expression by focusing on communicative behaviors that teeter on the edge of being protected by the First Amendment, particularly solicitations to commit crimes and threats.

The alteration of our concept of the freedom of expression guaranteed by the First Amendment is the subject of *Francis Canavan*⁷ book's discussion of the topic. It is becoming more accepted as common knowledge that it offers nearly unrestricted latitude for anyone to express themselves. This book was written with the intention of putting this viewpoint to the test by encouraging readers to question why we have the right to free speech and what the author hopes to achieve via it.

1.3. NEED AND OBJECTIVE OF THE STUDY

The study focuses on bringing out the reality of free speech that is present in our society and how the Supreme Court has been dealing with the issues that are coming up with the violations of free speech. The objectives of this study are:

- i. To understand the concept of free speech
- ii. To analyse the free speech in the current scenario
- iii. To study the judicial pronouncements dealing with freedom of speech
- iv. To analyse the issues that come up with the violation of free speech

1.4. RESEARCH QUESTIONS

1. What is the scope of freedom of speech?
2. To what extent has the free speech pertinent in our Constitution of India?
3. What are the issues that come up with Free speech?
4. What is the conundrum of Supreme Court in relation to Art. 19 of the Constitution of India?

⁶ Kent Greenawalt, *Free Speech Justifications*, 89 CLR 119 (1989).

⁷ Francis Canavan, *Freedom of Expression: Purpose as Limit*, 181 (Carolina Academic Press and The Claremont Institute for the Study of Statesmanship and Political Philosophy) (1984).

1.5. RESEARCH METHODOLOGY

The research paper utilises the Doctrinal and Analytical Research Methods, where we will focus on the law rather than the law in action and also involve critical thinking skills and the evaluation of facts and information relative to the research being conducted.

This study is based mainly on the analysis of the primary data, i.e., Law Commission Reports, The Constitution of India 1950, The Constituent Assembly Debates, etc. and evaluating how the current scenario affects the free speech. The researcher here, utilises and analyses the primary source of data to come up with an answer as to why the disparity of sentencing exist in India. Also, this study will focus on the Constitutional Aspect of the issue at hand by focusing on the law aspect rather than on the law in action.

1.6. SCHEME OF CHAPTERIZATION

Chapter I: Introduction

This Chapter provides an overall view of what the topic is about, the objective and need, and research questions.

Chapter II: Evolution of free speech

This chapter basically elaborates the historical development of “free speech” from the ancient times of 431 BCE to the current scenario of free speech in our Constitution of India.

Chapter III: Judicial Decisions and Its Conundrum

This chapter deals with the views of Supreme Court of India and High Courts on the matter of Art. 19 and how the Court is trying to solve the contemporary issues that come up with the violation of Art. 19.

Chapter IV: Free Speech in Current Scenario

This chapter elaborates on the context of free speech in the present times and how it is being mis utilized by the politicians and the media people. It also mentions the issues that come up with guarantee of free speech to the individuals.

Chapter V: Conclusion and Suggestions

The final chapter finally gives the research study its conclusions and emphasizes the most important research findings with certain suggestions.

CHAPTER II: EVOLUTION OF FREE SPEECH

In democracies, the right to free expression is often viewed as one of the most essential fundamental safeguards. It is not only enshrined in international human rights treaties, but also in the constitutions of the great majority of modern nations. It is commonly referred to as a "first-generation right," which refers to a right that protects people against governmental intervention. It is believed to be fundamental to liberal policies, either in the sense that it is a prerequisite for a liberal government or in the sense that it is strongly

tied to liberal principles such as autonomy, dignity, and freedom. In any case, it is a prerequisite for the establishment of a liberal government. In any event, it is universally recognized as a crucial element of liberal political systems. Concurrently, there is a great deal of debate regarding the breadth of what is considered to be speech, the types of expression that should be protected, the significance or weight that should be accorded to the protection of speech relative to other rights or policy concerns, and the reasons that support the protection of speech. Particularly, there is a great deal of discussion about the scope of what is regarded to be speech, the forms of expression that should be protected, and the importance or weight that should be accorded to each. These disagreements have significant political and legal significance, which are reflected in the varying degrees of legal protection accorded to various sorts of speech around the world.

To explain why (and if) activities that do not contain speech should be protected in a way separate from (or in addition to) others is the greatest obstacle that must be overcome in the subject of philosophy. This is the most formidable impediment that must be overcome. When we defend the right to free speech, we give speech more weight than non-verbal actions. The normative investigation of the grounds for retaining speech gives light not only on what qualifies as communication, but also on what defines speech. This is due to the fact that communication may be characterized in several ways. For an action to be considered speech, it must first have a communicative goal and then contribute to the development of the principles that provide the basis for the protection of speech. Thus, the selection of the rules that regulate the protection of free speech has an effect on the sorts of actions that are considered "speech." This is due to the fact that choosing the principles affects the kind of behaviors deemed "speech." Hence, the question of what constitutes speech and the issue of what constitutes protected expression are often intertwined, at least within the framework of legal discourse.

By tracing the beginnings of the notion, we may easily see the cornerstone of free speech.

2.1. ORIGINS OF FREE SPEECH

Nonetheless, the history of free speech predates the First Amendment and the Enlightenment. Ancient foundations of this privilege demonstrate this. The history of free speech clearly shows that the ecology needed for this ideal to exist and flourish in reality is considerably more complicated than merely shielding citizens from the state. Free speech has a long history. The long history of free speech proves this. The origins of free speech are old, substantial, and widespread. In 431 BCE, Athenian leader Pericles praised free discussion and social tolerance as essential to democracy. Democracy requires these qualities. Ibn al-Rawand was an irreverent freethinker in the ninth century CE Abbasid Caliphate. He used the intellectually stimulating Abbasid Caliphate to reject prophecy and religious books. He exploited the intellectually stimulating Abbasid Caliphate. In 1582, Dutchman Dirck Coornhert called "forbid magnificent literature in order to conceal the truth" "tyrannical." In 1766, Sweden became the first country to guarantee press freedom, and in 1770, Denmark abolished all censorship. 1766 saw these achievements.⁸

⁸ David S. Bogen, *The Origins of Freedom of Speech and Press*, 42 Md. L. Rev. 429 (1983)

Free expression usually starts an entropic process. Example: Example: No matter how educated they are, political authorities will eventually decide that freedom of expression is too high. This happens regardless of political regime. Oligarchs who hated democracy overthrew ancient Athenian democracy twice. Democratic sympathizers and dissidents were eliminated. Medieval Islam had tougher apostasy and blasphemy laws, which suppressed the most daring and dangerous freethinking. Coornhert fled the Dutch Republic in the 16th century as his books were constantly outlawed. Sweden and Denmark quickly reclaimed control of the printing presses, ending their brief press freedom experiments.

