

# FREEDOM OF HATE SPEECH

*Posted on December 25, 2020*



freedom  
OF HATE SPEECH

Category: [Interview](#)



---

**Author: Amrita Tiwary, 1st year student in NUSRL, Ranchi.**

---

## **Abstract**

This essay shall deal with what freedom of speech and expression stands for, in today's India. Taking into consideration how it came into existence and what are the controversies that surround it, in this article we shall try to understand the mysterious nature of hate speech and where does it draw the line from freedom of speech.

## **Background**

*To speak is to commit. Putting forward an idea, opinion or information is being answerable to any future consequences and submitting to criticism.*

When democracy started to evolve as a concept, freedom of speech became its most distinct feature. No other form of governance granted this freedom to its subjects due to the fear of dissent and uproar. After experiencing several such failed models, democracy decided it was time to hear the people who were to be governed and work accordingly. This did indirectly invite criticism but rather than seeing it as a threat, it was seen as a way to progress in the needed direction.

India under British rule witnessed a massacre of its natural rights for centuries. The leaders who dreamt of a free State made sure that these rights are protected and cannot be discarded even in the most disputed times. Freedom of speech being one of the basic rights, Constitution of India Bill 1895 stated - *"Every citizen may express his thoughts by words or writings, and publish them in print without liability to censure, but they shall be answerable to abuses, which they may commit in the exercise of this right, in the cases and in the mode the parliament shall decide."* Soon after internationally, the Universal Declaration of Human Rights, in 1948, established in its article 19 that everyone shall have the right to hold opinions without interference and the ICCPR amended this by fixing that the exercise of these rights special duties and responsibilities and may therefore be subject to certain restrictions. Conflict arose around the implementation of restrictions, during the drafting of the Constitution, yet India was granted the freedom of speech and expression, the day it turned into a republic state.

## What does Freedom of Speech mean in India today?

According to Section 19 (1)(a) of the Indian Constitution, “*All citizens shall have the right to freedom of speech and expression.*” Freedom of speech refers to the right of an individual to express and seek information, opinions and ideas whether orally, in writing or print, or through forms of art or any other media of one’s choice without the fear of persecution and retaliation. For a democracy to function to its full potential, freedom of speech is one of the most, if not most the important right held by the people of a State. Although not absolute, reasonable restrictions were imposed with the view of maintaining public order and morality. These restrictions as mentioned in Section 19(2) of the Indian Constitution, are:

1. **The security of State:** Information that threatens the security of the State.
2. **Friendly relations** with foreign States: Any false publication which maligns the image of a foreign friendly state to a point where it threatens India’s ties with the said state.
3. **Public order:** publications whether oral, written or in the form of art that threatens the public peace and tranquility, whether expressly or incite such actions, come under this restriction.
4. **Decency or morality:** Acts in public and sale of works the content of which are deemed to be obscene and contain the potential to corrupt a person are covered under this restriction. Although quite ambiguous of what constitutes obscene, it is further explained in Section 292 and 294 of the Indian Penal Code.
5. **Contempt of court:** Any content that lowers the integrity of the judiciary in the eyes of the public is defined as contempt of court. Provocation to not abide by a court order also constitutes contempt of court.
6. **Defamation:** Fake claims, either oral or written, aimed at maligning the reputation of a person before the public is called defamation.
7. **Incitement to an offence:** Provocation or abetment towards illegal activities.

To understand the true meaning of freedom of speech and expression in India, restrictions must be seen as parts of the same body. Doing anything less would-be doing injustice towards the true comprehension of the right.

## Controversies

The fundamental right has been under scrutiny ever since it evolved as a concept, but more so in recent times with the significant rise of persecution of citizens due to the ambiguous nature of the law. Subjects ranging from Freedom of Press to right to criticize, have become topics of nation-wide debates and protests. Widespread violence against journalists, like the murder of journalist and activist Gauri Lankesh, who dared to speak against the government, with minimal conviction rates. According to a study, out of 30 killings of journalists from 2010, only three cases have seen conviction. There has been a

rise in moral policing due to the unclear scope of what constituted as morals. Protestors being arrested on the charges of sedition have become a common occurrence. National Crime Records Bureau's Crime in India 2019 data, when compared to reports of 2016, showed 165% jump in cases of sedition and a 33% jump in Unlawful Activities (Prevention) Act cases.

