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# **Article 19(1)(A): Paramount Law To Free Speech And Expression**

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## **Abstract**

This research paper analyses the crucial function of Article 19(1)(a) as the fundamental statute guaranteeing the right to free speech and expression in democracies. This clause serves as a cornerstone of constitutional guarantees all over the world since it is based on the idea that informed citizens are necessary for the operation of a just and equitable society.

The research highlights the broad applicability of Article 19(1)(a), which covers a wide variety of expressive actions, via a thorough review of case law and comparable constitutional systems. It explores the tension between protecting individual liberty and maintaining societal order, shedding light on the delicate balance that must be struck to ensure responsible exercise of this fundamental right.

This research article intends to give a comprehensive understanding of the complicated consequences of Article 19(1)(a) on freedom of speech and expression by synthesising legal analysis.

## **Introduction**

Freedom of speech and expression is the key component of every democratic society and without it the idea of democracy will become just a mere thought and the spirit of democracy will wither away. Absence of this freedom will lead to an erosion of democratic values and institutions, abuse of powers, suppression of innovation and creativity, social and political unrest, lack of accountability, propaganda and manipulation of public opinion. It is protected and upheld by many international human rights treaties and declarations, including Article 19 of UDHR (Universal declaration of human rights) and Article 19 of ICCPR (International covenant on civil and political rights).

In a democratic society, freedom of speech and expression accomplish various essential purposes: It empowers people to raise their voices and opinions, participate in decision making, allows individuals to express their identity, values and beliefs, foster exchange of ideas leading to innovation and growth of nation, it supports right to information, promotes empathy and respect towards diverse perspectives and cultures. It plays a crucial role in advocating social justice and necessary reforms and keeps a check on the potential abuse of the powers by the authorities. However, it is essential to note that this right is not absolute and can be subject to certain limitations. These limitations are placed in order to protect the rights and freedoms of others, public safety and national security.

Moreover, freedom of speech and expression serves as a safeguard against authoritarianism and despotism and is an integral part of vibrant and inclusive democratic society. Embracing this freedom will foster the progress and bright future of the nation and is not just a matter of individual liberty.

### **Indian constitution protecting freedom of speech and expression**

In the formation and expression of public opinion on social, economic, and political issues across the nation, freedom of speech is vital. The right to freedom of speech and expression is stated under **Article 19(1)(a) of the Constitution of India**<sup>1</sup>. It ensures that Indian citizens have the liberty to express their thoughts, ideas and opinions freely.

The basic elements of the right to freedom of expression:

1. This privilege is only available to Indian citizens; foreign nationals are not allowed to use it.
2. The freedom of expression guaranteed by Article 19(1)(a) includes the right to express one's beliefs and ideas on any topic by any media, including spoken words, written or printed words, pictures or films.
3. This right is not absolute because it allows the Indian government to enact laws that can impose reasonable restrictions in situations involving the security of the nation, India's integrity and liberty, or friendly connections with other nations. It also allows for

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<sup>1</sup> [Article 19\(1\) in The Constitution Of India 1949](#)

reasonable restrictions in situations involving public order, morality, and decency, as well as situations involving court contempt, defamation, and incitement to commit an offence.

4. A restriction on citizen's freedom of expression may be imposed through the State's activity as well as its inaction. Therefore, it would also be a violation of Article 19(1)(a) if the State was considered to have failed to provide all of its citizens with their fundamental right to freedom of speech and expression.

In **Romesh Thappar v State of Madras**<sup>2</sup> It was held by the supreme court that Freedom of speech and expression includes freedom propagation of ideas and that freedom is ensured by the freedom of circulation.

Right to silence - The supreme court in **Bijoe Emmanuel vs state of Kerala**<sup>3</sup> upheld the right of silence of the three children who were expelled from the school for not singing the National Anthem and the rights of the appellants are infringed under Article 19(1)(a) and 25(1). Furthermore, no one is obligated by law to sing the National Anthem, and we don't consider it disrespectful to the National Anthem if a person politely stands when the National Anthem is being sung and does not sing along. It was further held by the court that no one can be compelled to sing the national anthem if he has genuinely conscientiously held religious faith.