2.2. EVOLUTION OF FREE SPEECH IN INDIA

It is now common knowledge that before the introduction of European colonial power, there was no such thing as an "Indian nation" in the geographical and political sense in which we use the word today. This is the understanding that has gained widespread acceptance in recent years. Although while human civilization has been present in the area that now comprises contemporary India's national boundaries since prehistoric times, no one power has ever been able to exercise control over the whole region's vast territory. The first known Europeans to set foot in India were Portuguese explorers who arrived in the year 1510. The French and the British eventually followed in their footsteps, doing so sometime around the middle of the 17th century. Even at the height of its power, the Mughal empire, which was the last of the major pre-European empires to exist on the Indian subcontinent, was primarily concerned with matters of business, trade, and associated issues. This was because the Mughal empire was the last of the major pre-European empires to exist on the Indian subcontinent. Constitutional governance, in the sense that it is often understood in the modern age, did not exist throughout any significant portion of the area that is currently inhabited by the Indian nation at any point in time.⁹

In the end, the British were successful in establishing themselves as the most dominant power in India. Yet, the colonization attempts were directed by a private business from the very beginning. This firm was known as the British East India Company. The British government granted the East India Company a monopoly on all English commercial activity in India, and the early focus of the firm was entirely on commercial endeavors. This was made possible by the monopoly. Yet, by the late eighteenth century, it had adapted the coercive, administrative, and financial procedures that were characteristic of empires operating during that time period. It also increasingly assumed more of the tasks of sovereignty over the course of time, such as the collecting of revenues, the signing of treaties or conflicts with regional potentates, and the exercise of judicial power, among other things. At the same time, the exploitative and predatory behavior of the East India Company began to produce rising levels of anger, which eventually led to what Indian nationalists would later refer to as the First War of Independence in 1857. This conflict was fought against the British colonial government. The response that the British administration came up with was to officially take control of the governance of India the next year, in the year 1858. As a consequence of this, India remained under to

⁹ Arun K. Thiruvengadam, *The Evolution of the Constitutional Right to Free Speech in India (1800-1950): The Interplay of Universal and Particular Rationales*, SSRN (Jan. 29, 2023, 10:04 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2470905.

official and direct colonial authority throughout the vast part of the nearly 90 years leading up to its declaration of independence in 1947.

The British government did not waste any time after formally gaining control of India in the year 1858; they immediately began developing and implementing regulations that "formed India into a coherent [political] entity." This, in turn, led in the construction of a location that Indian social and political activists started to claim, and finally started to inhabit. This was especially the case with the founding of the Indian National Congress in 1885, which would go on to become the most powerful nationalist party working for complete independence.

2.2.1 Emergence of newspapers and Rammohan Roy's views (1800-1857)

Almost a century ago, Indian scholars and activists experimented with political identity and constitutionalism. This shows how early Indian philosophers valued the abstract idea of free speech. The printing press and the first book published in India in 1778 created that social class. These devices printed and distributed newspapers in English, Bengali, Arabic, and Marathi. Tilak, Gandhi, and Ambedkar, who started various newsletters in the 20th century to engage with their growing followers and undertake mass-based campaigns as part of the emerging nationalist movement, employed newspapers and the written word successfully. Newspapers and newsletters spread information, ideas, and education throughout the late 18th and early 19th centuries. As Western-style schools in local languages opened, their effect increased. Newspaper and newsletter founders launched several of these organisations. The growing Indian intelligentsia, which helped liberate the country, made press and speech freedoms important.

By focusing on Rammohan Roy (1772-1833), the "creator of modern India" and "first liberal Indian," free speech and the press demonstrate their importance. Roy learned various Indian languages and traditions from his wealthy landowner family. The East India Company taught him English and other European languages. He created an English-speaking boys' school in 1816. He established a Bengali-language journal in 1821. He then started a second Persian paper.¹⁰

Roy was noted for working with the British to reform Hinduism's most backward practices. He also championed a free press and constitutionalism, as is now being acknowledged. Roy was "India's first consciously modern political theorist," according to historian C.A. Bayly, who helped establish constitutional liberalism in India. Political movements outside motivated Roy's interest in Indian political transformation. He celebrated the Spanish, Portuguese, and Latin American revolutions in Calcutta Town Hall between 1820 and 1823. He backed South American independence from Spanish rule and any successful global campaign against tyranny. Roy was really cosmopolitan and universalist. "All of Roy's important political arguments were strongly related to British and European discourse on analogous subjects," says Bayly.

This Art. considers Roy's opinions on India's free speech and his reasoning. Roy and other newspaper editors and public officials believed free speech was essential to civic society's liberal outlook. These Indian newspapermen used Blackstone, Ferguson, Stewart, and Bentham to establish the press as the foundation of

¹⁰ Pradyumna K. Tripathi, *Free Speech in the Indian Constitution: Background and Prospect*, 67 YLJ 384, 390 (1958).

free society. Comparative trends and universal ideals definitely influenced civil rights notions in India. These arguments connect to the truth and self-fulfillment arguments at the beginning. As their notion of constitutionalism was quite different from ours, Roy and his contemporaries did not argue for democracy.

Indian free speech advocates also used local and contextual reasons. One event may illustrate these ideas. Bengal's 1824 press legislation required licenses that might be cancelled at the government's discretion. Roy and other prominent Bengalis affected by the law petitioned the government. After failing to get a positive response, Roy's team appealed directly to the King of England, which may have been the first Indian-British encounter. These two monuments argue for free speech and the press using local, contextual reasoning that would sound servile and respectful to contemporary readers. Roy believed that India's press freedom spread reason and information and helped the government by creating a reading populace. This alluded to Indian illiteracy. Roy and his colleagues stressed the Indian press's greater educational role. Roy skillfully argued that even the "cruel and capricious" Mughal emperors had permitted some freedom of speech and information by hiring news-writers and correspondents to tell the people of important public topics because they realized the beneficial governance advantages. The statues boldly claimed that a free press was needed to expose government abuses. This radical argument claimed that the government's greatest interest was to reveal these acts so they could be dealt with, enhancing the people's allegiance to the government. Considering the petition's nature, it's probable that an attempt was made to reduce the benefit to those exposed to such arbitrary government policies. Roy's example supports this concept. He cited the late 18th-century "enlightened inhabitants" of Canada. "Discovering that their rights and privileges had been secured, their worries responded to, and their complaints redressed by the British government," Roy said, the Canadians opposed every US attempt to earn their devotion.

