



Freedom of Speech, Fundamental Rights and Governance in India with the Comparison of Other South-Asian Countries

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ABSTRACT

Freedom of speech is one of the finest fundamental rights in any democratic country. India is not exception of that. Fundamental rights are the basic human rights gives certain freedom to the citizen. Freedom of speech encourages creativity, innovation, and the exchange of knowledge. Freedom of speech and expression is very important article to the fourth pillar of democracy of a nation for the survival and contribution of News media. The paper will address about freedom of speech and fundamental rights among South-Asian countries, how fundamental rights, democracy and good governance related, roles of civil societies for democratic nation building. The paper will additionally discuss about Viksit Bharat @2047, the development of India in the century of independence and good governance. There will be a comparison among different South-Asian countries in the dimension of Rule of Law, Press Freedom, Political Rights, Corruption and the governance. As the recent cases and the observations of the Honourable High courts and Supreme court are the mirror image of the actual situation so some recent case judgments will be briefly discussed.

Introduction: Freedom of speech is one of the finest fundamental rights in any democratic country. India is not exception of that. Fundamental rights are the basic human rights gives certain freedom to the citizen. These are written in constitution of India in Part III, Article 12 to 35. Fundamental rights are like soul of

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constitution as they are essential for the life, protection and dignity of citizen. The foundation of democracy is fundamental rights. They make the rule of law a reality by ensuring equality, liberty, and judicial remedies. The rule of law would only be a theoretical concept without fundamental rights, but with them, it becomes practical and enforceable. Freedom of speech is the right to express anyone's opinions without fear of censorship or punishment. It protects diverse viewpoints and empowers citizens to criticize the government and make leaders accountable. However, it is not absolute and can be restricted in the interest of sovereignty, security of the State, friendly foreign relations, public order, decency or morality, contempt of court, defamation, and incitement to offence. Freedom of speech is guaranteed under Article 19(1)(a) of the Constitution of India. Freedom of speech encourages creativity, innovation, and the exchange of knowledge. This right also covers the freedom to access and disseminate information and the freedom of the press as an essential part of public discourse. Freedom of speech and expression is very important article for the fourth pillar of democracy of a nation. The survival of news media based on the article. Through this media can analyse the performances of government, can make healthy criticism on policies. Nowadays social media influencers also getting advantages to share their point of views on different issues from local to global level on the basis of this particular constitutional provisions.

Freedom of speech and fundamental rights in different South-Asian Country

Country	Constitution	Freedom of Speech/ expression	Fundamental Rights	Time
India	THE CONSTITUTION OF INDIA	19(1)(a)	Part III 12-35	1950 - TILL DATE
Afghanistan	THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN	34	Ch. -2 22-59 [FR+FD] 22-40 (App.)	2004-2021 (up to Taliban takeover)
Bangladesh	THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH	39	Part III 26-47A	1972-TILL DATE
Bhutan	THE CONSTITUTION OF THE KINGDOM OF BHUTAN	7(2)	A. -7 7(1)- 7(23)	2008-TILL DATE
Iran	CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN	'speech' is not there Expression:	Ch. -III 19-42	1979-TILL DATE

		6,24,67,84,86,175	The rights of the people	
Maldives	CONSTITUTION OF MALDIVES	'speech' is not there Expression(everyone): 27	Ch. -II 16-69	2008-TILL DATE
Nepal	THE CONSTITUTION OF NEPAL	17(2)(a) Opinion and expression	Part-3 16-47 [FR+FD]	2015-TILL DATE
Pakistan	THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN	19	Part II Ch.-1 8-28	1973-TILL DATE
Sri Lanka	THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA	14(1)((a)	Ch.-III 10-17	1978-TILL DATE

Fundamental Rights, democracy and good governance: It is clearly seen freedom of speech and expression and other fundamental rights are given to the citizen in the constitution of most of the democratic, socialist and republic countries. Fundamental rights constitute the normative core of good governance, the rule of law, and democratic practice. Fundamental rights empower citizens to hold governments accountable. Rights such as access to information, freedom of the press, and freedom of assembly enable transparency and civic oversight, which are essential for responsive and inclusive governance. Fundamental rights serve as the foundation for inclusive economic policies. Economic policies related to the protection of rights tend to attract investment, reduce conflict risks, and promote sustainable development. Rights-based governance promotes stable policy environments and adherence to international norms like labour conventions and anti-corruption frameworks.

