



# Research Ambition

An International Multidisciplinary e-Journal  
(Peer-reviewed & Open Access) Journal home page: [www.researchambition.com](http://www.researchambition.com)  
ISSN: 2456-0146, Vol. 08, Issue-IV, Feb. 2024



## EVOLUTION OF CONCEPT OF FREEDOM OF SPEECH AND EXPRESSION

Shubham Garg<sup>a,\*</sup>



<sup>A</sup> Shubham Garg, LLM Student, Maharashtra National Law University, Nagpur, (India).

KEYWORDS	ABSTRACT
Freedom, Speech, Expression, Democracy, Constitution, Civilization	Free speech is considered as the cornerstone of all democracies. It enables individuals to express their views freely without fear of censorship. There is a long and rich history in the evolution of concept of free speech that can be traced back to ancient civilizations. When we taking about evolution of freedom of speech and expression in India the first question always came in our mind why India adopts this ideal right as one of the most sacrosanct inalienable rights. The answer of this question dates back into the long back history of pre independent India when colonial rule was theirs. The British Empire used various law sand measures to restrict the Indians from expressing their opinions and ideas against the colonial oppression Another reason behind the adoption of this alienable right was the founding fathers of India`s Constitution, vision is to ensuring that India`s citizens enjoy liberty of thought, expression, conviction, belief, faith and worship which is vital for a democratic society. Here in this research paper researcher is going to explore in depth the Importance of this sacrosanct right from time immemorial.

### 1.1 Introduction

Free speech is considered as the cornerstone of all democracies, since it enables individuals to express themselves freely without fear of censorship or repression. In view of people being able to learn from different points of view, and express their views in various forms, freedom of expression is also an encouragement for a culture of diversity, tolerance or creativity. There is a long and rich history in the evolution of concept of Free speech that can be traced back to ancient civilizations. The freedom to speak was seen as a key element of democracy and citizenship in ancient Greece<sup>1</sup>.

Athenians had practiced a form of direct democracy in which citizens could participate in public debates and decisions. They also considered the art of rhetoric and persuasion to be an instrument that would enable them to express their views and influence others. In ancient Greece, however, this freedom of expression was not extended to everyone. Only free male citizens had the right to speak in public assemblies, while women, slaves, and foreigners were excluded<sup>2</sup>.

The practice and recognition of Free speech declined during the Middle Ages. The rise of feudalism, monarchy and theocracy is leading to a

### Corresponding author

\*E-mail: [lawshubhamgarg@gmail.com](mailto:lawshubhamgarg@gmail.com) (Shubham Garg).

DOI: <https://doi.org/10.53724/ambition/v8n4.04>

Received 15<sup>th</sup> Nov. 2023; Accepted 20<sup>th</sup> Jan. 2024

Available online 26<sup>th</sup> Feb. 2024

2456-0146 /© 2024 The Journal. Publisher: Welfare Universe. This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)

<https://orcid.org/0009-0008-5521-8580>



suppression of all individuals' rights and freedoms. The freedom of inquiry and free speech has been restricted by the predominance of the Church's dominant influence, its doctrine of orthodoxy<sup>3</sup>. Free speech has also been hampered by the emergence of the Inquisition and censorship of books and ideas. But some voices have also called for change in the status quo and defended Free speech. For example, John Wycliffe, Jan Hus, Martin Luther, John Calvin, and other reformers condemned the corruption and abuses of the Church, and called for religious freedom and tolerance<sup>4</sup>.

The concept of Free speech was revived and expanded in the modern era. A spirit of reason, empiricism, humanism and individualism emerged during the Enlightenment period. Values of freedom, equality, fraternity and rationality have been advocated by philosophers and thinkers in this period. They've been arguing about human rights and the sovereignty of the people<sup>5</sup>. They were also protecting the fundamental and inalienable right to freedom of expression, which is vital for human progress and happiness. John Locke, Voltaire, Jean Jacques Rousseau, Thomas Paine, Immanuel Kant, John Stuart Mill are among the important figures that have contributed to this debate.