Roy's strategy for press freedom is to renounce radicalism by stating that what is wanted is not an absolute right. Roy initially allayed concerns that allowing Indians free speech and press would cause unrest. "India's elegant and commercial class had already demonstrated its implicit commitment to the British connection by substantial investments in land and companies around Calcutta, East India Company bonds, and British financial instruments," he said. To show his "loyalty," Roy suggested that Indians who "excite hatred in the minds of the Natives of India against the English nation" and "might seditiously attempt to excite hostilities with neighbouring or friendly states" be punished under Britain's freedom of the press. The Constituent Assembly debated these colonial restrictions on Indian free expression.¹¹

2.2.2 Sedition laws, the trials of Tilak, Besant, and Gandhi, and stricter limits on press and free expression all occurred during this period (1857-1947)

In 1870, the Indian Criminal Code included sedition sec. 124A. The sec. was meant to be included in the 1860 Indian Criminal Code, but it was left out for reasons that are still debated. James Fitzjames Stephen spearheaded the 1869 amendment that made this sec. effective in 1870. Sec. 124A originally defined sedition as follows: Whoever by words, either spoken or intended to be read, or by signs, or by visible representations,

¹¹ *Ibid.*

or otherwise, excites or attempts to excite feelings of disaffection against the Government established by law in British India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment up to three years, to which fine may be added. The crime was non-bailable and cognizable, demonstrating its seriousness. The new law first targeted nationalist newspaper editors. The editor of Bangobasi, a renowned Bengali daily, Jogendra Chandra Bose, was the first high-profile trial. Bose criticized the "Age of Consent" Ordinance, which he believed was imposed on Indians, and British colonialism's impact on the Indian economy. Bose's editorial apology quashed the claims. As we will see in the following part, some newspaper editors and political personalities opposed claims, resulting in additional legal changes.¹²

The early nationalist movement is significant. In 1900, the Indian National Congress, founded by an Englishman in 1885, was a "debating assembly" of well-meaning but useless intellectuals. Imperial diplomacy gave the Moderates some Native American self-government. Bal Gangadhar Tilak (1856-1920) and others radicalized the Congress into a national movement. Many were charged with sedition by British authorities. Like Roy, Bal Gangadhar Tilak published Kesari and Mahratta. As expected, the authorities noted Tilak's confrontational writing style over time. Tilak's three historic sedition trials invigorated the nationalist movement and gained him national renown against the government's attempt to restrict dissent and disruption. Tilak was prosecuted with sedition in September 1897 for writing in Kesari in June 1897 that Indians should remember their predecessors and critically assess their current position. Tilak was prosecuted with sedition when two Indians assassinated two English colonial administration officials on June 22, 1897, despite his long-time advocacy of self-governance. The government maintained in court that Tilak's speech incited Indians to overthrow British control, which happened. Tilak wrote to condemn the British and foster Indian pride. He denied that his writings incited violence. Tilak's lawyer cited the provision's original drafter's assertion that criticism without a clear purpose to "create the use of force" does not breach the clause.

Judge Strachey urged the jury to reject this interpretation and adopt a far broader meaning of "disaffection" as just the absence of connection and "hate, antagonism, dislike, hostility, contempt, and every sort of ill will to the government." He called it "totally immaterial" whether the essay upset anyone. This second remark strengthened the rule's ability to restrict government-banned publications. Judge Strachey convicted and imprisoned Tilak for 18 months. Indian outrage and international backing freed Tilak after a year in jail. In 1898, the colonial authorities altered Sec. 124A to accommodate Judge Strachey's expansive reading. Hate and loathing accompany "discontent." "Disloyalty and any sentiments of hatred" constitute disaffection. The Indian Criminal Code now prohibits "promoting hatred between various communities" and "statements detrimental to public damage" under 153A and 505.

Even if the British constitutional tradition had grown more flexible and such restrictions did not exist, many British Parliament speakers underlined the particularist reasons why these adjustments were required in India before Act V of 1898. Avoiding Tilak's attorneys' "abuse" of legal voids. Mr. Chalmers defended the altered bill: Language may be accepted in England but hazardous in India because it is more likely to be transformed

¹² Vineeth Krishna E, *Freedom of Speech in the Historical Constitutions*, Constitution of India: Read, Search and Explore, (Feb 2 2023, 9:30 PM)

into action than harmless gas. Bengal lieutenant governor Sir Alexander Mackenzie supported the amended bill: The 1870 act was reasonable and should be definitive, and its divergence from English seditious libel law infuriated many. I'll assert these claims. First, that the law of England, which was developed by judicial decisions to meet the needs of a homogeneous people directly interested in and participating in its own government, is not necessarily a standard to which the law of India should strictly adhere; and second, that the country has changed so drastically since 1870 that what was adequate then may not be adequate now. He gave further specific reasons for the amendment's tougher laws. Sedition laws that work for a country ruled by its own ethnicity and religion may not work for a nation ruled by a foreign power and inhabited by people of multiple races and religions.¹³

Hence, India's variety prompted British speech restrictions. As we will see later, minority organizations argued that India's diversity required a strong free speech guarantee to prevent the government from silencing minority concerns. Gerald Barrier's in-depth analysis of the British colonial government's suppression of publications in India indicates a shift in colonial policy around the turn of the century. Barrier found that the colonial government filed few charges u/s 124A and 153 of the Indian Penal Code between 1870 and 1900. The colonial government seized 8,000–10,000 volumes and banned 2,000 magazines from 1907 until 1947. Several causes changed colonial policy. The nationalist movement's printed materials contributed to this. As said, Indian nationalist leaders were inspired by Japanese and Italian nation-building. By 1905, India had the technology to reach a big audience. Since publication was cheap, hundreds of printing houses created more polemical and patriotic books and pamphlets. By 1905, 1,359 newspapers had 2 million subscribers, outperforming books and pamphlets. These publications were circulated over the Indian subcontinent in at least twenty vernacular languages, which is even more amazing. Sir Alexander Mackenzie used these "changes since 1870" to justify the Amendment Bill of 1898's sedition amendments. This changed background must be considered when interpreting the sedition law changes and the large variety of press freedom legislation.¹⁴

In 1909 and 1916, Tilak was charged with sedition. He was found guilty and sentenced to six years of severe prison in the previous case. Mohammed Ali Jinnah's brave defense freed him in the final trial. Tilak and Annie Besant (1847-1933) founded the Indian Home Rule League, modeled after Irish nationalists, the same year. In her early fifties, Besant joined the Indian nationalist cause and moved to India, where she became its national president in 1917. Besant also linked the Indian nationalist movement to progressive organisations in Britain, especially the Labour Party. 1919 sedition conviction for Besant. Mohandas K. Gandhi (1869-1948) had transformed the Congress into a popular movement by 1920. Gandhi communicated with his followers via two weekly periodicals. Gandhi published newspapers in South Africa to stay in touch with his people.¹⁵ After returning to India in 1914, he founded two weekly newspapers, *Young India* in English and *Navjivan* in Gujarati. He also edited *Indian Thinking* and *Harijan* to spread his ideas.

¹³ *Ibid.*

¹⁴ *Supra* Note 12.

¹⁵ *Supra* Note 10.

2.2.3 Free Speech under Indian Constitution

The Indian Constitution grants people freedom of expression, notwithstanding some restrictions. In this Art., we will briefly examine how previous constitutional papers, known as historical constitutions, reflected freedom of expression, focusing on the constraints on the right. The Declaration of Independence, US Constitution, and Bill of Rights are older constitutional documents. The US, Canada, and UK have older constitutions.

