



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2025 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Freedom of Speech v Hate Speech: Drawing the Legal Line

Dhaarna Shandilya<sup>a</sup>

<sup>a</sup>Agra College, Agra, India

*Received 25 October 2025; Accepted 27 November 2025; Published 01 December 2025*

---

*Words are powerful. They can heal wounds or ignite wars.<sup>1</sup> In a democracy, freedom of speech is the heartbeat of liberty. Yet when words become weapons of hate, the same freedom becomes a threat to peace. Balancing this line between free expression and hate speech remains one of the greatest legal and moral challenges of our time. In the age of social media, a single post can spark debates or riots. While the constitution guarantees every citizen the right to speak freely.<sup>2</sup> The misuse of this freedom often leads to hate divisions and violence.<sup>3</sup> Where does free speech end and hate speech begin? The answer is not always clear, but it defines the strength of a democracy. Every democracy survives on two pillars: the right to speak and the responsibility to listen. But when opinions turn into insults, an expression turns into aggression. The law must step in<sup>4</sup>. The conflict between freedom of speech and hate speech reveals the fine balance between liberty and restraint that every society must maintain. This article examines how Indian law draws the line between free expression and hate speech, and why defining that boundary is essential for a democratic society.*

**Keywords:** *freedom of speech, hate speech, constitutional rights, judiciary, legal boundaries.*

---

---

<sup>1</sup> *Kaushal Kishore v State of Uttar Pradesh & Ors* (2023) 4 SCC 1

<sup>2</sup> The Constitution of India 1950, art 19(1)(a)

<sup>3</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1; *K A Abbas v Union of India & Anr* (1970) 2 SCC 780

<sup>4</sup> The Constitution of India 1950, art 19(1)(a)

## INTRODUCTION

Freedom of speech is one of the strongest pillars of a democratic nation. It allows every citizen to speak, express, listen, and raise their voice on essential issues that make society more aware and informed. It reminds us that we are not confined to ourselves. We possess the power to question those in authority and to bring our concerns before them. As responsible citizens of this nation,<sup>5</sup> our voices are no less than a weapon. They are the means through which truth and justice emerge. Every person should be aware of this right and the strength it carries. Freedom of speech and expression is not a right that binds us to silence. Rather, it encourages us to speak up, to seek answers, and to demand solutions. It is truly the lifeblood of democracy, guaranteeing our right to know and empowering us to challenge injustice. A society that cannot speak cannot grow, and therefore, the right to free expression must be protected at all costs. We must remember that as members of society, whenever we face injustice, our voices must rise, for silence only strengthens oppression.<sup>6</sup>

## WHAT IS FREEDOM OF SPEECH?

Article 19(1)(a) of the Indian Constitution guarantees the freedom of speech and expression. It is not merely the act of speaking. It represents a broader concept of communication and thought.

Firstly, it includes the **right to expression**, which forms the core of this freedom. It means that every person has the right to freely share their thoughts, beliefs, opinions, or emotions. Through spoken words, writing, arts, gesture, music, or digital media. For example, writing an article for citizens on government policies or a student posting their opinion on social media both exercise this right. There is nothing unlawful about expressing the world's honest views.

Secondly, it includes the **right to receive information** in our daily lives. We often discuss various topics, personal lives, someone's career, politics, and more. But do we always know the real facts? Not necessarily. This right reminds us that freedom of speech and expression is not only about speaking but also about listening and knowing. It ensures that individuals have access to complete and accurate information, so they can form independent opinions or

---

<sup>5</sup> The Constitution of India 1950, art 19(1)(a)

<sup>6</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1; *K A Abbas v Union of India & Anr* (1970) 2 SCC 780

participate meaningfully in democracy. For instance, the RTI (Right to Information Act, 2005)<sup>7</sup> empowers citizens to question the government and demand transparency.