'Rule of Law' has been derived from the French phrase 'la principle de legalite' means a government based on the principles of law. The origins of the Rule of Law theory can be traced from the Ancient Romans during the formation of the first republic. Indian philosophers have also inculcated the rule of law theory by maintain the concept that King should be governed by the word of law. According to Edward Coke, Rule of Law is Absence of arbitrary power on the part of the Government. No man is punishable or can be made to



suffer in body or good except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. According to Prof. A. V. Dicey, the Rule of Law is the absolute supremacy of regular law over arbitrary power. It is based on three core principles- i) Supremacy of Law (no one above the law, punishment only for law breaches in ordinary courts); ii) Equality Before Law (all classes subject to the same law, including officials); and iii) Predominance of Legal Spirit (constitution's fundamental rights are products of judicial decisions and traditions, not just written law). From the perspective of the rule of law, fundamental rights institutionalize legal limits on government action and affirm the supremacy of law over political discretion. Independent judiciaries and equality before law, elements of rights enable domestic and international mechanisms to check abuses of power. The term 'democracy' is derived from the Greek 'demokratia', which was coined from demos ("people") and kratos ("rule"). Democracy is about participation, representation, and protection of minority voices. Fundamental rights guarantee the political freedoms necessary for democratic engagement such as voting rights, freedom of speech, and association. These rights are not merely procedural but substantive, shaping the quality and inclusiveness of democratic life. So, fundamental rights not only safeguard individuals but also function as the ethical and legal foundation of democratic governance.

Civil society's role about ensuring good governance: According to UNDP, Civil societies are non-state organizations and function outside the government and market that unite people to pursue shared goals, values, and responsibilities for societal progress. These include NGOs, community groups, social movements, indigenous peoples' organizations, volunteer groups, and citizens acting collectively or individually. Civil society operates as a non-profit entity. Civil society plays a significant role in enabling citizen interaction with the state and facilitating citizen participation in the governance process. India's regulatory framework includes laws for civil society such as The Societies Registration Act, 1860, Indian Trusts Act, 1882, Companies Act, 2013, and FCRA, 2010, ensuring structured governance, transparency, and societal contribution. Roles of Civil Society Organizations (CSOs) are crucial for democratic nation building through engaging in policy advocacy, protecting rights, fostering transparency, mobilising resources, and forming development partnerships. Civil society can reach out those zones where the government not even able to take the part to assist due to various reason such as not proper set up, the distance from the government organization, no nearest agent to take care of that etc. Civil society also play crucial role to bridge between the government or corporations and the marginalized people. They also help people to get the benefit of government's scheme as well as take donation from corporate businesses to help people. This is always a win-win game for all the social agent. Business owner or corporate managers sometime have intension to help the marginalized but they have not proper wing or socially skilful people



who are take care of that. By donating in civil society, they can fulfil their intension and get rebate in tax at same time. Civil society have required funding for social work and have socially skilful people so they also able to go ahead step by step towards their motto. A good government have the liability to take care of the people, in case government agent or officials not able to reach out where civil society play the role as a support system so local administration also help them to execute their plan.

Viksit Bharat and good governance in India: India's Viksit Bharat 2047 vision is an exciting dream to become a developed nation by the 100 years of independence. It aims for a massive economy worth \$30-40 trillion, with per capita income hitting \$15,000-18,000, and zero poverty through sustained 7-10% annual growth. The plan focuses on uplifting youth, poor, women, and farmers (Yuva, Garib, Mahilayen, Annadata). Key Objectives are zero poverty, quality education & healthcare, Skilled Labor with Jobs, Women in Economic Activity, India as a global food basket. There are certain challenges in this journey such as high inequality (income, gender, digital), skill gaps in the workforce, insufficient infrastructural set up, managing rapid urbanization and environmental stress, insufficient healthcare, policy implementation gaps, issues of inflation and low tax-to-GDP ratio. According to experts, Programs like Make in India, Digital India, and Skill India will boost manufacturing, infrastructure, education, healthcare, and green energy and overall economic growth as well.

