

# Freedom of Speech VS Hate Speech a Comparative Constitutional Study of India and USA

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## **Abstract**

The majority of people residing in today's world have an opinion that democracy is the ideal form of government, and the right of free speech is the basic foundation of democracy which being the cornerstone of democracy. The freedom of speech is considered as mother of all freedom rights which guarantee individual liberty India and the USA are two of the most crucial democracies in the whole world. <sup>1</sup>In both countries, freedom of speech has been granted in their constitution. However, freedom of speech rights are different in both countries despite not being absolute in either country. These rights are governed by the separate type of government and implemented by judiciaries in their own way, so both countries have different approaches while regulating them. The citizens residing in these countries have their own way to express their freedom of speech to express themselves and have completely different ways to express their emotions and their liability. So freedom of speech we enjoy has its own limits, and hate speech is one of the limits imposed on the freedom of people, which poses a fundamental challenge to the rights of people. After enquiring about the status of this right of freedom in the USA and India, it is recognised that the expansion of this right's limitation for the people of India is much wider compared to the people of the USA. <sup>2</sup>The USA grants protection even in the case of offensive speech, whereas India imposes more restrictions in the name of public dignity. Through the legal and comparative analysis, the paper tries to compare how different democratic countries work well; it must consider freedom of speech to share their ideas and views but put an absolute check on its limit, as sharing views and spreading hate are different concepts, as sharing views increases growth, whereas increasing hate destroys peace and harmony in society.

**Keywords:** freedom of speech, hate speech, democracy, U.S, India

## **1. Introduction**

Freedom of speech is the cornerstone of <sup>3</sup>democracy, through which every individual residing in a democracy shares their opinions, views, challenges faced by them, the aggressive rule of government or their arbitrary actions, and even the social progress. However, the freedom of speech is being misused by

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<sup>1</sup> <https://articles.manupatra.com/pdf/56af671c-5cf6-47c7-bab0-0d24712e1cb9.pdf>

<sup>2</sup> <https://www.ijfmr.com/papers/2023/4/8066.pdf>

<sup>3</sup> Universal Declaration of Humans right Article 19(1948)

many citizens, politicians, or some mischievous elements, raising the right to speak into hate speech, which causes trouble constitutionally, legally, and even ethically. No doubt state authorities are using their best mindset to control the particular problem; even the legislatures are trying their best to carve out the rules that are necessary to stop such practices as hate speech.

Hate speech can usually result in the exploitation of religious networks and can cause destruction of public property and can lead to riots or even many serious issues related to belief and individuals.

### **Introduction to Freedom Of Speech And Hate Speech**

<sup>4</sup>Article 19(1)(a) provided under the Indian Constitution states that “all citizens shall have the right of freedom of speech and expression.” Freedom of speech can be defined in simpler ways as the right to express your own opinion, views, and ideas to another person or people without fear of government. The Constitution of India no doubt gives freedom of speech but is this freedom is covered under the blanket of limitations that means they are not absolute and is subject to various restrictions as stated in article 19(2) on the various grounds like sovereignty, integrity of India, friendly relations with foreign states, the security of the state, , public order, decency or morality, or for contempt of court, defamation or incitement to an offence.

Hate speech refers to the words that promote hate or try to bore a seedling to hate and discrimination regarding specific groups or individuals. These speeches are generally spoken by one person against another person or group, generally targeting another group's religion, gender, ethnicity, gender, etc. The media, the 4th pillar of democracy, is too responsible for hate speeches. People who try to form their opinion and gradually question the government can even introduce a risk to national security.

### **Literature Review**

#### **John Stuart Mills in Harm Principle in 1859**

<sup>5</sup>In this, Mill argued that liberty, especially individual liberty, includes freedom of expression, which should be protected unless it directly harms others. His view forms the backbone of liberal democratic theory, promoting the idea of freedom of speech but under complete regulation, i.e., not allowing offensive speeches.

#### **Marketplace of Ideas Theory**

This theory was given by Justice Oliver Wendell Holmes<sup>6</sup> Jr; it suggests that truth emerges from the competition between ideas shared in public discourse. To suppress even unpopular views is dangerous to the democratic process, and it hides the truth.

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<sup>4</sup> Constitutional Limits Article 19(2)

<sup>5</sup> Mill, J.S(1859). On Liberty

<sup>6</sup> Waldron, J.(2012). The Harm in Hate Speech

## Human Rights Perspective

<sup>7</sup>**Article 19** of the Universal Declaration of Human Rights clearly states that freedom of expression is an inalienable right.