Thirdly, it includes the **Right to Privacy in Communication**. Privacy reflects one's personal choice to keep certain communications confidential.<sup>8</sup> This secrecy matters deeply, as no authority has the right to interfere with or access private conversations without legal justification. It covers personal calls, messages, or letters. True freedom of speech exists only when people feel safe to communicate. Privately, without fear of being monitored.

Along with these essential dimensions, there are several other rights covered under Article 19(1)(a) of the Indian Constitution.

**Right to Express One's Views:** This is an animation, right, that allows every person. To share their opinions, ideas, beliefs, and emotions. Really, no one can force or restrict an individual from expressing themselves. A person may express their point of view through speech, writing, art, or any other medium of communication.<sup>9</sup>

**Right to Remain Silent:** This right grants an individual the freedom to remain silent on any matter that does not concern them or any issue they do not wish to discuss. It safeguards people's peace, dignity, and mental freedom. No authority or individual can compel someone to speak against their will.<sup>10</sup>

**Freedom of Press:** The press (media) is considered the voice of the people and the watchdog of democracy. This right allows journalists and media organisations to publish news, opinions, and criticism freely<sup>11</sup> without censorship and due to pressure from the authorities. The Supreme Court also interpreted freedom of the press as part of Article 19(1)(a).

**Freedom of Commercial Advertisement:** This right protects business owners and advertisers, allowing them to promote their goods and services through advertisements.<sup>12</sup>

---

<sup>7</sup> Right to Information Act 2005, ss 6 and 7

<sup>8</sup> *K S Puttaswamy & Anr v Union of India & Ors* (2017) 10 SCC 1

<sup>9</sup> *Bennett Coleman & Co & Ors v Union of India & Ors* (1972) 2 SCC 788

<sup>10</sup> *Kharak Singh v State of UP & Ors* (1964) 2 SCJ 107

<sup>11</sup> *Express Newspaper (Bombay) Private Ltd & Ors v Union of India & Ors* (1985) 1 SCC 641; *Sakal Papers (P) Ltd v Union of India* (1962) 3 SCR 842

<sup>12</sup> *Castrol India Ltd v T N State* (1997) Supreme (Mad) 1329; *Tata Press Ltd v Mahanagar Telephone Nigam Ltd & Ors* (1995) SCC (5) 139

Advertising is also a form of expression. However, this freedom is valid only as long as advertisements are trustworthy and not misleading to the public.

The right to express, the right to remain silent, the freedom of the press, and the freedom of commercial advertising together form the living spirit of Article 19(1)(a), ensuring that every citizen can think, speak, question, and communicate freely in a democratic nation.

However, we say that freedom is not absolute. Every liberty carries certain limitations to maintain public harmony and national interest. Under Article 19(2) of the Indian Constitution, the state has the authority to impose reasonable restrictions on this right<sup>13</sup> to ensure that freedom is not misused to harm others or destabilise the nation.

**These restrictions are imposed in the interest of:**

The Sovereignty and Integrity of India.	Decency/Morality.
The Security of the State.	Contempt of Court.
Friendly Relations with Foreign States.	Defamation.
Public Order.	Incitement to an Offence

These grounds ensure a delicate balance between **individual liberty and collective responsibility**, reminding us that freedom should be exercised with awareness of respect and restraint to preserve democratic values.<sup>14</sup>

After understanding the concept of freedom of speech and expression, we have learned that we are not bound by any authority or power. We have the right to seek before them to raise our concerns and to seek solutions for the issues that affect us. In essence, we possess the freedom to express what our mind truly thinks.

When the Constitutional bench was framing the Constitution, it carefully debated which measures should be included under Article 19 so that the people of India would never feel enslaved or silenced after 200 years of colonial rule. They focus on Article 19, which ensures

<sup>13</sup> The Constitution of India 1950, art 19(2); *Rajagopal alias R R Gopal & Anr v State of Tamil Nadu & Ors* (1994) 6 SCC 632

<sup>14</sup> *S Rangarajan v P Jagjivan Ram & Ors* (1989) 2 SCC 574

that every citizen has the individual right to express, question, and protect their own dignity and liberty.