Governance index of South Asian countries: There are four core components to create governance index such as Rule of Law, Press Freedom, Political Rights and Corruption. Rule of Law Index developed by the World Justice Project, measures the extent to which countries adhere to the rule of law, encompassing perceptions regarding the quality of contract enforcement, property rights, police and judicial effectiveness, and the prevalence of crime and violence. Press Freedom Index compiled by Reporters Without Borders, evaluates the degree of press freedom enjoyed by journalists and media organizations. It is based on seven criteria such as pluralism, media independence, environment and self-censorship, legislative framework, transparency, infrastructure, and abuses. Political Rights derived from Freedom House's Freedom in the World report, assesses the extent of civil liberties, including freedom of expression and belief, associational and organizational rights, and personal autonomy and individual rights. Corruption Index produced by Transparency International, which ranks countries according to perceived levels of corruption within the public sector, as assessed by experts and business executives

Country	Rule of law	Press freedom	Political rights	Corruption	Governance Index	Global ranking	Grade
Bhutan	65.9	23.0	73.8	76.6	59.8	52	B



India	53.3	23.4	83.3	32.5	48.1	72	C
Nepal	36.2	52.1	64.3	27.3	45.0	81	C
Sri Lanka	45.9	32.4	59.5	24.7	40.6	97	C
Bangladesh	35.1	24.4	40.5	13.0	28.2	126	D
Pakistan	25.7	19.1	40.5	18.2	25.9	130	E

Source: World Economics

Here, Index numbers shown on a scale of 0-100.

Rule of Law: 0 = low rule of law & 100 = High rule of law;

Press Freedom: 0 = Low press freedom, 100 = High press freedom;

Political Rights: 0 = Low political rights; 100 = High political rights;

Corruption: 0 = Bad, 100 = Good;

Governance: 0 = Poor governance, 100 = As good as it gets.

Grade definitions:

A: Very good governance

B: Good governance

C: Average governance

D: Poor governance

E: Very poor governance

Therefore, in comparison with other country we can see India is in the second position among the South-Asian countries with the global ranking 72 after the Bhutan (52). Behind India there are Nepal Sri Lanka, Bangladesh, Pakistan though Governance Index for some countries are not taken here due to their political situation and /or unavailability. According to Governance Index there is certain Grade for respective countries. From this we may conclude India is in a good position among South Asian countries.

Recent Cases regarding freedom of speech and fundamental rights: Recent cases and the observations of the Honourable High courts and Supreme court are the mirror image of the actual situation. Therefore, in the following part some cases can be consider-

MADHYAMAM BROADCASTING V. UNION OF INDIA (2022): The Union Ministry of Information and Broadcasting revoked the granted permission of Madhyamam Broadcasting Limited to uplink and



downlink a news and current affairs television channel called “Media One”, though MIB gave MBL permission to uplink ‘Media One’ for a period of ten years under the ‘Policy Guidelines for Uplinking of Television Channels from India’ and MIB issued a registration certificate for downlinking of the Media One channel for a period of five years according to the provisions of the ‘Policy Guidelines for Downlinking of Television Channels. MIB cancelled the uplinking and downlinking permission and issued show cause notice as MHA has denied security clearance in the past to the proposals of MBL.

The writ petition before hon’ble single and division bench of High Court of Kerala have dismissed. MBL was not provided access to the material which MIB submitted before the High Court to support the allegations made in the show cause notice.

The High Court relied on material that was placed in a sealed cover to reject the challenge to the revocation order. This course of action undertaken by the High Court violates the principles of natural justice.

The state has taken defence as the issue of national security clearance and establishment the relationship to JEIH. The principles of natural justice stand excluded when issues of national security are involved.

Security clearance is one of the conditions required to be fulfilled for renewal of permission under Uplinking and Downlinking Guidelines.