Article 19(1)(a) covers the right to choose one's personal appearance or dress subject to Article 19(2). In **National Legal Services Authorities vs Union Of India & Ors**<sup>4</sup> It was declared that the transgenders have the right to express their self-identified gender through speech, dress, appearance and mannerisms.

The Emblems and Names (Prevention of Improper Use) Act of 1950 and the Prevention of Insults to National Honour Act of 1971 regulate the use of the National Flag. According to clause 2 of Article 19 of the Indian Constitution, the fundamental right to fly the National Flag is not an absolute right but a qualified one that is subject to reasonable restrictions. The supreme court in the case of **Union Of India vs Naveen Jindal & Anr**<sup>5</sup> held that Right to fly the National Flag freely with respect and dignity is a fundamental right of a citizen as defined by Article 19(1)(a) of

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<sup>2</sup> [Romesh Thappar vs The State Of Madras 1950 AIR 124, 1950 SCR 594](#)

<sup>3</sup> [Bijoe Emmanuel vs State of Kerala 1987 AIR 748, 1986 SCR \(3\) 518](#)

<sup>4</sup> [National Legal Services Authorities vs Union Of India & Ors \(2014\) SCC 438](#)

<sup>5</sup> [Union Of India vs Naveen Jindal & Anr. \(2004\) 2 SCC 510, AIR 2004 SC 1559](#)

the Indian Constitution, a citizen's expression and demonstration of his respect, feelings, and sentiments is a basic right.

## Limitations and exceptions to freedom of speech

However, like many other fundamental rights, this right is not absolute and is subject to certain limitations and exceptions. As it is essential to preserve the right of freedom of speech and expression in a democratic society, at the same time it is also necessary to impose few restrictions to maintain public order, morality and integrity of the nation.

Article 19(2) is a crucial provision that tempers the right of freedom of speech and expression enshrined under Article 19(1)(a). This provision strikes a subtle coordination between individual liberties and societal benefit, empowering the state to enact laws that curb certain expressions to preserve social harmony and safeguard national security. Nevertheless, the framers of the Indian constitution recognised that unchecked and unrestricted free speech could prospectively lead to chaos and unrest in the nation. To address this concern Article 19(2) allows the state to impose reasonable restrictions on the right of freedom of speech and expression.

No restrictions can be imposed other than those provided under Article 19(2) and the onus is on the state to justify the restrictions imposed.

The supreme court in **Ramlila Maidan Incident v Home Secretary, UOI**<sup>6</sup> held that the right that springs from Article 19(1)(a) is not absolute and unchecked. Any liberty that confers a right that is completely unrestricted by any other rights cannot be absolute in nature and uncontrolled in action.

**Article 19(2) of the Indian constitution**<sup>7</sup> provides that Nothing in subclause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from enacting any law, to the extent that such law imposes reasonable restrictions on the exercise of the right conferred by the said subclause in the interests of India's sovereignty and integrity, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to any of the other interests set forth in clause (1), or in the interests of friendly relations with foreign States, public

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<sup>6</sup> [Ramlila Maidan Incident vs Home Secretary, Union Of India \(2012\) 5 SCC 1, 2012 AIR SCW 3660](#)

<sup>7</sup> [Article 19\(2\) in The Constitution Of India 1949](#)

order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

The reasonable restrictions provided under clause 2 of Article 19 are as follows:

1. Sovereignty and integrity of India:

This limitation was inserted in Article 19(2) by the Constitution (sixteenth amendment) Act, 1963. It aims at restricting any freedom of speech and expression that undermines sovereignty and integrity of the nation and is essential to maintain stability and unity in the nation. This includes preventing activities that might threaten the territorial integrity of India or its political and economic sovereignty.