The American Revolution (1775-1783) and the French Revolution (1789-1799) were two historical events that gave a practical expression to the ideals of Free speech. Both revolutions were inspired by the Enlightenment principles and sought to overthrow oppressive regimes that denied basic rights and liberties to their subjects. Both revolutions also produced landmark documents that

enshrined Free speech as a constitutional right.

## **1.2 International bill of human right and Free speech**

The 20<sup>th</sup> century revival of fundamental Free speech dates back to 1948 when for the first time Universal Declaration of Human Rights was issued by the United Nations. The Universal Declaration of Human Rights states that "each and every human being, irrespective of their race, sex, language, religion or any other status, has inherent dignity and rights"<sup>6</sup>. In Article 19, it also provides for the freedom of opinion and expression.

Subsequently, UDHR is being followed by 2 international treaties which laying down Civil and Political Rights; Economic, Social and Cultural Rights. The International Covenant for Civil and Political Rights, adopted by the United Nations of 1966 and entered into force in 1976, and ICCPR that covers economic, social and cultural rights adopted by the United Nations of 1966 and entered into force in 1976.

The ICCPR recognises the right to freedom of expression in Article 19, which states that everyone has the right to hold opinions without interference and to seek, receive, and disseminate information and ideas of all kinds through any media and regardless of frontiers. In cases in which the rights of persons are infringed by a State Party, ICCPR also provides that they may lodge complaints with the Human Rights Committee<sup>7</sup>.

The ICESCR recognises the right to participate in cultural life which includes enjoying and contributing to culture by means of creative expression<sup>8</sup>. A Committee on Economic, Social and Cultural Rights will also be established under

the ICESCR with a view to monitoring the implementation of the Agreement by States Parties.

### **1.3 Evolution of Free speech in India**

When we taking about evolution of Free speech in India the first question always came in our mind why India adopts this ideal right as one of the most sacrosanct inalienable right? The answer of this question dates back into the long back history of pre independent India when colonial rule was theirs. The British Empire used various laws and measures to restrict the Indians from expressing their opinions and ideas against the colonial oppression<sup>9</sup>. Some instances of these laws are:

The Laws of Sedition in 1870, which made it a criminal offence to incite disaffection or hatred against the government or the Queen. The press law of 1910, which made it compulsory for newspapers and magazines to obtain a license from the state before any publication deemed seditious or prejudicial could be confiscated by authorities.

The 1921 Rowlett Act, which granted the government authority to apprehend and hold anyone accused of treason or terrorism without trial. The Salt March of 1930, a nonviolent protest against the British salt monopoly and the salt tax, led by Mahatma Gandhi. The British authorities responded with brutal force, arresting thousands of protesters and firing at unarmed crowds.

The Quit India movement, launched by the Indian National Congress in 1942 to demand the end of British rule, was a mass civil disobedience movement. The British government declared a state of emergency and arrested thousands of leaders and activists, including Gandhi, Jawaharlal Nehru, and Vallabh Bhai Patel.

These are some of the instances where the Britishers`s atrocities violated the Free speech of the Indian people. The struggle for freedom of speech, which was ultimately achieved when India acceded to a sovereign democratic republic in 1947<sup>10</sup>, also played a role in the quest for independence.

Another reason behind the adoption of this alienable right was the founding fathers of India's Constitution, vision is to ensuring that India's citizens enjoy liberty of thought, expression, conviction, belief, faith and worship which is vital for a democratic society<sup>11</sup> has been the objective of Indian constitutionalists when they decided to enshrine freedom of speech as a fundamental right.

### **1.4 Indian Constitutional Assembly Vision on how Free speech took its Shape in India`s Democratic ideals**

To understand the vision of our founders of constitution behind enacting such a sacrosanct right we need to go back to 1st and 2nd December 1948, when Draft Article 13 (later Article 19) was discussed. The draft of Article 13 provides that Free speech is guaranteed by certain reasonable restrictions on eight grounds, inter alia the security of the state, friendly relations with foreign countries, public order, decency or morality, contempt of court, defamation, incitement to an offence; Indian sovereignty and integrity.