Freedom of speech was usually controlled under earlier constitutions. We noticed. "Accountable for abuses, which they may commit in the exercise of this right, in instances and in a manner that the Parliament may define," it safeguarded free expression. Freedom of expression originally appeared in the 1895 Constitution of India Bill. The constitution included this in 1948. It allowed people to share their ideas "responsible for any legal transgressions they commit while using this liberty. "

"Public order" and "morality" underpin the Indian Constitution's public speech bans. The Commonwealth of India statute was originally passed in 1925 with these lines. This Legislation spawned the Nehru Report, Karachi Resolution, Gandhian Constitution for Free India, States and Minorities, and Socialist Draft C. these. "Public order" and "morality" prohibitions curtailed speech in most of these constitutions. The 1931 Karachi Resolution and Gandhian Constitution followed this Bill. Gandhian Constitution followed this Law. M.N. Roy gave everyone freedom of expression except "enemies of the people."

The Indian constitution was based on several books. "Public order" and "morality" constrain free speech in these works. Contributions, committee reports, and the Constitutional Adviser's Draft Constitution are included. The Constitutional Adviser's Suggested Constitution starts this collection. The Constitutional Adviser's Proposed Constitution is last. The Constitutional Adviser's proposed constitution is the best.

The Drafting Committee's initial constitution replaced "public order" with "morality." The Constituent Assembly's final Constitution included this change. The First Amendment's 1951 reinstatement of "public order" as a free speech constraint is noteworthy. The Constitution triggered this. The Constitution made this happen. This happened a year after the Constitution became law.

Reading India's constitutional texts shows that freedom of expression was never considered a birthright. These items show. This is indisputable. Also, balancing free speech and avoiding abuse is an ongoing struggle. This problem emerges because balancing goals is incompatible. Balance is conflicting, which causes conflict. Balance goals collide, causing conflict. Balance aims are incompatible. When restrictions were abolished, reinstated, and added to India's constitution, this problem was very pressing. This time saw constitutional restrictions abolished, revived, and added. Several constitution limits were abolished, made permanent, and introduced during this period. Indian citizens have free speech rights u/a19. Six speech provisions remain in Art. 19 of the Indian Constitution. They are:

- Freedom of expression and speech;
- Right to peacefully gather without armaments;

- Freedom to create organizations or groups (or cooperative societies)
- Freedom to roam freely within India's territory;
- Freedom to dwell and establish anywhere on the territory.
- Freedom to practice or engage in any profession, employment, trade, or business.

Art. 19(1)(a) defines "freedom of speech and expression" in India. "Freedom of thought, speech, religion, faith, and worship, which has been included as a human right or notably a fundamental right u/a19 (1) (a) of the Constitution of India" is the foundation of democracy. The UDHR, ECHR and Fundamental Freedoms, and ICCPR acknowledge the right to free speech and expression, together with national constitutions and legislation. In democracies, freedom of speech is frequently debated, and law and public order are limited for peace and security.

CHAPTER III: JUDICIAL DECISIONS AND ITS CONUNDRUM

Art. 19(1)(a) of the Constitution of India recognizes the right to freedom of speech and expression as one of the basic rights that citizens of India are entitled to. The right to express one's views verbally, in writing, in printed form, via pictures, or in any other medium is what we mean when we talk about freedom of speech. Given the significance of this privilege in a democratic system, any effort to realize democratic ideals would amount to nothing more than a meaningless exercise in formality in its absence. Despite the fact that the scope of this right is so extensive, the United States Constitution requires that when it comes to protecting the wider interests of society, the rights of an individual must take a backseat to certain communal rights. This is why the right to freedom of speech and expression guaranteed by Art. 19(1)(a) of the Constitution is subject to "reasonable limits" guaranteed by Art. 19(2) of the Constitution. The prohibition is required to be construed in the strictest possible manner, as the Courts have emphasized on several occasions. Inasmuch as such restrictions are in the nature of curbs or limitations on the exercise of the right, they are bound to be viewed with suspicion, which throws a heavy burden on the authorities who seek to impose them. Such restrictions are bound to be viewed as anathema, inasmuch as they are in the nature of curbs or limitations on the exercise of the right. The American legal system, in contrast to that of India, places a much higher value on this right. This is because the First Amdt. to the Const. of the United States of America does not permit any prior restraint, and the guarantee of free speech is absolute and unqualified. India has a system that allows for prior restraints.

The need to understand it much better and to build the foundation of our understanding, we should first observe the views of our constitutional makers.

3.1. CONSTITUTIONAL ASSEMBLY DEBATE

The Constituent Assembly debated Art. 13, now Art. 19, on Wednesday, December 1, 1948. Art. 13 ensures free speech and expression. At this stage, constituent assembly members should be heard. "Art. 13, in its current phrasing, appears to have been inadequately drafted," Shri Damodar Swarup Seth said. Press freedom is missing. Sir, some would argue that Art. (a)—freedom of speech and expression—already provides

freedom. I'd want to argue, Sir, that we live in the age of the press and that it's acquiring more and more power in society. Hence, journalistic freedom should be expressed directly and independently like Cause-and-effect.

Prof. K. T. Shah suggested adding "of thinking and worship; of press and publishing" to subclause (a) of clause (1) of Art. 13. He thought communication and expression would be comparable and work together. "Expression" may include pictorial or other creative ways beyond words and voice. Shri K. M. Munshi stated: (2) Nothing in subclause (a) of paragraph (1) of this Art. shall impair the operation of any existing legislation or prohibit the State from passing any law dealing to libel, slander, defamation, or other matter that offends decency or morals or undermines the security of, or seeks to overthrow the State. (3) No subclause (Because this relates this part to "to libel, etc.," he recommended replacing "must affect the implementation of an existing law" with "in so far as it applies to." Replace "must impact an existing statute" with this. This clarifies the message. He also favored deleting "sedition" from clause 2 of Art. 13. The press and citizens have the same rights. "Freedom of the press" doesn't apply here since a publication's editor or management is using their right to free speech.

3.2. SCOPE OF FREEDOM OF SPEECH AND EXPRESSION

The highest court in India has, on several occasions, reaffirmed the importance of safeguarding basic rights, including those pertaining to freedom of speech and expression. After the *Romesh Thappar case*¹⁶, there have been a no. of further cases that concern the right to freedom of expression. In the case of "*R. Rajagopal v. State of Tamil Nadu*"¹⁷, Judge Jeevan Reddy emphasized how important it is to have unrestricted access to the media. He clarifies the jurisprudential desideratum: Nowadays, a balance between press freedom and rules that uphold the Constitution's democratic ideals is needed. This is needed now. Throughout the course of the last several decades, the press and electronic media have developed into significant forces in the life of our country. They are still growing, and as a result, are getting more curious as a byproduct of this process. Our form of government, along with the systems of government in the United States of America and the United Kingdom, requires ongoing monitoring over the use of governmental authority by a variety of institutions and individuals, including the press and the media. That is very necessary for an effective government.

The proliferation of new technology has resulted in the rise of electronic media, which is not only widespread but also very active. The electronic era has seen a rise in the popularity of digital press as a medium for "expression," opening up the cyber globe to the publication of electronic journals. Yet the question of whether or not they are just the mouthpieces of certain interest groups or whether or not they actually reflect the feelings of the people continues to be an intriguing one. "Sting operations" using technological traps to interrogate a person may help reveal the truth, but using the same technology to coerce a person is illegal and immoral. Democracy then risks becoming videocracy. It's great that some websites expose human rights violations. The "right to know" is recognized as a fundamental right by the Supreme Court of India in the

¹⁶ Romesh Thappar vs. State of Madras, 1950 SCR 594 (India).