2. The security of the state:

Under this, any speech or expression that threatens the security of the state or promotes violence, terrorism or any activities that lead to public disorder or unrest can be restricted. It ensures that freedom of speech and expression is not used to threaten the security and defence of the country.

3. Friendly relations with foreign states:

This ground aims at restricting speech or expression that could harm or create tension with foreign states having friendly relations with India. The Constitution (First Amendment) Act of 1951 added this restriction. The idea behind this provision is to ensure that freedom of speech and expression is practised cautiously and does not lead to actions that jeopardise diplomatic relations and international standing of India.

4. Public order:

It refers to the maintenance of peace, tranquillity and prevention of disturbance and violence in the society. The government can curtail speech that has the potential to disrupt public order or incite violence. This includes speech that leads to riots, communal tensions, or public unrest.

5. Decency or morality:

This restriction allows for limitations on speech or expression that is considered indecent

or immoral. The determination of what is indecent or immoral can be subjective and can vary based on cultural, religious, and societal norms. This can include obscenity, pornography, or content that is offensive to public sensibilities.

6. Contempt of court:

Actions that disregard or hinder the administration of justice are referred to as contempt of court. Restrictions under this category can prevent individuals from making statements that undermine the authority or integrity of the judiciary or interfere with ongoing court proceedings. Furthermore, Speech or expression that scandalises or lowers the authority of the judiciary can be restricted.

7. Defamation:

Making false claims about someone that harms their reputation is referred to as defamation. These restrictions aim to prevent individuals from spreading false information that could damage the reputation of others, whether individuals or organisations. This allows individuals to protect their reputation from malicious or false statements.

8. Incitement to an offence

This restriction pertains to speech or expression that encourages or incites others to commit a criminal offence or engage in unlawful activities. It is meant to prevent the use of speech to promote or encourage illegal activities.

While Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression, Article 19(2) outlines the necessary limitations and exceptions that allow the government to impose restrictions in certain circumstances to protect the interests of the nation and society as a whole.

## Right to information

The Constitution of India provides the right to information is implicitly guaranteed under Article 19(1)(a) of it. In **Raj Narain v. State of Uttar Pradesh**<sup>8</sup> The Supreme Court ruled that the right to information shall be considered as a fundamental right under article 19. It plays a significant role in promoting transparency, accountability, and participatory governance in the country.

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<sup>8</sup> [Raj Narain v. State of Uttar Pradesh, 1975 AIR 865, 1975 SCR \(3\) 333](#)

Furthermore the landmark case of **S.P Gupta vs Union of India**<sup>9</sup> reinforced the notion that the right to information is essential for a functioning democracy. The court observed that the citizens have the right to know the functioning of the government institutions and their decisions, which is a necessary precondition for the prevention of the abuse of power and corruption.

In an Indian democracy it is believed that the people are masters and have a right to know how their government is working.

As a result, in 2005, the government passed the Right to Information Act, which established a statutory framework for the exercise of this fundamental right. The act was enacted to promote transparency, accountability and good governance in the functioning of public authorities.

This has been extensively used by the public and the media to elucidate corruption, the advancement of governmental activity, information regarding expenses, etc.

The right to information act grants citizens the following rights:

1. Request information from public authorities.
2. Obtain copies of documents and records.
3. Inspect documents, records and works maintained by public authorities.
4. Inquire about policies and decisions of public authorities.

The citizens have the right to seek any information from the government that the government may provide to the parliament. RTI does not apply to information that would threaten India's integrity and sovereignty and to information about internal security, relations with other nations, intellectual property rights, or cabinet meetings.