The principles of natural justice were constitutionalised by the judgement of this Court in Maneka Gandhi (supra). The effect is that the courts have recognised that there is an inherent value in securing compliance with the principles of natural justice independent of the outcome of the case

The non-renewal of permission to operate a media channel is a restriction on the freedom of the press which can only be reasonably restricted on the grounds stipulated in Article 19(2) of the Constitution. The reasons for denying a security clearance to MBL, that is, its alleged antiestablishment stance and the alleged link of the shareholders to JEI-H, are not legitimate purposes for the restriction of the right of freedom of speech protected under Article 19(1)(a) of the Constitution.

The channel did not violate the Programme and Advertising Code prescribed under the Cable Television Networking (Regulation) Act 1995. There was no evidence or material backing of nexus between Madhyamam Broadcasting Limited and Jamaat-E-Islami-Hind (JEIH). JEIH is not a banned organization. The SC observed that the channel was not given a chance to defend which violates Article 19(2). The state is using national security as a tool to deny remedies to the citizens thus violating the rule of law.



COMMON CAUSE V. UNION OF INDIA (2018): A registered society seeks, in a writ petition under article 32, to declare 'right to die with dignity' as a fundamental right within the fold of 'right to live with dignity' guaranteed under article of the constitution.

The right to die with dignity as fundamental right has already been declared by constitution bench judgment of Hon'ble Supreme court in Gian Kaur Case. Which the bench reiterate.

Gian Kaur V. State of Punjab, the Constitution bench ruled

"Right to life' is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of "right to life". With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to "freedom of speech" etc. to provide a comparable basis to hold that the "right to life" also includes the "right to die". With respect, the comparison is inapposite, for the reason indicated in the context of Article 21. The decisions relating to other fundamental rights wherein the absence of compulsion to exercise a right was held to be included within the exercise of that right, are not available to support the view taken in P. Rathinam qua Article 21."

And also declare that an adult human being having mental capacity to take an informal decision has right to refuse medical treatment including withdraw from life saving devices.

PUTTUASWAMY V UNION OF INDIA (2017): Justice K.S. Puttaswamy (Retd.) and Mr. Pravesh Khanna, filed Writ Petition when Aadhaar scheme was not under legislative umbrella. The scheme has been challenged on the grounds of violation fundamental rights, right to privacy under Article 21 of the Constitution of India.

Court use three-fold test-

- (a) The existence of law;
- (b) A legitimate State interest and
- (c) such law should pass the test of proportionality.

The observations are-

Collection of data, its storage and use does not violate fundamental Right of Privacy.



Parental consent for providing biometric information under Regulation 3 & demographic information under Regulation 4 has to be read for enrolment of children between 5 to 18 years to uphold the constitutionality of Regulations 3 & 4 of Aadhaar (Enrolment and Update) Regulations, 2016.

The provisions of Aadhaar Act requiring demographic and biometric information from a resident for Aadhaar Number pass three-fold test.....hence cannot be said to be unconstitutional.

Adhar Act & Regulation provides protection and safety of the data received from individual Aadhar Act is not unconstitutional. A good step for governance. People can get direct benefit from this, easy to serve the services for govt. to citizen at the same govt need to secure the data of public.

HEMANT MALVIYA V. STATE OF MADHYA PRADESH (2025): Hemant Malviya, a cartoonist faced multiple FIR for his satirical cartoon. which depicts a figure in RSS uniform receiving a COVID-19 vaccine from a caricature of PM. The cartoon originally published in 2021 and was re-shared in May 2025 with new commentary on caste census. Police claimed it as derogatory and communally provocative.

Sections: 196, 299, 302, 352, 353(3) of BNS, 2023 and Section 67-A of the I.T. Act, 2000.

The High Court denied Malviya's anticipatory bail, observing that his speech was malicious and repeat in nature. The Supreme Court disagreed, offering interim protection and accepting a written apology.

Justice Dhulia noted that while speech may be offensive, it must still fall within the scope of permissible criticism or satire unless it meets the thresholds of incitement or criminality.

The bench, suggested that criticism of public figures, even when expressed through satire, deserves constitutional protection unless it crosses specific statutory thresholds.