¹⁷ R. Rajagopal v. State of Tamil Nadu, 1994 SCC (6) 632 (India).

case "*Resurgence India v. Election Commission of India*"¹⁸, which is based on Art. 19(1)(a). The court ruled that candidates who submit affidavits with inaccurate or blank information cannot be treated similarly. This would violate the "right to know" under Art. 19(1)(a) of the Constitution. The Supreme Court of the United States, in the case of *Rakeysh Omprakash Mehra & Anr. v. Govt. of NCT of Delhi*¹⁹, created a new layer on free speech and determined that our written Constitution protects both speech and speech after speech. In a democratic, rule-of-law society, freedom of expression is invaluable. The court advised the electoral commission to take suo moto notice of the issue in the case of *Pravasi Bhalai Sangathan v. U.O.I and Ors*²⁰ that hate speech marginalizes group members. While ordering the electoral commission to take suo moto cognizance. Hate speech is used to delegitimize a minority in the eyes of the majority by inciting hate and exposing the group to it. Hate speech goes beyond distressing group members. It might affect society. Hate speech sets the stage for subsequent, more serious attacks on vulnerable individuals, including discrimination, ostracism, segregation, deportation, violence, and genocide. Hate speech prepares susceptible individuals for widespread assaults. Hate speech may also hinder a protected group's ability to respond to genuine debates, which limits their democratic participation. In the case known as "*National Anthem*"²¹, which was heard by the Supreme Court, the justices decided that no one may be forced to sing the national anthem "if he has genuine conscientious objections based on his religious beliefs." This was the court's conclusion. The court upheld that basic right in accordance with Art. 19(1)(a), which also includes the right to remain silent. The decision that the government does not have a monopoly on electronic media was made by the Supreme Court in the landmark case "*Secretary, Minister of I&B v. Cricket Association of Bengal (CAB)*"²². This expanded freedom of speech and expression by proving that the government did not control electronic media. The Supreme Court has ruled that the government does not have a monopoly on electronic media and that citizens have a right under u/a19(1)(a) to livestream and broadcast significant events on television and radio. This ruling greatly increases free speech and expression. The government may only restrict such a right for one of the grounds in clause (2) of Art. 19.

The Supreme Court determined in the case "*Tata Press Ltd. v. MTNL*"²³ that the freedom of speech and expression guaranteed by Art. 19 (1) (a) of the Constitution includes the ability to engage in commercial communication (advertisement). The Court, on the other hand, made it quite apparent that the Government has the authority to control commercial ads that are dishonest, unfair, misleading, or otherwise inaccurate. The constitution guarantees free speech and expression in India and abroad. If a state restricts its people' freedom of speech in whatever nation, it violates Art. 19(1)(a) to the same degree.

The U.O.I argued in the case known as "*Maneka Gandhi v. U.O.I*"²⁴ that the basic rights that are guaranteed by the Constitution are accessible solely to individuals and should not be safeguarded by the State. The

¹⁸ Resurgence India v. Election Commission of India, (2014) 14 SCC 189 (India).

¹⁹ Rakeysh Omprakash Mehra & Anr. v. Govt. of NCT of Delhi, W.P.(CRL) 1188 OF 2009 & CRL.M.A. 9918 OF 2009, (India).

²⁰ Pravasi Bhalai Sangathan v. U.O.I and Ors, AIR 2014 SC 1591 (India).

²¹ Bijoe Emmanuel & Ors v. State of Kerala & Ors, 1986 SCR (3) 518 (India).

²² Secretary, Minister of I&B v, Cricket Association of Bengal (CAB), 1995 SCC (2) 161 (India).

²³ Tata Press Ltd. v. MTNL, 1995 SCC (5) 139 (India).

²⁴ Maneka Gandhi v. U.O.I, AIR 1978 SC 597 (India).

Supreme Court disagreed and ruled that freedom of speech and expression had no limits. Political liberty and democracy depend on the freedom of speech and press. Freedom of speech and expression includes the freedom to obtain information, communicate and express oneself, and share views with others in India and internationally. According to a statement made by the American Press Commission, "political liberty cannot exist without freedom of the press." Free speech is the cornerstone of a free society, and the instruments to preserve liberty are currently accessible. Freedom cannot exist when people cannot openly express their thoughts. Only freedom of expression is special. "Democracy may develop not just under the careful eye of its Legislature, but also under the care and direction of public opinion, and the press is, by far and away, the instrument through which opinion can become articulate," says the Indian Press Commission. The Indian Press Commission said this. The freedom of the press allows anybody to print and publish anything without prior approval. Press freedom extends beyond newspapers and magazines. This category includes pamphlets, circulars, and other publications that provide information and opinion. The Indian Supreme Court made the following observation in the case known as "*Indian Express Newspapers v. U.O.I*"²⁵ regarding the significance of the right to freedom of the press:

"The expression 'freedom of the press' has not been used in Art. 19, but it is comprehended within Art. 19(1)."

(a). Freedom from interference from authority, which would have the consequence of interfering with the content and distribution of publications, is the meaning of the word "freedom from interference." Under the sake of protecting the public interest, there must be no infractions of this individual's right to freedom. The mission of the press is to serve the general public interest by disseminating information and viewpoints, both of which are essential for a democratic electorate to be able to exercise responsible decision-making. The freedom of the press is essential to the functioning of our society and our government. It is the main responsibility of the judicial system to protect the right to freedom of the press and to declare unconstitutional any legislation or administrative acts that violate the mandate of the Constitution in this regard.

3.3. BASIS OF LIMITATIONS ON SPEECH & EXPRESSION

"Law"—not executive branch or department directives—can restrict rights u/a19(1). No one is really free. Art. 19(2) allows the state to impose "reasonable" limits on free speech and expression for reasons of state security, cordial relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to offense, and India's integrity and sovereignty. Certain speech restrictions must be observed.

- Sovereignty and Integrity of India: The Constitution (Sixteenth Amendment) Act of 1963 added "sovereignty and integrity of India" to Art. 19 clause (2). To prevent anyone from doubting the nation's sovereignty or pushing for the secession of any part of India, free speech might be limited. Sedition is a justification for restricting one's right to free speech and expression, however clause

²⁵ Indian Express Newspapers v. U.O.I, 1985 SCR (2) 287 (India).

does not address sedition *Devi Saren v. State*²⁶ held that secs. 124A and 153A of the IPC impose reasonable limits in the interest of public order and are guaranteed by Art. 19(2) of the Constitution.