But now comes the real question. Do we truly understand what freedom of speech means? Yes, it gives us power to speak. But do we really know how to use that power responsibly? Often, we speak in favour of ourselves, our people, or our community, yet unintentionally hurt others. We fail to notice that thin line between expression and harm. We forgot that words are as sharp as a sword. While they can inspire truth, they can also wound deeply. A careless word can ignite anger, and that anger holds the potential to set an entire nation on fire.

### **THE BLURRED LINES BETWEEN FREE SPEECH & HATE SPEECH**

There is no doubt that some political leaders, community heads, and cultural figures, even though they claim to be secular, often cross every boundary of decency while inspiring their followers in the name of religion. These leaders ignite a spark that, instead of guiding people and setting entire cities and livelihoods on fire, we often forget the core idea behind a peaceful protest: that it is meant to demand justice and rights, not to spread violence or hatred. Yet we rarely question how such peaceful assemblies are sometimes transformed into scenes of chaos, where it is always the innocent who suffer the most.

This was precisely what unfolded during the Shaheen Bagh protest (2019-2020). A peaceful sit-in led primarily by Muslim women in Delhi against the Citizenship Amendment Act (CAA) and the proposed National Register of Citizens (NRC). The protesters sought to highlight the potential discrimination these laws could cause against Muslim citizens. What made the movement remarkable was its nonviolent character. Women, children, and the elderly set on the streets day and night and holding the Indian flag and reciting the preamble to the Constitution, exercising their right to peaceful assembly under Article 19.<sup>15</sup>

However, their peaceful voices are distorted by certain political leaders and their so-called paid media. The protest was labelled ‘anti-national’ and portrayed as a ‘threat to public order.’ A clear example of how the line between free expression and hate speech is often blurred. Some leaders even went so far as to use hate slogans like ‘Goli Maro’ in reference to

---

<sup>15</sup> The Constitution of India 1950, art 19(1)(b); *Amit Shani (Shaheen Bagh, In Re) v Commissioner of Police & Ors* (2020) 10 SCC 439

the protesters. One of the movement's prominent figures, Sharjeel Imam, was arrested on sedition charges for allegedly inciting unrest, charges that many human rights activists and legal experts later called politically motivated.<sup>16</sup>

The entire episode reminds us how those we elect to represent us often turn against us. Once they hold power, it reaffirms that the common citizen still stands no match to political influence. Yet despite everything, we know our rights, we value our Constitution, and we will continue to speak, not in violence but in truth, for those who have been silenced, because freedom of speech and expression is not merely about speaking but about being heard.

This was not the only instance where peace transformed into unrest. There are many more, one of the most concerning being the rise of anti-Muslim hate speech during elections. Some political leaders who represent themselves as guardians of religion often forget the essence of faith: respect for all. They use religion not to unite but to divide. Turning sacred beliefs into political weapons.

And the very incident happened in March 2024. BJP MLA Nitish Rane made an inflammatory remark during the Sakal Hindu Samaj,<sup>17</sup> an event held in Ghatkopar, Mumbai. He publicly called for the boycott of Muslim Street vendors, referring to them as illegal Bangladeshis/Rohingyas. His word did not merely express an opinion. They stigmatised an entire community. Unfairly labelling Indian citizens as outsiders, this incident reflects how easily the thin line between free expression and hate speech can blur. When influential voices use their platform to spread hostilities, the speech case ceases to be free. It becomes a weapon that silences others. Even though the law protects our rights to express ourselves. What happens when that very freedom is used to suppress or marginalise another group?

This question lies at the heart of India's ongoing struggle between freedom of speech and hate speech. A struggle where dialogue often turns into discrimination, and the right to express is transformed into a tool of exclusion.