**Agrawal (2018) at Firstpost** claims that some media outlets that engage in unfair and prejudiced reporting aim to incite violence against people and suppress freedom of expression. Social media hate speech spreads its influence on traditional news outlets as well. The author openly did critics to all those news anchors who openly use words like 'urban-naxals' or 'maoists' in media as it violates their freedom of speech. The issue lies in how anchors speak about programs to boost ratings, frequently causing people to accuse unfairly.

**The Wire reported** in 2016 that The Hoot's annual free speech report stated that 2015 focused on inquiries about free expression. Cases involving various forms of restriction, offensive speech, rebellion, false statements, intimidation, violence, fatalities, limitations, and monitoring were detailed in the document.

**Sorabjee** published an article in the 'Indian Express' in 2018 states how sedition law is being misused by major politicians today. The Article 19(1)(a) of Indian Constitution protects the freedom of speech and expression for Indians, yet it doesn't offer an absolute right. Under Article 19(2), restrictions may apply if there's a danger to national or state security. Adopting the Indian constitution led to debates over why seditious laws should be included in Article 19, since they had been previously employed by the British government to curb nationalist movements against India's freedom fight. The debate led to seditious acts being treated as a crime under Section 124A, where the penalty included life imprisonment plus a fine for those found guilty. Sedition refers to actions capable of fostering hatred or violence within a nation. Fair criticism about the government or administration should not be considered as sedition. The sedition calls for violence or threats. The author acknowledges that sedition is being misused but argues that merely altering some laws does not resolve the issue of remaining incorrect, given that numerous laws have been abused. If the provision is correctly understood, the honor of the Indian state will be safeguarded.

## Origin Of The Fundamental Right Freedom Of Speech

Idea of fundamental right freedom of expression and speech is derived from the Roman Republic's core concept, which was believed to have started in the late 5th or early 6th century. This was the time when early human rights were born, which contain the different concepts of various fundamental rights which include freedom of speech and expression. The first country which guaranteed these civil rights was England through its Bill of Rights in 1689. Followed by the French Revolution, which established freedom of expression as an inalienable right. As per the first amendment of the United Nations Constitution, the freedom of expression became fundamentally important. The bedrock of democratic government is allowing free speech. For the machinery to work properly, liberty plays an essential role, as this is the basic raw material for all democratic countries and their democratic processes to work properly. The right to free speech has a rich and extensive history. The right of freedom of speech is even presented through various conventions in the present world.

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<sup>7</sup> Universal Declaration of Humans right Article 19(1948)

India, being a democratic country, gives essential importance to the right to free speech. The Indian constitution guarantees all people certain rights; even the preamble of our country guarantees all people certain rights and promises India as a secular, sovereign, and democratic country. Talking about the Colonial Era when India was under the British Crown, the freedom of speech was heavily impacted in India. The British Government never allowed Indians to share their views, especially their ideologies during nationalist movements.

From the 1860s, <sup>8</sup>Section 124A known as the Sedition law present in the Indian Penal Code (IPC), was also one of the most famous colonial-era laws, which was used by the British government to criminalise any word or action as hate or contempt which was against the crown. Our many leaders, like Mahatma Gandhi and many more freedom fighters, were prosecuted with this section.

The Indian Press Act of 1910 was also the earliest law which restricted freedom of speech and press. It gave vast powers to the British Crown to allow the censorship of publications which were deemed to be seditious or offensive against the government. The Act was basically to suppress all voices that were raised by Indians to criticise British policies.

Talking about Post-Independence After gaining independence in 1947, India adopted a constitution in 1950 in which there was clearly expressed the right of freedom of speech and expression as our basic fundamental right. The Preamble of India even guarantees the freedom of speech to its citizens. <sup>9</sup>Under article 19(1)(a), it clearly guarantees all citizens both rights, but this is not absolute; its limitations are even provided as reasonable restrictions under section 19(2), which are public order, sovereignty and integrity of India, defamation, incitement to an offence, decency or morality, etc.

Over the decades India's Supreme Court has played a critical role in shaping the structure of freedom of speech and expression in India in various judicial judgements, but as laws are developing, the Indian laws are still found to be incomplete, as the Indian laws do not clearly distinguish hate speech as a separate category. Still, the Indian government has tried to introduce several provisions which are used to regulate hate speech, like

**Section 153A of the IPC** <sup>10</sup>– this law is against those groups which promote enmity between different groups on grounds of religion, race, place of birth, etc., and will be punishable by imprisonment.

**Section 295A of the IPC:** It states that any act that has been maliciously made to outrage any religious feeling will be considered a crime and will be punishable.