There were different views expressed by the members of the Constituent Assembly on the need and scope of these restrictions. Some of the arguments in favour and against these restrictions are as follows:

**Those who are in favour are:**

1. The restrictions that are necessary to balance individual rights and social interest, argued Dr. **B.R. Ambedkar**, the Chairman of the Drafting Committee. In a civilized society, he said, “no right must be unrestricted or limitless and that all rights have to be fairly regulated by law. He also pointed out that the restrictions were based on similar provisions in other democratic constitutions, such as those of the United States and Ireland<sup>12</sup>.”

2. The restrictions that are needed to keep public order and morality intact were supported by **Mr Alladi Krishnaswami Ayyar**, a member of the drafting committee. He stated that “Free speech does not mean freedom to incite violence or hatred, or to undermine the security or integrity of the nation. He also cited examples from British and American jurisprudence to justify the limitations on free speech<sup>13</sup>”.

3. **Shri K.M. Munshi**, another member of the Drafting Committee, justified the restrictions as reasonable and necessary to protect the interests of the minorities and the weaker sections of society. He contended “that Free speech should not be used to propagate communalism, casteism, or separatism, or to offend the sentiments or beliefs of others. He also suggested that the restrictions should be interpreted narrowly and strictly by the courts<sup>14</sup>”.

**Those who against this idea of putting restrictions:**

1. **Pandit Thakur Das Bhargava** opposed the restrictions as excessive and arbitrary. He argued that “Free speech is the essence of democracy and liberty, and that any restriction on it would stifle

dissent and criticism. He also feared that the restrictions would be misused by the executive to suppress opposition and dissent<sup>15</sup>”.

2. **Shri H.V. Kamath** objected to the restrictions as vague and undefined. He pointed out that “terms such as 'security of the State', 'friendly relations with foreign States', 'decency or morality', etc., were not clearly explained or qualified in the Draft Article. He also proposed that some of these grounds should be deleted or modified to make them more specific and precise<sup>16</sup>”.

3. **Shri R.K. Sidhva** protested against the restrictions as undemocratic and unconstitutional. He claimed that “Free speech is a natural and inherent right of every human being, and that no law can abridge or curtail it. He also asserted that the people of India had fought for this right against colonial oppression, and that they would not tolerate any infringement on it by their own government<sup>17</sup>”.

So, from the above analysis we can conclude that no rights are unlimited in an organized democratic state. With every right there are certain reasonable restriction and with these restrictions there are certain safeguards which every state is need to be followed so that people`s opinion should be given a paramount importance in a democratic state. But certain time state forgets these safeguards, which results into making oppressive laws which are in derogation to fundamental rights guarantees to its citizens by state. So, to deal with this situation our constitutional makers in advance brings Judiciary as the Key pillar of our democracy which are assigned with the task of judicial interpretation of our constitution and which act as a safe guarder of

our most cherish able fundamental Right.

#### **1.4 Indian Constitution and Free speech**

Indian Constitution under Article 19(1)(a) which provides for “All citizens shall have the right to Free speech” but this Right shall be limited by adding restrictions under Article 19(2) which provides that “Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”.

The idea of our Constitutional fathers is clearly seen here is that they didn't want this as an absolute right so they added certain reasonable restrictions to it which are in interest of national and public security. Further from time-to-time Indian Judiciary through its interpretation expand the horizons of this sacrosanct inalienable fundamental right<sup>18</sup>.

So, the next question arises in our mind why this right is so important that **George Orwell** called it “If liberty means anything at all, it means the right to tell people what they do not want to hear.”<sup>19</sup>

Because of the following reasons:

**1.** In order for a democratic government to function, freedom of expression is essential. This provides citizens with a means of expressing their opinions, criticizing the Government and participating in Decision Making. If freedom of expression is not preserved, the society risks

becoming authoritarian and has a limited amount of room for disagreement or divergent views.