In **Secretary, Minister of Information and Broadcasting vs Cricket Association of Bengal & Anr**<sup>10</sup> The supreme court held that the right to communicate and receive information is implicit in the right of freedom of speech and expression under Article 19(1)(a). It was also emphasised

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<sup>9</sup> [S.P Gupta vs Union of India, 1982 AIR 1982 SC 149, 1981 Supp \(1\) SCC 87, 1982 2 SCR 365](#)

<sup>10</sup> [Secretary, Ministry of Information and Broadcasting vs Cricket Association of Bengal & Anr 1995 AIR 1236, 1995 SCC \(2\) 161](#)

by the supreme court that ensuring a rich tapestry of opinions, perspectives and thoughts become challenging when the single entity either governmental or non-governmental holds a monopoly over the communication environment. And this right cannot be denied on the ground that information is held by a non-government agency.

While the right to information is not directly mentioned under Article 19 (1)(a) of the Indian Constitution, it is conceptually related to the broader principles of freedom of speech and expression guaranteed by it.

### **Freedom of the press and its impact**

Freedom of press is an essential aspect of a vibrant democracy as it allows the media to act as a watchdog, hold the government and other powerful authorities accountable for their actions, decisions and policies and provide information to the public. Press is considered as the fourth pillar of Indian democracy.

The supreme court in **Association for Democratic Reforms vs union of India**<sup>11</sup> observed that the right of freedom of expression includes several specific rights which are bound together and through which a common string passes. These include :-

1. Right to voice one's opinion.
2. Right to seek information and ideas.
3. Right to receive information.
4. Right to impart information

And it was also observed that the State is under an obligation to create conditions in which the aforesaid rights flowing from Article 19(1)(a) can be effectively and efficiently enjoyed by the citizens. The right to information can be expressed orally, in writing or print, visually, or through other means such as radio, television, etc.

While Article 19(1)(a) does not explicitly mention the freedom of the press, the supreme court in

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<sup>11</sup> [Association for Democratic Reforms vs union of India AIR 2001 Delhi 126, 2000 \(57\) DRJ 82](#)

**Bennett Coleman & co. & Ors vs Union Of India**<sup>12</sup> has firmly ruled that the freedom of speech and expression encompasses the freedom of press and its circulation. The press holds the right to disseminate information and circulate its content without any prior restraint on publication. Enforcing a law that disproportionately burdens the press, curtails its circulation, penalises its freedom of choice as to personnel, prevents newspapers from being started and compels the press to solely rely on government aid would contravene the principle enshrined under Article 19(1)(a) and would fall outside the protection guaranteed under Article 19(2).

It is a subset of freedom of speech and expression which supports the right of the journalists and media organisations to disseminate information and opinions without government censorship and interference.

The supreme court in **Brij Bhusan vs State of Delhi**<sup>13</sup> held that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression provided by article 19(1)(a).

In **Sakal Papers vs Union of India**<sup>14</sup> The supreme court held that restrictions on the number of pages and sizes and to regulate the allocation of spaces for advertising matter by the central government under the Newspaper (price and page) Act 1956 is void as it violates the freedom of press guaranteed under Article 19(1)(a). It was further held that the State could not make a law which directly restricted one guaranteed freedom for securing the better enjoyment of another freedom. For the aim of controlling the business component of newspapers' operations, freedom of speech could not be curtailed.

The impact of freedom of press under Article 19(1)(a) are as follows:

1. Press serves as a conduit for the dissemination of the information and ideas to the public. It acts as a collective voice of the people, embodying their right to access correct information, express diverse opinions and engage in informed discussions.
2. It provides transparency and accountability in holding government and decision making authorities for their policies and actions. It was held in **Indian Express Newspapers vs**

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<sup>12</sup> [Bennett Coleman & Co. & Ors vs Union Of India & Ors 1973 AIR 106, 1973 SCR \(2\) 757](#)

<sup>13</sup> [Brij Bhusan & Anr. vs State Of Delhi, 1950 AIR 129, 1950 SCR 605](#)

<sup>14</sup> [Sakal Papers & Ors. vs Union Of India, 1962 AIR 305, 1962 SCR \(3\) 842](#)

UOI<sup>15</sup> that freedom of press is the heart of social and political intercourse. The press has now assumed the prominent role of the public educator shaping formal and informal education possible on a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. By disseminating information that might otherwise prevent a democratic electorate from making informed decisions, the press serves the public interest. Newspapers as conduits of news and views having a bearing on public administration frequently feature content that might not align with the preferences of government and other authorities. With a view to checking malpractices which interfere with free flow of information, democratic Constitutions globally have made provisions safeguarding the rights of free speech and expression laying down the limits of interference with it.