Over time there were many incidents which, if started to be discussed, could move away from my topic, but I am still listing a few which influence legal development. We still have certain laws, but there is a vacuum between the freedom of speech and hate speech which needs to be resolved. The incidents are as follows:

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<sup>8</sup> Section 124 of IPC Sedition Law

<sup>9</sup> Constitutional Article 19

<sup>10</sup> Section 153 of I.P.C

**1. 1984 Anti-Sikh Riots:**<sup>11</sup>- These riots were followed by Indian former Prime Minister Mrs Indira Gandhi's murder, which resulted in much inflammatory or hateful speech in different parts of the world, which incited violence against the Sikh community.

**2.1992 Demolition:** Popularly known as the <sup>12</sup>Babri Masjid Case. In this case a large crowd of Hindu activists led by an influential figure, no matter religiously or politically, gathered in Ayodhya and demolished the Babri Masjid. The demolition was converted into massive communal riots in India, which resulted in the massive death of people. This was provoked by hate speeches of so-called religion protectors or political propaganda.

**3.2002 Gujarat Riots:-** The hate speech and media reporting here also contribute a lot to spreading communal riots.

These were only a few events from the past which show us the path to keep a proper check on hate speech, either through intervention by the court or even forming proper legislative laws to protect the country from its bad impacts.

### **Incidents of Hate Speeches-**

- In 2025, recently in Bengaluru, seven individuals were apprehended for a crime for posting derogatory comments about Karnataka Chief Minister Siddaramaiah on social media. The whole controversy arose only after the Chief Minister questioned President Droupadi Murmu during a speech, which led to many online debates and offensive remarks.
- In Lucknow, youth leader Dilshad Salmani was detained for posting an objectionable image of Uttar Pradesh Chief Minister Yogi Adityanath on social media. His arrest prompted protests by BJP Yuva Morcha members across the state.
- In Davanagere, Karnataka, a banner depicting Chhatrapati Shivaji Maharaj provoked Contraversy. Police arrested an activist from the Hindi Jagarana Vedike who opposed taking down the banner, and the incident sparked demonstrations by Hindu Activists.
- In 2016, Umar Khalid--a student leader from JNU—was heavily criticized on the TV channel Times Now, where a s reporter characterized him as a greater danger to the country than Maoist terrorists and other anti-national elements.
- In 2018, the Supreme Court asked the Uttar Pradesh government to explain why it had rejected an appeal filed by Yogi Adityanath in a 2007 hate speech case.
- The appeal came after the then Chief Minister made a hate speech in January 2007 that led to riots in the Gorakhpur district.
- Two activists Vrinda Grover and Kavita Krishnan in 2015 expressly wrote a letter which criticized Times Now and accuses his reporter for disrespecting the two .They wrote in letter that anchor used

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<sup>11</sup> 1984 Indira Gandhi case

<sup>12</sup> Babri masjid case of 1992

wrongful terms like 'naxal', 'terrorist', and 'terrorist sympathizer', for them and even remarked all these words as hate speech and using its power under corrupt practices..

So from above we can say that the impact of speech that spread hate gets only more worse when it is met by some publisher or broadcaster or press. When any person, no matter their standing on political, bureaucratic or individual grounds, makes a hate speech, the press shall describe that under unbiased and impartial terms, i.e., explain the situation in exactly the same condition as it was made, without provoking it by adding extra spies to the speech, as media journalists little refrain from using expressions or language that can lead to violence or intolerance.

### **Freedom of speech and hate speech in America**

The First Amendment of the U.S.A Constitution ,clearly protects the right of U.S. citizens to freedom of speech. It clearly states that “Congress shall make no law... abridging the freedom of speech.” It is clearly mentioned that this protection is for all kinds of expression, even if they contain constructive criticism. Even the USA Supreme Court has clearly stated that if the hate speech does not fall under the Amendment 1 defined exception, then it shall also be protected under freedom of speech.

The exception is very limited to very special cases which don't accept hate speech under the 1st Amendment. They are: -

1. Incitement to Imminent Lawless Action:-It was stated in the English case (“Brandenburg vs Ohio”, 1969) that the American Supreme Court clearly stated that if a speech will incite imminent illegal activities, then it would be restricted.
2. True Threat: The statements that are made to threaten individuals with violence are restricted under Amendment 1 to be protected under freedom of speech and expression.
3. Fighting Words: Speech that is uttered that can cause a breach of peace.

Despite these exceptions, people in the United States are allowed to say what they want. Under the First Amendment of the USA, the government can't stop people from speaking their minds even if what they say is offensive, rude, or hateful.

### **Research Objective**

- 1.To study about the current situation of Article 19 of Indian Constitution.
- 2 This study tries to compare freedom of speech, in India with that in the United States.