- State security: Freedom of speech may be limited to protect state security. The Supreme Court may define "security of the state" in "*Romesh Thappar v. State of Madras*"²⁷. The court found many "public order" offences. Any public disturbance cannot threaten state security. "State security" only applies to serious public disturbances like revolt, war, and insurrection. Illegal assembly, riot, and affray are not covered by the term. Hence, remarks or sentiments that incite violent acts like murder would harm the state's security.
- Friendship with foreign nations: The 1951 Constitution (First Amendment) Act added this. This sec. prevents unrestrained and vicious propaganda against a friendly foreign state, which might endanger beneficial relations between India and the state. This constitution does not consider Commonwealth nations like Pakistan "foreign states." Hence, restricting free speech on the basis that the issue is harmful to Pakistan is untenable.
- Public order: Public order refers to the calm that prevails among political society members as a direct result of the Government's internal norms. Art. 19 paragraph 2 did not include "public order." Limits may only be imposed for reasons u/a19 of the treaty (2). This judgement added "public order" to paragraph 2 of Art. 19 as a grounds for controlling speech and expression. Anything that disturbs public peace may destabilize public order. Hence, strikes and demonstrations intended to splinter employees are banned. Criticizing the administration shouldn't disturb public order. Under "public order," the state might limit propaganda for a state at war with India.
- Ethics: Morality and decency have many meanings. In order to preserve a moral society, Sec. 292-294 of the IPC limit one's right to free speech and expression. India defines obscene language as "offensive to modesty or decency; vulgar, unclean, and unpleasant". Obscenity is determined by whether the publication, when read in its entirety, may deprave and corrupt those whose minds are open to such immoral effects. So, each effort must be assessed separately.
- Court contempt: If a person commits contempt of court, their free speech and expression may be restricted. The 1971 Contempt of Courts Act defines "contempt": Sec. 2 of the Act defines "contempt of court" as "criminal" or "civil." "Civil contempt" refers to wilful disobedience of a judge's judgment, decree, direction, order, writ, or other legal procedure or breach of a court's undertaking. "Criminal contempt" is the publication of any matter or the doing of any other act that:
 - i. Scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court;
 - ii. Prejudices, or interferes or interferes with the due course of any judicial proceedings; or
 - iii. Interferes or tends to interfere with, or obstructs or tends to obstruct any judicial Yet, these actions are not contempt of court: the innocent publishing and dissemination of any content;

²⁶ *Devi Saren v. State*, 1954 CriLJ 758 (India).

²⁷ *Supra* Note 16.

the publication of a fair and accurate report of judicial proceedings; the fair criticism of judicial acts; the good-faith complaint against presiding officials; the release of fair information about chambers or in-camera hearings.

- Defamation: A defamatory comment damages a person's reputation. It involves humiliating a man. Sec. 499 of the IPC, criminalizes slander. Slander and libel are the same whether the defamatory statement is heard or seen. These provisions limit speech and expression in a way the government finds appropriate.

Inciting a crime. The 1951 Constitution (First Amendment) Act helped provide this foundation. Free speech does not permit inciting illicit activity. The Constitution does not define "offense" this way. "Every act or omission that is made illegal by any law that is presently in force" is a crime under the General Clauses Act.

CHAPTER IV: FREE SPEECH IN CURRENT SCENARIO

Every democratic democracy needs free speech, unrestricted speech, and unhindered expression. Indians have this essential right under Art. 19(1)(a) of the Constitution. Free speech safeguards other rights. Free speech protects public debate on social, political, and economic concerns.

Everyone understands that every topic might be good or bad. A society will have pro- and anti-narrative persons. As democracy is worthless without debate, our freedom of speech and expression guarantees our right to disagree. Informed dissent grows nations. Dissent is tolerated without disrupting constitutional procedures. Art. 19(2) of the Constitution restricts powers. This was prevented. Consequently, the state may limit free speech and expression for state security, cordial relations with foreign states, public order, morality, decency, sovereignty, and integrity of India, or for contempt of court, defamation, or encouragement to commit a crime.

Conventions, treaties, and accords protect global speech and expression. Example: Art. 19 of the 1948 UN General Assembly-approved Universal Declaration of Human Rights (UDHR). It includes the freedom to hold beliefs and seek, receive, and share information and ideas via any means. It safeguards free expression. The UN Declaration of Human Rights (UDHR) does not require countries to protect free speech, but it is widely treated as customary international law.

ICCPR rights are limited by respecting others' rights or reputations and preserving national security, public order, health, or morality. These laws matter. Art. 9 of the African Charter on Human and Peoples' Rights, Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 13 of the American Conventions, the ASEAN Human Rights Declaration, and other regional human rights treaties safeguard free expression.

Publishing, radio, movie theaters, and television have elevated free speech and expression. How far one may utilize free speech and expression to preserve Indian culture and traditions is a new problem.

4.1. SCISSORS OF CENSORSHIP

There is not a single provision in the Constitution of India that either permits or prohibits the act of exercising censorship as a legal activity. The exercise of previous restriction, which is required by censorship, has a negative impact on the essential aspects of the right to freedom of the press. This is because prior limitation is required by censorship. The effects of censorship are likely to be felt most acutely in this area. It's quite disheartening when expression is stifled even before it has a chance to flourish because of how quickly it happens. It is much more likely that the censoring authorities will use a method of suppression known as "suppression by a stroke of the pen" rather than "suppression by a criminal proceeding," and as a consequence, there are significantly fewer opportunities for public examination and discussion of the matter. The previous approach of censoring suffers from this basic flaw, making it ineffective.²⁸

In the case of *Express Newspapers v. U.O.I*²⁹, the Supreme Court of India ruled that a law violates Art. 19(1)(a) when it either imposes pre-censorship, limits circulation, prevents newspapers from being started, or mandates that the government seek aid from the government in order to continue functioning. This decision was made in the context of a case involving the Express Newspapers and the U.O.I. This judgment was taken in response to a challenge that was presented by Express Newspapers, which is a newspaper publishing company.

In the case of "*Binod Rao v Masani*"³⁰, the Bombay High Court issued a historic judgement in which it said that "simply because disagreement, disapproval, or criticism is expressed in harsh language is no reason for forbidding its publishing."

In a judgement that would go down in history as a landmark verdict, the High Court of Guwahati came to the conclusion that an appeal to any government was inadequate. The court said that this was because governments regularly used censorship as an argument against their own policies. An appeal to any administration in this type of scenario would be the same as making an appeal from Caesar to Caesar himself. In other words, it would be pointless. The whole legal system made significant progress as a result of this ruling, which may be seen as an advancement.

4.2. MEDIA TRIAL

This idea has only been proposed in recent years, and it pertains to the situation in which the media, which is granted freedom of speech and expression u/a19(1)(a), uses the power of their communication medium to reach out to the masses in order to criticize and, at times, pre-judge a case that is currently being considered by a judge in a court of law, which can sometimes amount to defamation or contempt of court. One recent instance that illustrates this point is the so-called "Arushi Double Murder case," in which the media all but officially found the accused individual guilty. Throughout the 200th report that the Law Commission of India has released, there have been many suggestions made about this subject.

²⁸ Molnár Péter, Free speech and censorship around the Globe 419-20 (Central European University Press 2015).

²⁹ Supra Note 25.

³⁰ Binod Rao v Masani, (1976) 78 BOMLR 125 (India).