3. Press plays a critical role in investigating and reporting various aspects of society including environmental concerns and social issues. And promotes cultural diversity and pluralism by providing a platform for different perspectives, opinions and beliefs.
4. It helps in safeguarding individual rights by publishing instances of discrimination, justice and encourages innovation by exchange of ideas and viewpoints. The press has the power to mobilise public support for change and contribute to the development and protection of fundamental rights.

The supreme court in Mohd Ajmal Kasab vs State Of Maharashtra<sup>16</sup> held that the freedom of expression, like all other freedoms under Article 19, is subject to reasonable restrictions. Article 21 guarantees everyone the right to life, and any conduct that tends to infringe that right or jeopardises national security cannot justify the freedom of speech and expression. Therefore, it was held that the Indian TV channels did not serve any national interest by covering live the terrorist attack on Mumbai in the manner that they did.

### **Balancing freedom of speech with other fundamental rights**

A crucial component of a democratic society is the freedom of speech and expression, which is guaranteed under Article 19 of the Indian Constitution. To guarantee that individual liberty and society well-being live peacefully, this right must be balanced with other fundamental rights.

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<sup>15</sup> [Indian Express Newspapers & Ors. vs Union Of India, 1986 AIR 515, 1985 SCR \(2\) 287](#)

<sup>16</sup> [Md.Ajmal Md.Amir Kasab @Abu Mujahid vs State Of Maharashtra \(2012\) 9 SCC 1](#)

Though it is a fundamental right, the right to free speech must be balanced with other rights, including the rights to equality, privacy, and reputation.

**Right to Privacy:** People have a right to privacy, which includes protection against the disclosure of personal information without consent. When private information is disclosed without permission, there may be a conflict between this right and freedom of expression since it might possibly cause injury or violate someone's dignity.

**Hate Speech and Incitement to Violence:** While freedom of speech protects expression, there are limits when speech incites violence or promotes hate against certain individuals or groups. Balancing this with freedom of speech involves determining the line between permissible expression and speech that directly causes harm or danger.

**National Security:** In cases where speech threatens national security or public safety, governments may impose restrictions to prevent harm to society. However, this can be a sensitive area, as it requires careful consideration to avoid undue suppression of legitimate criticism or dissent.

**Defamation and Slander:** The right to reputation often comes into conflict with freedom of speech when false statements are made that harm an individual's reputation. Balancing this involves distinguishing between genuine criticism and malicious falsehoods.

**Religious Freedom:** Freedom of speech can intersect with religious freedom when speech involves expressions that are blasphemous or offensive to religious beliefs. Striking a balance between these rights involves respecting differing viewpoints while avoiding unnecessary offence.

In the case of **Navtej Singh Johar vs the Indian Union AIR 2018 SC 4321**<sup>17</sup> The Supreme Court invalidated Section 377 of the IPC in this case, deemed homosexual activities illegal. The Court acknowledged that the clause infringed the rights to privacy, equality, and dignity and that it had a negative effect on LGBT community.

These instances show how crucial it is for the judicial system to strike a balance between free speech and hate speech.