**2.** The concept of individual autonomy has a strong connection with freedom of expression. It's recognizing that individuals have a right to think, believe and express themselves freely. In order to develop and pursue happiness, that autonomy is essential<sup>20</sup>.

**3.** It is seen as a way to find truth through free speech. With open discussion and an exchange of views, societies can get a clearer picture of what is going on. Prohibition of freedom of speech can impede the pursuit of knowledge as well as an ability to oppose prevailing beliefs<sup>21</sup>.

**4.** In order for society to advance, free exchange of ideas is crucial. Through open dialogue, societal norms and values can be developed, and marginalized voices can be heard, leading to positive change. Society can fall into stagnation without freedom of speech, unable to deal with new challenges and injustices.

**5.** The role of freedom of expression in holding governments and institutions to accountable is crucial. In order to provide transparency and avoid abuse of authority, citizens need the freedom to criticise and ask questions of those in power. Unchecked power and possible abuses of human rights may result from restrictions on freedom of expression.

**6.** Free speech makes it possible to speak of different cultures, religions and ideological stances within a variety of societies. It helps to foster a culture of pluralism, while preventing the dominance of one narrative. A wide range of views and opinions can be drawn from this diversity of

expression.

7. In order to express complaints and resolve conflicts, Free speech provides a non-violent means of doing so. If there is a possibility for individuals or groups to raise their concerns freely, it reduces the likelihood of violence being used as a means of redress.

Because of above following reasons many of Jurists called it as one of the most sacred alienable fundamental right which is one of the most important pillars of democracy<sup>22</sup>.

So, the next important question arise in our mind is how this sacrosanct right should be expanded? In India the answer to this question lies in Judicial Interpretation of this right from time to time in many landmark judgments. For instance, in the landmark Judgment of **Bennett Coleman & Co. v. Union of India**<sup>23</sup>, In this case, “the Supreme Court annulled a law that imposed a ceiling on the consumption of newsprint by newspapers and prescribed a formula for its allocation. The Court held that “such a law violated the Free speech of the press, as it would affect the volume and circulation of newspapers, and that it was not saved by Article 19(2) of the Constitution”.

So, the next important questions came in our mind is what are the key features of this sacrosanct right? The answer to this question lies in Judicial Interpretation of this right from time to time in many landmark judgments. So, say for instance in the landmark Judgment of **Maneka Gandhi v. Union of India**<sup>24</sup> where Apex Court held that “The right of free speech and expression has not been limited to speaking or writing words only; it also encompasses, among other things, those rights

relating to freedom of silence, the ability to communicate one's opinions and access to information. The judgment emphasises that the right does not constitute an absolute right and, although it is subject to reasonable limitations, any such limitation must comply with the test of proportionality without being arbitrary or excessive”.

In India the Horizons of this sacrosanct right is expanding because of some of the emerging issues that affect this freedom are globalization, digitalization, artificial intelligence, cybersecurity, fake news, hate speech, privacy, etc.

The emergence of new technologies and platforms which make it possible to access the public sphere in a never-before-seen way, are one of the main changes brought about by globalization in terms of free speech and expression. The Internet, social media, blogs, podcasts, memes, and hashtags have given rise to new modes and ways of expressing themselves. They have also made it easier for ideas, cultures and values to move from one country to the next<sup>25</sup>.

However, the scope and limitations of freedom of expression have also been brought into question by these developments. The threats of terrorism, extremism, hate speech, fake news, cyberbullying, online harassment, etc., have posed serious challenges to the security, stability, and harmony of society<sup>26</sup>.