---

<sup>16</sup> Indian Penal Code 1860, s 124A; *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955; 'JNU student Sharjeel Imam charged under UAPA in connection with Jamia protests' *Scroll* (29 April 2020) <<https://scroll.in/latest/960617/jnu-student-sharjeel-imam-charged-under-uapa-in-connection-with-jamia-protests>> accessed 26 October 2025

<sup>17</sup> 'Hindus should only engage with Hindus in property deals': MLA Nitesh Rane remark sparks row' *Times of India* (Mumbai, 15 September 2024) <<https://timesofindia.indiatimes.com/city/navi-mumbai/hindus-should-only-engage-with-hindus-mla-nitesh-rane-remark-on-hindu-realty-deals-sparks-row/articleshow/113361077.cms>> accessed 26 October 2025

It is not data. The legal system has always neglected Article 19 or denied citizens their right to express themselves. The Supreme Court held that a legal authority has upheld this right and proved its strength, showing that the voice of the people is not always meant to be silenced but rather to be heard and respected. And there was one such case where the freedom of speech and expression was put to the real test.

In 2012, in Mumbai, a shutdown was observed following the death of Bal Thackeray. In response, the two young women posted on social media questioning the city-wide bandh; one of them wrote, 'Dead people like Thackeray are born and die every day, and one should not observe the Bandh for that.' The post led to public outrage, and both women were arrested under Section 66A of the Information Technology Act 2000,<sup>18</sup> which criminalises sending offensive messages through computers or other communication devices.

Their arrest sparked nationwide debates. People questioned why expressing an opinion on social media was treated as a criminal act. Later, Shreya Singhal, a law student, challenged the constitutional validity of Section 66A,<sup>19</sup> arguing that it was vague, arbitrary, and violated Article 19(1)(a), the right to freedom of speech and expression.

In 2015, the Supreme Court of India in *Shreya Singh v Union of India* struck down Section 66A for being unconstitutional. The court held the section lacked clear definitions and gave excessive power to authorities, leading to misuse and wrongful arrest. This landmark judgment became a symbol of digital freedom in India<sup>20</sup> and reaffirmed that. Decent criticism or mere expression of opinion cannot be silenced under the guise of law and order.

## CONCLUSION

We must understand this through the lens of humanity, though sometimes we all cross a line we were never meant to. There are times when we speak words that should never be spoken or are influenced by voices that push us beyond the limits of decency and cloud our sense of judgment. And here the issue is not just about religion, caste, or community. It is about

---

<sup>18</sup> Information Technology Act 2000, s 66A; 'Two Mumbai girls arrested for Facebook post against Bal Thackeray get bail' *India Today* (20 November 2012) <<https://www.indiatoday.in/india/story/2-mumbai-girls-in-jail-for-tweet-against-bal-thackeray-121882-2012-11-18>> accessed 25 October 2025

<sup>19</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1

<sup>20</sup> "Shocked" that Section 66A is still being used, SC seeks Centre's response' *The Hindu* (07 January 2019) <<https://www.thehindu.com/news/national/shocked-that-section-66a-is-still-being-used-sc-seeks-centres-response/article25931913.ece>> accessed 25 October 2025

humanity itself, about knowing our boundaries. Even an educated person can sometimes say things that make them sound ignorant. And sometimes an uneducated person can understand a law better than the learned ones. There is no place here for high or low, rich or poor, learned or unlearned. The law and its rights belong to every citizen of this country, to everyone who together makes India a sovereign, secular, socialist, democratic republic. This is the India that we built, not on words of hatred, but on songs of love, the India for which countless people shed their blood and sweat. And they dreamed that every citizen should have the freedom of speech and expression, not to suppress others, but to awaken them. If we look back, even those who raised their voices during the struggle for independence also spoke fiercely, but there was not much hate; they were filled with the fire of freedom, rights, and justice. The speech united people, gave them courage to break their chains, and inspired them to stand tall with dignity. But today, the same words of freedom are being twisted for personal gain, used to divide communities, to provoke hatred among relations, and to shatter peace. And that is the real difference we must learn to understand. That religion, caste, and beliefs may all have their place, but the true meaning of freedom lies in unity, compassion, and the strength to live together as one nation.