### **Methodology of the research**

This research study is exploratory in nature ie the complete analysis is based on major available data available online (secondary data), including websites, research papers, newspapers, and other sources. The research involves both qualitative and quantitative elements, but it is mainly qualitative in approach.



## Comparison Between Freedom of Speech vs Hate Speech In India And The USA

| Feature                   | India   | United States  |
|---------------------------|---|--|
| 1.Constitutional Right    | Article 19(1)(a) guarantees freedom of speech and expression.   | First Amendment of the US Constitution<br>“Congress shall make no law abridging the freedom of speech.   |
| 2.Scope                   | Subject to Reasonable Restrictions  | Nearly Absolute, subject to narrow exceptions.   |
| 3.Reasonable Restrictions | Yes-<br>a. Public Order<br>b. Decency<br>c. Morality<br>d. Security of the State<br>e, Defamation<br>f. Contempt of Court<br>g. Incitement to An offence. | Yes-But Narrowly Defined by the Supreme Court Rulings;<br><b>a.Miller Test</b><br><b>b.Brandenburg Test</b><br>c.Defamation<br>d.National Security |
| 4.Hate Speech             | Prohibited under sections like IPC 153A and 295A  | Primarily Civil Law, Criminal defamation rare and controversial  |
| 5.Practical Realities     |   |  |
| Press Freedom Index 2025  | 151 <sup>st</sup> Out of 180 countries  | 57 <sup>th</sup> out of 180 countries  |
| Score                     | 32.96 (on a scale 0 represents the highest level of press freedom)  | Not Specified  |
| Political Influence       | Reports of government pressure on media and internet censorships  | Content Moderation handled mostly by private platforms controversial but less direct government control  |

## The Current Scenario Of Freedom of Speech in India

India being the largest democracy of world which means government is elected by the people and the power ultimately lies with the citizens. In the Indian Constitution every citizen is given certain fundamental rights that are essential for feeling free in a democracy. The fundamental right freedom of speech means every citizen has certain rights and freedom to expressly express whats in their mind like their thoughts, opinions and ideas. It is to be noted that in India Article 19(1)(a) of India constitution state free speech as a fundamental right, clearly stating it as freedom of speech and expression, which also includes freedom of the press in it.

Freedom of the press could be understood as the independence of media organisations which even include anchors of various media news channels and various journalists and editors who can report news, and how much people engage in this field can express their opinions and investigate the government or powerful people about any scenarios without any fear of sedition charges, harassment or punishment.

**Unfortunately, in recent years in India the situation has been really complicated.**

### **1. Government Pressure and Censorship**

The government of India has been accused in many cases of putting pressure on media channels or individuals to avoid reporting critical news. Some journalists faced legal actions like sedition or defamation charges for criticising government policies or exposing corruption scenarios. It is too bad that even if an editor gives a constructive remark, it will be charged under the sedition or defamation mark.

### **2. Arrest Of Journalists**

The Unlawful Activities Prevention Act (UAPA) has become a thorn in the throat of many independent journalists, as many have been arrested for being accused under this law.

Many journalists, like Rana Ayyub and Disha Rani, have been arrested and faced raids by police for publishing reports against government policies.

### **3. Avoidance of Controversial Topics**

Many journalists and owners of news channels have self-censored due to harassment faced either by them or any other journalists. They have stopped raising controversial topics. As media itself is the most important pillar and a bridge to scrutinised government policies, critically showing them to the citizens so that they can know their limitations before benefits, if they get mute and promote the dominating behaviour of the government, then how will the normal citizens find cons in them? The smaller or even independent media channels cannot survive in this so-called democratic country without political backing, so the result is that the media is even sold.

### **4. Internet and Digital Media Control**

This free India even controls the internet and digital media of its citizens by increasing the use of IT Rules 2021 by the government. These rules even regulate digital news portals and social media. Many critics even said that these rules need to be checked, as they are giving arbitrary powers to the government to block or demand the removal of content.

### **5. Fake News Crackdowns**

The government often justifies restrictions by targeting fake news, but sometimes this has even become a tool to suppress legitimate or right criticism.

But through this I will not create fear among my readers and will make them feel that there is no source that is telling them the truth. The actual thing is now the citizens of the country have to work smart and trust some vibrant independent sources of press like The Hindu and The Indian Express, which are worldwide newspapers. Even though there are many digital media outlets like The Wire and The Scroll, they are trying their best to work as their reliable sources. As their investigative journalists continue to expose scams, corruption and government abuses. Even the supreme court is trying their best to stand with freedom of the press and help to protect journalists from arbitrary government actions and police raids



### **The Statistical Data Expressing Freedom Of Speech**

As per the latest data of Reporters Without Borders in World Freedom Index, In 2023 India ranked 161 when compared with 180 countries. In 2019, India position was at 140th out of 180 countries. In 2018, India stood at 138th position. This shows that how India's position is getting worsed over the years for its freedom of speech and expression despite being one of the largest democracy in world.