The question remains, what speech is protected under the blanket of freedom of speech? How does one carefully navigate through these troubled waters?

## **The Mystery of Hate Speech**

Hate speech is defined in the United Nations Strategy and Plan of Action on Hate Speech as:

*"...the term hate speech is understood as any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, group or other identity factors."*

This, however, does not include, bona fide criticism of the government, its policies and all public figures. As the European Court of Human Rights rightfully stated in *Lingens v. Austria*, that a public figure inevitably and knowingly lays themselves open to the scrutiny of their every word and deed by both journalists and the public at large, and thus they must consequently display a greater degree of tolerance.

Some laws prosecute certain forms of speech as an exception to the freedom, such as section 295A and 298 of IPC that prohibit malicious speech and acts against religious beliefs of any person or community. Similarly, Section 8 of The Representation of The People Act, 1951 disqualifies a person from contesting in the election if they are convicted for illegitimate use of freedom of speech and expression. Even though these legislations do not seem problematic in theory but the vague nature of these laws boosts their potential of being misused.

Journalists, artists, activists and even protestors are accused of spreading hate and inciting violence against the State and are hauled off to jails. At times, killed by the supporters of such philosophy that they stand against. While a few others roam free even after chanting slogans like "*goli maaro*" in front of a public gathering. It is the equation of slogans like "*humein chahiye azadi*" to "*goli maaro*" which raises red flags for that country.

Context and intention play important roles in deciding a case of hate speech, but it has become a common practice to take texts, speeches and acts out of context and spread misinformation about the writer, speaker or performer. Even if the intention behind these actions were purely critical in nature, the false image of the act creates a bias. These form sufficient bases for arrests. Even though conviction rates have seen an all-time decline in

the past few years, the rate of cases filed and arrests made have gone up. False reports do not only malign the reputation of the person but the arrests also hinder their living.

## Conclusion

It can be concluded that today, one cannot foresee what words or acts of theirs can get them arrested for hate speech. In a world where anything and everything can be used as a tool to further someone's political agenda, it would be in one's best interest to write or act, keeping in mind that they might have to justify their actions in court someday. This does not mean that one should avoid voicing their opinions on the topic of their choice, but instead, one should try to be politically and factually correct and should refrain from acting on a whim. Thus, even though the lines between Freedom of Speech and Hate Speech has become blurred in the contemporary world, being informed about one's right is the best defence for the common man.

---

## References:

1. The Constitution of India, Part III, Section 19
2. [https://en.wikipedia.org/wiki/Freedom\\_of\\_speech](https://en.wikipedia.org/wiki/Freedom_of_speech)
3. [https://en.wikipedia.org/wiki/Freedom\\_of\\_expression\\_in\\_India](https://en.wikipedia.org/wiki/Freedom_of_expression_in_India)
4. <https://www.lawteacher.net/free-law-essays/constitutional-law/freedom-of-speech-and-expression-constitutional-law-essay>
5. <https://lexlife.in/2020/05/21/explained-freedom-of-expression-in-india/>
6. <https://indianexpress.com/article/opinion/columns/sedition-law-free-speech-india-modi-govt-madan-b-lokur-6723906/>
7. United Nations Strategy and Plan of Action on Hate Speech
8. <https://www.theleaflet.in/why-is-free-speech-different-from-hate-speech/#>
9. <https://thewire.in/rights/hate-speech-sangh-parivar-protests>
10. <https://lawcommissionofindia.nic.in/reports/Report267.pdf>
11. <https://www.thakur-foundation.org/report-on-attacks-on-journalists-in-india-2014-2019.pdf>
12. <https://theprint.in/opinion/ncrb-2019-data-shows-165-jump-in-sedition-cases-33-jump-in-ua-pa-cases-under-modi-govt/521861/>