APOORVA ARORA VS STATE (GOVT. OF NCT OF DELHI) (2024): Apoorva Arora t an Actor, model and casting director. She has created in web series "College Romance" and hosted on YouTube channel of a media company (Contagious Online Media Network Pvt Ltd.). They are sought to be investigated and prosecuted for production, transmission, and online publication of obscene and sexually-explicit material

Sections: 67 and 67A of the IT Act,2000; 292,294,509 of IPC; 2(c), 3 of the Indecent Representation of Women (Prohibition) Act, 1986, ADJ modified order of ACMM directed the FIR registration only U/S 67 & 67A of IT Act.

Quashing Petition had filed u/s 482 CrPC before High Court and dismissed.



Appeal against the judgement. The right to freedom of speech under Article 19(1)(a) protects artistic creativity and expression was questioned.

The facts of the present case certainly do not attract Section 67A as the complainant's grievance is about excessive usage of vulgar expletives, swear words, and profanities. There is no allegation of any 'sexually explicit act or conduct' in the complaint and as such, Section 67A does not get attracted.

.... the availability of content that contains profanities and swear words cannot be regulated by criminalising it as obscene. Apart from being a non-sequitur, it is a disproportionate and excessive measure that violates freedom of speech, expression, and artistic creativity.

SUPRIYA CHAKRABORTY & ANR. V. UNION OF INDIA (2023): Same-sex couples filed writ petitions in the Supreme Court seeking legal recognition of same-sex marriages in India. Article 19 guarantees freedoms like speech, assembly, and association, while Article 21 protects the Right to Life and Personal Liberty, interpreted broadly to include dignity, privacy, and education. So, those can be guaranteeing all persons the right to marry

a person of their choice, including LGBTQIA+ persons.

The Special Marriage Act (SMA) violates the right to dignity and decisional autonomy of LGBTQIA+ persons and therefore violates Article 21 & 32. Excluding LGBTQIA+ persons from the SMA discriminates against them on the basis of their sexual orientation and the sex of their partner. This violates Article 15 of the Constitution;

The Court observation is the impugned provisions of the SMA are constitutional. The object of the SMA is to grant (and regulate) legal recognition to inter-faith and inter-caste unions of heterosexual couples.

The SMA would become unworkable if it is read in a gender-neutral manner... The exclusion of non-heterosexual unions from the SMA is not violative of Articles 14 and 15 of the Constitution;

The assumption of the petitioners that both law and society must consider non-heterosexual unions as belonging to the same class as heterosexual unions without distinction based on sexual orientation is wrong.

LGBTQ couples have a right to register their marriages under Section 5 of the HMA and under Section 17 of the FMA if they are lawfully married in a foreign jurisdiction and at least one of them is an Indian citizen.



ARNAB MONORANJAN GOSWAMI V. STATE OF MAHARASHTRA & ORS. (2020): Arnab Goswami, Editor-in-Chief of Republic TV and R Bharat has been targeted for his news broadcasts criticizing the Maharashtra government and the Maharashtra policer regarding on 16 April 2020, three persons, including two Sadhus, were brutally killed by a mob, allegedly in the presence of the police and forest guard personnel. on 21 April 2020, he had raised issues in relation to the allegedly tardy investigation of the incident by the police.

He was arrested in November 2020 for allegedly abetting the suicide of interior designer Anvay in 2018, based on a suicide note mentioning unpaid dues.

A writ of Habeas Corpus, claiming that he had been illegally arrested and wrongfully detained by the SHO Alibaug Police Station in relation to a FIR on 5 May 2018 under Sections 306 and 34 of IPC in spite of an earlier closure report was accepted by the Magistrate.

More than four decades ago, in a celebrated judgment in State of Rajasthan, Jaipur vs Balchand³⁹, Justice Krishna Iyer pithily reminded us that the basic rule of our criminal justice system is bail, not jail. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. Courts must be alive to the situation as it prevails on the ground – in the jails and police stations where human dignity has no protector.

While reserving the judgment at the conclusion of arguments, this Court had directed the release of all the three appellants on bail pending the disposal of the proceedings before the High Court. The interim protection which has been granted to the above accused by the order dated 11 November 2020 shall continue to remain in operation pending the disposal of the proceedings before the High Court and thereafter for a period of four weeks from the date of the judgment of the High Court, should it become necessary for all or any of them to take further recourse to their remedies in accordance with law.