The ever-increasing trend of using the media while the issue is still being considered by the courts, including the Supreme Court of India, has been frowned upon on several times for various reasons. The Supreme Court of India made the following observation in the case "*State of Maharashtra v. Rajendra Jawanmal Gandhi*"³¹:

"There is process established by law controlling the conduct of trial of a person accused of an offense." A trial that is conducted by the press, electronic media, or public agitation is the exact opposite of what the rule of law entails. It is possible that this will result in an injustice being committed. A judge is expected to be impervious to this kind of pressure and to make decisions in accordance with the letter of the law at all times. If he decides that the person committed the offense, he is next responsible for determining the appropriate punishment that should be handed down to that individual in line with the terms of the law. At the same time, the right to a fair trial, which in India means a trial that is free from the influence of any outside forces, is acknowledged as an essential component of the Indian legal system. The Contempt of Courts Act, 1971, as well as Art.s 129 and 215 of the Constitution of India, both include provisions with the intention of protecting this privilege. The limits that are placed on the discussion or publishing of material pertaining to the merits of a case that is now ongoing before a court are a particular source of worry for the media. Consequently, a journalist may be held accountable for contempt of court if he publishes anything that could compromise the integrity of a "fair trial" or anything that undermines the ability of the court to make an unbiased decision based on the merits of a case, regardless of whether the proceedings before the court are criminal or civil in nature.

4.3. THE NOTORIETY ASSOCIATED WITH STING OPERATIONS

In spite of the fact that it does make the system more accessible, there are a lot of individuals who believe that it violates the "right to privacy" that is written into the Constitution and is guaranteed to each person individually. Because of this right, it is illegal for the government to gather information on an individual without first obtaining that person's agreement. This line of thinking is given greater weight by the fact that carrying out such actions does, in fact, make the system more approachable. People have the legal right to prohibit their personal information from being shared with other parties without first receiving their permission for the disclosure, and this right is protected by the law. This privilege comes with a no. of obligations to fulfill.³² Having said that, one of the obligations that comes with having this degree of freedom is the need to respect the private lives of the individuals who are in close proximity to them. This is one of the responsibilities that comes with having this level of freedom. It is an open question whether or not carrying out a sting operation may be considered an exercise of an individual's constitutionally protected right to freedom of the press. Yet, it is feasible that this kind of action does meet the requirements. [There should be more citations for this] The individual whose life is the subject of a "story" in a newspaper or on television sees a decline in their personality, reputation, or vocation as a direct result of the coverage they received in the media as a direct result of the coverage they received in the media as a direct result of their

³¹ State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386 (India).

³² Mrs. Mamta Saini et.al., Right to Privacy in Sting Operations of Media, 8 JETIR 455, 456 (2021).

involvement with the media. This decline occurs as a direct result of the coverage they received in the media as a direct result of the coverage they received in the media as a direct result of their involvement with the media. It's possible that this is because their lives were the major subject of the "narrative," which was told via the medium of the novel. There is a good possibility that this will be covered in some of the news outlets, such as the television or the newspaper. According to Art. 21 of the Constitution, he has each and every one of the fundamental rights that are granted to the other citizens of the nation. This is the case for him. Due to the fact that he is a citizen of the country, this is the situation. Some examples of these rights are the ability to live with respect and dignity, the right to one's own privacy, and the right to one's own property, amongst other rights. Another example of one of these rights is the ability to live with one's own property.

It was the court procedure known as "*Kharak Singh v. State of Uttar Pradesh and Ors.*"³³ that served as the spark that started a movement in India for the acknowledgment of the right to privacy for India's citizens and inhabitants. This struggle is still active today. This movement is showing no signs of slowing down. There is no indication that this conflict will be resolved any time in the near future. Even in this day and age, the movement that we're talking about here is still continuing strong and gaining steam. In this specific case, the highest court in the land made the decision that the right to privacy, despite the fact that our constitution does not specifically identify a right to privacy as a fundamental right, is nonetheless an essential component of an individual's liberty. This conclusion was reached despite the fact that our constitution does not specifically identify a right to privacy as a fundamental right. In spite of the fact that our constitution does not mention a basic right to privacy anywhere, we nonetheless managed to arrive at this conclusion. In spite of the fact that our constitution does not include a provision for a fundamental right to privacy anywhere in its text, we were nonetheless able to arrive at this verdict. Despite the fact that our constitution does not expressly include a right to privacy as one of the fundamental rights, this goal was successfully accomplished. However, this objective was completed successfully. The following contributors are to blame for the aforementioned outcome: The court case served not only as the primary impetus for the movement but also as the driving force behind the movement's increasing rate of progress. Because of the humanistic expansion of Art. 21 of the Constitution, which made it feasible for this right to be included, this right has been able to be completely accommodated within the framework of the right to life and personal liberty. This expansion made it possible for this right to be included. Because of this increase, it became feasible for this privilege to be included into the agreement. The establishment of this right made it possible for the achievement of this goal to become a tangible reality. This was made possible as a direct result of the in-depth analysis of this right that was carried out in the case known as "*Gobind v. State of Madhya Pradesh and Ors.*"³⁴ This was made possible as a direct result of the inquiry that was carried out in this case. This particular instance served as the justification for the ruling that opened the door for this to take place. The examination into this topic that was carried out definitely had a direct part in the conclusion that this option was a possibility. This particular occurrence was

³³ Kharak Singh v. State of Uttar Pradesh and Ors, 1964 SCR (1) 332 (India).

³⁴ Gobind v. State of Madhya Pradesh and Ors, AIR 1975 SC 1378 (India).

utilized as the justification for the decision that brought about the circumstances that made it feasible for this to take place.

4.3. STUDENT PROTESTS: SHAHEEN BAGH PROTEST

“Freedom is hammered out on the anvil of discussion, dissent and debate”

– Hubert Humphrey

Peaceful demonstrations and marches across criticized the controversial Citizenship (Amendment) Act, 2019. These demonstrations became violent in several regions of the country, including Delhi, and ended in a riot in the north-east. The Shaheen Bagh protest, police assaults on Jamia Millia Islamia University students, and continuous mob unrest in Jafrabad and surrounding regions have drawn attention to Delhi. State-sanctioned violence quelled demonstrations against this terrible legislation. International condemnation of state apparatus abuse to violate human rights stains constitutional freedom of speech and expression. Safoora Zargar ("the accused") has been preventively held at Tihar Jail on 22 criminal counts since April 15, 2020.

JMI University research researcher and 14-week pregnant accused. Lawyer organizations and campaigners have called her last bail rejection on June 4, 2020, a major judicial oversight. So, it's crucial to analyze how the accused's custody and non-bail violate law and international values. The recent rejection of bail to Safoora Zargar by a District & Sessions Judge at Patiala House Court, New Delhi, has again raised questions about the Unlawful Activities (Prevention) Act, 1967. Sec. 43D(5) of the Act states that if a prima facie case is presented against an accused, bail should not be granted.