Tensions over censorship, surveillance, data protection and other issues have led to a debate on the balance between individual rights and citizens' interests. The boundary between tolerance and diversity has been brought into sharp focus by the

conflict over identities, ideology, religion, politics etc. The notion of Free speech is therefore extended and distorted around the world by globalization.<sup>27</sup>

The objective of this paper is to analyse how to balance and safeguard this right of citizen by putting some reasonable restrictions to it. So, for that purpose the researcher firstly going to Critically Analyse the evolution of traditional aspect of Free speech and then slightly shift to emergence of digital age, how Introduction of information and technology Act 2000 changes down the Landscape of this sacrosanct right, and finally what key amendments brings by legislature under this Act and why many scholars oppose them.

#### Endnote:

<sup>1</sup> Stevens, John Paul. "The Freedom of Speech." Yale Law Journal 102 (1993): 1293–1313.

<sup>2</sup> ibid

<sup>3</sup> Bakshi, P. M. "Television and Freedom of Speech." Journal of the Indian Law Institute 31 (1989): 408–11

<sup>4</sup> ibid

<sup>5</sup> Baj, S. R. "Free speech in Labour Management Relations." Journal of the Indian Law Institute 5 (1963): 377–417.

<sup>6</sup> Arnaudo, Daniel. "Freedom of Expression, Privacy and Human Rights." In *Brazil, the Internet and the Digital Bill of Rights: Reviewing the State of Brazilian Internet Governance*, Igarape Institute, 2017, pp. 8–14.

<sup>7</sup> supra

<sup>8</sup> International Covenant on economic, social and cultural rights

<sup>9</sup> Tripathi, Pradyumna K. "Free Speech in the Indian Constitution: Background and Prospect." Yale Law Journal 67 (1958): 384–400.

<sup>10</sup> Indian Constitution, Preamble

<sup>11</sup> ibid

<sup>12</sup> B.R. Ambedkar, Speech on Draft Article 13 (Free speech), 7 CONST. ASSEMBLY DEBATES 38 (December 17, 1948).

<sup>13</sup> Alladi Krishnaswami Ayyar, Speech on Draft Article 13 (Free speech), 7 CONST. ASSEMBLY DEBATES 39 (December 17, 1948).

<sup>14</sup> K.M. Munshi, Speech on Draft Article 13 (Free speech), 7 CONST. ASSEMBLY DEBATES 40 (December 17, 1948).

<sup>15</sup> Pandit Thakur Das Bhargava, Speech on Draft Article 13 (Free speech), 7 CONST. ASSEMBLY DEBATES 41 (December 17, 1948).

<sup>16</sup> Shri H.V. Kamath, Speech on Draft Article 13 (Free speech), 7 CONST. ASSEMBLY DEBATES 42 (December 17, 1948).

<sup>17</sup> Shri R.K. Sidhva, Speech on Draft Article 13 (Free speech), 7 CONST. ASSEMBLY DEBATES 43 (December 17, 1948).

<sup>18</sup> Banerjee, D. N. "Some Aspects of Our Fundamental Rights: Article 19." Indian Journal of Political Science 11, no. 4 (1950): 26–36.

<sup>19</sup> Orwell, George, Unused preface to *Animal Farm* (1945).

<sup>20</sup> Turner, David A. "Freedom of Speech: Its Exercise and Its Interpretation." British Journal of Educational Studies 58 (2010): 285–91

<sup>21</sup> ibid

<sup>22</sup> Brandeis, Louis D. Dissenting opinion in *Whitney v. California*, 274 U.S. 357, 375–76 (1927).

<sup>23</sup> 1973 A.I.R. 106, 1973 S.C.R. (2) 757 (1972).

<sup>24</sup> 1978 A.I.R. 597, 1978 S.C.R. (2) 621 (1978).

<sup>25</sup> Kaye, David. Free speech in the Digital Age: Challenges and Opportunities. (2019).

<sup>26</sup> Ibid

<sup>27</sup> Citron, Danielle. Free Speech in the Digital Age: Balancing Rights and Responsibilities. 116 Va. L. Rev. 1849 (2022).

\*\*\*\*\*