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<sup>17</sup> [Navtej Singh Johar vs the Indian Union AIR 2018 SC 4321](#)

The seven judge Bench in **Maneka Gandhi Vs. Union of India & Anr**<sup>18</sup> while considering the scope and essence of Article 19(1) it was established that "Even if a right is not explicitly listed in Article 19(1), it may still be a fundamental right covered by some clause of that Article if it is closely intertwined with a named fundamental right or partakes of the same basic nature and character as that fundamental right. It is not sufficient that a right asserted by the petitioner arises or emerges from a stated fundamental right or that its existence is necessary for the named fundamental right's meaningful and effective exercise.

Not every activity that facilitates a named fundamental right falls within that right nor can it be assumed as such solely because it may not be possible otherwise to effectively exercise that fundamental right. What must be determined, and this is the test that must be used, is whether the right asserted by the petitioner is a crucial component of a named fundamental right or shares the same fundamental nature and character as the named fundamental right, such that the exercise of such right is in fact and substance nothing more than a manifestation of the named fundamental right. If this is the proper standard, then freedom of speech and expression cannot always be seen as including the right to go abroad.

### **International perspective**

Freedom of speech and expression is a fundamental human right recognized internationally, encompassing the ability of individuals to express their thoughts, opinions, ideas, and beliefs without fear of censorship, retaliation, or persecution. This right is enshrined in various international legal instruments and treaties, as well as in national constitutions and laws.

Article 19(1) of the Indian Constitution, which guarantees the right to freedom of speech and expression, draws inspiration from various international declarations and conventions that uphold similar principles of human rights and democratic values. While the Indian Constitution does not explicitly reference any specific international documents, it's evident that the framers of the Constitution were influenced by global developments in human rights. Some of the key international declarations and conventions that likely influenced Article 19(1) include:

**Universal Declaration of Human Rights (UDHR)**: The Universal Declaration of Human Rights

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<sup>18</sup> [Maneka Gandhi vs Union Of India 1978 AIR 597, 1978 SCR \(2\) 621](#)

(UDHR), which was adopted by the UN General Assembly in 1948, is a landmark document that articulates fundamental human rights. Article 19 of the UDHR explicitly states the right to freedom of opinion and expression. It provides that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”<sup>19</sup>.

India, as a member of the United Nations, was likely influenced by the UDHR when drafting its own constitution. The UDHR sets the foundational principles for freedom of speech and expression on an international level.

**International Covenant on civil and political rights (ICCPR):** The ICCPR, adopted by the United Nations in 1966, further elaborates on the right to freedom of expression in Article 19. While the ICCPR was adopted after the Indian Constitution came into effect, its principles align with the democratic values enshrined in the Indian Constitution. It states that:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.<sup>20</sup>

**Constitution of U.S.:** The framers of the Indian Constitution drew inspiration from several national constitutions that included provisions related to freedom of expression. The First Amendment to the U.S. Constitution included protecting freedom of speech, and was likely influential.

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<sup>19</sup> [Article 19 of Universal Declaration Of Human Rights](#)

<sup>20</sup> [Article 19 of International Covenant on Civil and Political Rights](#)

In summary, the right to freedom of speech and expression stands as a universally valued human entitlement, acknowledged across a spectrum of global and regional agreements.

## **Conclusion**

In conclusion, Article 19(1) of the Indian Constitution stands as a cornerstone of democratic principles, affirming the fundamental right to freedom of speech and expression. This right is indispensable for fostering a vibrant and informed society, enabling individuals to voice their opinions, ideas, and concerns openly. It serves as the bedrock upon which a pluralistic and democratic society is built, allowing for the exchange of diverse viewpoints and the robust engagement that drives progress. However, this cherished right is not without its limitations. Article 19(2) of the Indian Constitution recognizes the necessity of reasonable restrictions in the interest of safeguarding national security, maintaining public order, preserving diplomatic relationships, and upholding morality and decency.

In essence, Article 19(1) encapsulates the essence of democracy itself—a platform where voices can be heard, ideas can flourish, and progress can be achieved through the power of open dialogue. It is a testament to India's commitment to democratic values and the recognition that a society thrives when its citizens are free to express themselves while responsibly upholding the greater good.

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