The journalists are seen on the clear bases working in our democratic country in dangerous situations and under consistent threat. They are sometimes under the influence of our so-called leaders or political parties or sometimes saving their lives from the paid sources of the abovesaid. News containing murder of journalists Newspaper editors or the person who criticises the government are being trendy these days, as day after day you will find such news that would surely not surprise you. The most famous case of 2017 which was murder of a senior journalist named Gauri Lankesh is one of the most well-known cases of a journalist being murdered. She lost her life because of her sharp criticism and exposing some illegal actions by certain right-wing activists. Even when she tried to cooperate with them by taking money or was scared of their threats, she kept insisting on revealing the truth for the investigation. As a result, she lost her life. In recent years, many reports and events have shown an increase in hate speech and a decline in the freedom of the press. Criticizing the so-called Hindutva or Hindu Rashtra ideology often leads to threats from right-wing groups. This constant pressure to either work honestly or protect one's life has become a major problem for many journalists.

Journalism in this present world has become a professional business. Earlier, it was a prestigious profession which was one pillar of the state, but now it is a business because nowadays the honest matter is not relevant; the spice added to even the fooliest topic seems relevant if it increases their TRP. Media houses and newspapers are now a days more inclined towards advertisements. The newspapers and news channels which were meant for making critical reviews of government policies are advertising them using various slogans like "Indira Hatao, Desh Bachao" and "Acha Din Aana Vala Hai". Etc., and many more. The media now a days is owned by few personalities, which actually made freedom of speech and expression limited to books only.

### **Impact of Hate Speech on General Public**

The incidents mentioned above have clearly showed how speeches with hate are impacting free speech and expression in present time. Hate speech is often delivered like any regular speech, but its effects can be extremely harmful, to the point where a normal person might not even realize that one speech can cause public unrest and violence, and in some cases, even lead to loss of life. Some influential people use their authority to spread false information and misuse their power for personal benefit. Media outlets that support certain political parties or ideas have taken away the public's ability to debate and criticize fairly. Their main focus is to target specific groups or individuals and label them as "anti-national" or "Naxalites". Shows like "Traitors vs. Patriots" are created mainly for profit and to boost ratings, not for truth or justice. Social media is also part of this hate speech problem today it has been made a major tool for spreading false information. Digital Platform ,WhatsApp are being used privately to spread hateism. Although Meta is trying to educate users about not spreading fake news, it hasn't helped much. False accusations and rumors have led to more cases of mob violence and attacks on individuals. The kind of trolling done by Gen Z on social media is also contributing to hate speech. Just posting a controversial or offensive

comment on social media to seem cool can start 1000 debates and lead to many riots. Politicians are often seen using hate speech for their own political gains and to promote their religion. In a recent case, some politicians made offensive remarks such as "To live peacefully in India every Muslim should recite Bharat Mata ki Jai," which is generally not tolerated religiously and usually led to religious riots and increased violence among the common public on terms of caste.

## Conclusion

Freedom of speech is correctly considered as the cornerstone of democracy, as it enables individuals to question even the government and contribute to the social progress of the country. However, when we compare the freedom of speech between India and the United States, the right of freedom and limitations are completely different. The U.S. adopts an almost absolute approach, i.e., it even tries to protect controversial and offensive speech as per the First Amendment except in situations like incitement, threats, or fighting words, whereas India has a broader regulatory framework but with restrictions of article 19(2) on certain grounds like public order, morality, sovereignty, and decency. So concluding, we can say that we can say anything which could be tolerated in America, but not the same thing will be tolerated in India.

The paper also focused on how hate speech is being misused by politicians or for ideological gains. The paper tries to find actual gap between free speech right and hate speech, which has created a legal vacuum where criticism is completely suppressed.

No doubt freedom of expression encourages social growth and individual liberty, but when it becomes hate speech, it can even destroy peace, dignity, and social harmony. India, to settle in terms of freedom of speech, needs better laws and clear guidelines to avoid misuse of hate speech law, whereas the U.S. must try to refine its approach in a clearer sense.

An absolute democracy requires freedom of speech but under complete regulation so that this freedom of speech does not turn into hate speech. As freedom of speech is a necessity, it shall not be taken away. Thus, it is essential to preserve freedom of speech, as it works as a shield in democracy, but if it is misused, it can become a sword on the throat or become intolerant.

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