Initially, the court investigated the Act conspiracy charges against the defendants. The Court found “prima facie evidence to demonstrate that there was a conspiracy to at least impede the route (chakka jam).” Note that the prosecution's bail hearing materials were just WhatsApp communications and witness testimonies recorded under Arts. 161 and 164 of the Code of Criminal Procedure(CrPC), 1973.

The Hon'ble Court stated that “one cannot disregard the argument of the prosecution that the accused people have plotted to produce disruption of such an extent and such a magnitude that it would lead to disorderliness and disturbance of law and order at an unprecedented scale.” The Court did not define "unprecedented magnitude" or how it relates to the road obstruction. Surprisingly, UAPA's punitive restrictions apply to roadblocking protests.

Second, the case seems to be a forced effort to establish road blockades as criminal activities under Sec. 2(o) of the Act for creating or attempting to induce disaffection towards India. The Court relied on the 1962 Supreme Court decision in *Kedarnath Singh v. State of Bihar*³⁵ to rule that any conduct that has the potential to bring a whole city to its knees is unconstitutional.

³⁵ *Kedarnath Singh v. State of Bihar*, 1962 SCR Supl. (2) 769 (India).

Not every lawbreaking causes state disaffection. The Kedarnath case's perspective is no longer applicable since anti-terror statutes now demand a link between the accused's behavior or words and impending violence. Instead, the Court utilized the analogy "when you choose to play with embers you cannot blame the wind to have carried the spark a little too far and spread the fire" to arbitrarily declare the accused accountable for inciting violence. This violates the Supreme Court's subject-matter jurisprudence that requires familiarity and proximity of the act/speech and its illegal result (spark in a powder keg). It also violates Art. 19 of the Indian Constitution's Fundamental Right to Speech and Expression since the Court's theory allows anybody to be held accountable for an illegal behavior based only on the judge's decision.

Hence, the Court improperly refused bail to the accused under Sec. 43D(5) of the Act. This rule applies solely to Chapter IV and VI terrorist crimes. Even if the Court's argument for declaring the occurrence illegal is right, it is not a terrorist act. The Court must also find reasonable reasons to think the charge against the accused is truthful. But, this aspect is unsatisfied, thus the offender cannot be charged prima facie. Given the accused's critical state, the judiciary's high-handedness in rejecting bail has drawn widespread criticism for violating human rights. The Indian Constitution and international agreements like the UDHR and ICCPR, which India has ratified, protect the freedom to dissent. The accused, who is five months pregnant, is incarcerated in Tihar Jail, which is over twice its capacity and at high danger of COVID-19. Pregnant women should choose non-custodial pre-trial measures, according to the Bangkok Rules.

In this instance, pre-trial incarceration and bail refusal on arbitrary grounds created a catastrophic miscarriage of justice. The unjustified loss of the accused's life and liberty to suppress righteous opposition against an unjust law is inexcusable. It is hoped that the higher courts would investigate this problem and protect democracy, free expression, and liberty during this crisis. Dissent is faith in any democracy.

Art. 19(1)(a) of the Indian Constitution grants students the freedom to peaceful assembly and protest as part of their right to free speech and expression. In recent years, however, there have been cases in which students have been jailed for participating in nonviolent demonstrations or voicing alternative opinions. Being a violation of the basic right to free speech and expression, student incarceration for free speech demonstrations is a cause for worry. Students may be discouraged from engaging in nonviolent demonstrations and expressing their ideas on matters of public importance if they are detained for expressing their opinions.

To avoid such abuses of the right to freedom of speech and expression, the government and educational institutions must respect the right to peaceful protest and guarantee that students are not arbitrarily detained or harassed for exercising this right.

CHAPTER V: CONCLUSION AND SUGGESTIONS

Art. 19(1) of the Constitution of India recognizes the right to freedom of speech and expression as one of the basic rights that every citizen is entitled to (a). Yet, this right is not unlimited, and reasonable limits may be put on it in order to protect the sovereignty and integrity of India, public order, decency, morality, contempt of court, defamation, and incitement to commit an offense.

The right to freedom of speech and expression in modern India has been the topic of a great deal of controversy and has been the subject of countless arguments. The proliferation of social media and the internet has opened up new doors for people to express their right to free speech, but it has also ushered in a new era of controversies, including instances of online harassment and hate speech, as well as false news.

The Indian court has been instrumental in shaping the boundaries of free speech in the nation throughout the course of its history. The freedom to disagree with and criticize one's government has been protected by the courts, but at the same time, the courts have acknowledged the significance of preserving the cohesion of communities and safeguarding the dignity of both people and groups.

It is essential for people, civil society groups, and the government to collaborate in order to guarantee the protection of the right to free speech and expression while simultaneously tackling the problems brought by the contemporary world. Free speech is a freedom that should be used by individuals, but they should do so in a responsible manner, without resorting to hate speech or inciting others to violence. The promotion of media literacy and the cultivation of awareness about the proper use of social media should be a focus for organizations that are part of civil society. It is the responsibility of the government to ensure that any limits on free speech that are deemed fair are appropriately tailored to accomplish the aims for which they were created, and that these restrictions are not used as a way of silencing dissent or criticism.

To summarize, the freedom to free speech and expression is an essential component of democratic practice in India; nevertheless, with this privilege comes some responsibilities. Together, we can guarantee that this right is maintained while simultaneously fostering social peace and the dignity of all persons and communities. This is something that is very possible if we work together.

Listed below are some suggestions that might help safeguard the right to free expression in modern India:

- **Encourage People to Be Media Literate** Being media literate may assist individuals in differentiating between legitimate and fraudulent news, comprehending the complexities of free speech, and appreciating the significance of responsible expression.
- **Promote Civil Dialogue:** The encouragement of civil discourse may help to cultivate a culture of mutual respect and understanding, one in which people are able to openly express their viewpoints without resorting to rhetoric that incites violence or hatred against others.
- **Balance Free Speech and Reasonable Limitations** While the right to free speech is one of the most basic rights, it is essential to acknowledge that exercising that freedom may have repercussions. To protect people and communities from being harmed as a result of exercising their right to free speech, there should be some reasonable constraints placed on that freedom.
- **Those who abuse their right to free speech by spreading hate speech, inciting violence, or engaging in other types of damaging speech should be held responsible for their acts. This should be ensured.**
- **Maintain the Independence of the Media** Maintaining the independence of the media is very necessary in order to defend our right to free expression. It is the responsibility of the government to ensure that

there is no interference with the operation of the media and that journalists are able to cover stories without fear of being punished for their work.

- **Promote Diversity and Inclusion:** Accepting diversity and inclusion may lead to a public sphere that is livelier and more welcoming, one in which a range of views can be heard and one in which free speech can be practiced without the fear of being persecuted or discriminated against.
- **Encourage Communication Between the Government and Civil Society** Engaging in conversation between the government and civil society can help promote a better understanding of the significance of free speech and the necessity of striking a balance between it and other factors such as maintaining public order and protecting national security
- By putting these ideas into practice, not only will we be able to guarantee that people in modern India have the right to express themselves freely, but we will also be able to foster a culture of responsibility and mutual respect.

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