So, an FIR to consider the grant of interim bail, especially when the personal liberty of the petitioner has been interfered with by the state action which is claimed to be in excess of state power.

KAUSHAL KISHORE V. STATE OF UP (2016): Kaushal Kishore, a minister Urban Development of the Government of U.P, alleged that the sexual assault of a woman and her minor child was termed a political conspiracy in a press conference. Therefore, the petitioner apprehended that there may not be a fair investigation. The petitioner claims that he was also offended by the irresponsible statement made by the Minister. Before this minister of electricity of Kerala also made certain statement, were highly derogatory of women.



Sections:154 Cr.P.C.,395, 397 and 376D r/w the relevant provisions of POCSO Act 2012

There was prayer about direction to the Chief Minister for framing a code of conduct for ministers to take action.

The right to free speech under Article 19(1)(a) is subject to clearly defined restrictions under Article 19(2). Therefore, any law seeking to limit the right under Article 19(1)(a) has to necessarily fall within the limitations provided under Article 19(2). Whenever two fundamental rights compete, the Court will balance the two to allow the meaningful exercise of both.

Court will balance between the right to free speech under Article 19(1)(a) with the right to fair trial under Article 21. The free speech under Article 19(1)(a) was a higher right than the right to reputation under Article 21

SARMISHTA PANOLI V. STATE OF WESTBENGAL: Sharmishta Panoli, a law student of a reputed law college in Pune, posted videos and made some comments regarding Operation Sindoor in social media as a reaction to the Pahalgam attack which left at least 26 people dead in Jammu and Kashmir. She faced multiple FIR and received rape and death threats. She was arrested by Kolkata Police for allegedly hurting religious sentiments through her comments.

Prayer was for Interim Bail. Submission was on Article 22 and BNSS sec 47 violated. The petitioner at the time of arrest was not made aware of the grounds of arrest, in the document captioned intimation of grounds of arrest, it was only mentioned under the heading of grounds of arrest that a warrant of arrest had been issued.

The requirement of arrest is a mandatory Informing a person arrested of grounds of requirement of Article 22(1).....When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency

Her bail is granted for a bond RS 10,000. The court also asked the police to offer her protection. The State is also directed to ensure that no further case and/or FIR is registered arising out of the same cause of action and/or similar set of allegations against the petitioner. It is made clear that the I.O. shall not unnecessarily summon the petitioner and provide adequate notice and also would be conscious that the petitioner is pursuing her studies

RANVEER GAUTAM ALLAHABADIA V. UNION OF INDIA & ORS.: Ranveer Allahabadia, an Indian youtuber and podcaster, took part in a conversation that involved sexually explicit remarks.



Basically, copied a question from a foreign show. Clips from the exchange surfaced beyond the member-only channel resulting in public outrage and legal complaints. He was is facing multiple FIR after a controversial episode aired on a private channel on February 8, 2025.

Allahbadia petitioned the Supreme Court, seeking to quash or consolidate the FIRs, a stay on investigations, protection from arrest, and lifelong security.

The Division Bench observed that the remarks he made on the show were offensive to societal norms and had the potential to shame “every parent, daughters, sisters and younger brothers”.

The Court was unimpressed. “When you copy a dialogue from somewhere, you must also follow the precautions they take. You don’t care about that,” the Court observed, pointing out that snippets of the show had been widely circulated on social media, fuelling this outrage.

The Hon’ble Supreme Court, granted interim protection with several conditions and stayed the lodging of any further FIRs based on the same set of allegations.

Conclusion: We have seen that freedom of speech and fundamental rights are there in the constitution of almost all democratic country. In the respect of governance India is in second position regarding governance index among South Asian countries. India is trying to develop the governance in every dimension such as economic, social and law and order through uplifting youth, poor, women, and farmers under the vision of Viksit Bharat @2047. From the above discussion it is clear that in the country like India the fundamental rights and freedom of speech is strongly protected by courts also until anyone harming some sentiments and the speech is not so much derogatory for society. When someone crosses the limit then they need to face the action still there is taken consideration that his rights would not get violated.

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