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Silence Is Not Order

Democracy is All About Speaking

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The university is where the Constitution first teaches its future custodians the difference between an argument and an offence. Public order that depends on silence is not order at all; it is merely the absence, for a while, of anyone brave enough to ask why.

Some convocation addresses send graduates into the profession with a few warm sentences and a photograph. A few of them return to the republic a truth it had begun to mislay. The address delivered on 30 August 2026 by Justice Ujjal Bhuyan of the Supreme Court of India, to the postgraduate students of National Law University, Delhi (NLUD), is of the second kind, and it deserves not qualified praise but the unreserved endorsement of the law fraternity.

Freedom of Speech

Let us state, with the precision the subject deserves, what the learned judge actually said, because just a sentence repeated across headlines cannot reveal the architecture that holds it up. Justice Bhuyan told the graduating class that a university exists to be a place where ideas different from one's own can be encountered, where established positions may be examined rather than merely inherited, and where disagreement proceeds through reason rather than hostility. A student who asks an uncomfortable question, or who declines to adopt an official position, he said, commits no act of defiance; she exercises an entitlement the Constitution confers on every citizen. He went further : any authority, academic or otherwise, that threatens punitive action against a student merely for holding a different opinion acts unconstitutionally and misuses the office it holds. He grounded this not in courtesy but in a constitutional first principle, holding that a democracy reveals a majority's true character not in how it treats popular opinions, but in how it responds to opinions that are difficult, unpopular, or inconvenient.

These words did not arrive in a vacuum. Today, India is ranked at a lowly 157 in the Press Freedom Index of 2026. What is most frustrating is that Pakistan has been ranked higher than us at 153 in the 2026 Academic Freedom Index Update of the Varieties of Democracy(V-Dem) Report of 2026, Indian universities and educational institutions are at the bottom of 10 to 20 per cent countries and academic freedom.

The Bar Council of India's (BCI) controversial recent directive (though withdrawn within hours) to State Bar Councils to withhold the enrolment of NALSAR's entire graduating batch as advocates was very much a punitive action which the Chief Justice of India (CJI) Surya Kant himself condemned in the strongest possible words in less than 24 hours. Justice Surya Kant demonstrated utmost generosity and wisdom in speaking from the bench that the BCI has no business whatsoever to come between him and students.

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This event must be read with something closer to relief than surprise. Relief, because the highest constitutional court corrected the overreach within days. It is rather less of a surprise, because the instinct to treat institutional criticism as insubordination has visited Indian legal education before, and will visit it again unless it is named plainly each time it appears. Justice Bhuyan's address must be read against this backdrop. It does not merely counsel graduating students. It ratifies, in the vocabulary of constitutional principle, what the CJI himself had only days earlier done in the vocabulary of an interim order.

None of what Justice Bhuyan said at the NLUD was a discovery. It was a recovery: law students start their journey of legal studies with John Stuart Mill's oft repeated assertion in Liberty(1859) that

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If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, then he, if he had power, would be justified in silencing the mankind.
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The well-known American educational reformer and free speech advocate Alexander Meiklejohn took the concept of free speech in a liberal democracy to new heights when he said that

> when men govern themselves, it is they -- and no one else -- who must pass judgment upon unwisdom and unfairness and danger. And that means that unwise ideas must have a hearing as well as wise ones, unfair as well as fair, dangerous as well as safe, un-American as well as American, If then, on any occasion in United States it is allowable, in that situation, to say that the constitution is a good document, it is equally allowable, in that situation, to say that the constitution is a bad document.

Thus, in a vibrant democracy conflicting views may be expressed, must be expressed, not because they are valid, but because they are relevant. True some slogans can be dangerous and need our strongest condemnation. But freedom of speech commands us to allow expression of even such repulsive ideas with the confidence that enlightened masses would certainly reject them. To be afraid of ideas, any idea, is to be unfit for self-government. Unfortunately, many of us have forgotten these core ideas of our constitution and Justice Bhuyan thought it appropriate to use the forum of the National Law University to set the record straight.

Protection under Article 19

When the Constituent Assembly took up Draft Article 13, which subsequently became present Article 19, the clause guaranteeing freedom of speech and expression carried within its own text an exception for laws relating to 'libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State', an essence lifted without embarrassment from the colonial statute book.

Somnath Lahiri, the Assembly's lone Communist member, rose to object that a chapter of Fundamental Rights which preserved so wide a power to criminalise dissent could scarcely be called a chapter of rights at all; an opposition denied the freedom to call a government's policy misguided was, in substance, an opposition that existed in name only. He was not alone in his discomfort, though he pressed it further than most. In December 1948, K.M. Munshi, a member of the Drafting Committee not otherwise known for radicalism, moved amendment number 86 in the additional list of amendments to delete the word 'sedition' from the list of permissible restrictions altogether. He reminded the Assembly that colonial courts had stretched the word to cover almost any criticism a government found inconvenient, that its most celebrated defendants had included men whose sole offence was disagreement with the state, and that a free nation's Constitution ought not inherit a word with so elastic and so abused a history. The Assembly agreed, and 'sedition' disappeared from the text, replaced by the narrower phrase ,confining restriction to speech that "undermines the security of, or tends to overthrow, the State."

Even that narrower formulation proved, within months, too permissive for the framers' own design. When Romesh Thapar's journal *Cross Roads* and the RSS organ *Organiser* were banned soon after the Constitution came into force, the Supreme Court found that the surviving text authorised restriction only in the interest of the security of the State, not merely of public order, and struck both bans down. It took the First Amendment of 1951 to reintroduce public order as a distinct ground, and Parliament, chastened by the very judgment it was legislating around, inserted in Article 19(1) of the Constitution for the first time the word 'reasonable', obliging every future restriction to survive judicial scrutiny rather than rest on legislative assertion alone. Read as a whole, this history does not show framers indifferent to order. It shows framers who, within living memory of a state that had treated criticism as sedition, kept narrowing, never widening, its licence to do so again.

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Behind that narrowing sat a theory of democracy considerably more demanding than the one our public conversation now assumes. Dr. B.R. Ambedkar told the Assembly that democracy 'is not merely a form of Government' but 'a mode of associated living.' A mode of living cannot be practised by citizens permitted to vote once in five years and expected to fall silent in between. It requires, as Alexander Meiklejohn argued of self-governing communities generally, that citizens retain the standing of rulers who must hear every relevant view before they decide, not the standing of subjects who receive a government's conclusions and are expected to applaud them. It requires what American constitutional thought came to call the counter-speech principle: that the remedy for speech one dislikes is more speech, not enforced silence, because a people fit to govern itself must also be trusted to tell the doubtful from the sound. And it requires what scholar Vincent Blasi later called the checking function of expression: a citizenry, a press, and an academy free enough to expose the misuse of power, precisely because power left unexamined tends toward its own abuse. None of this is a

foreign transplant grafted onto Indian soil. It describes, in different vocabularies, the very intuition Justice Bhuyan offered his audience in plain language: that intolerance becomes unconstitutional the moment disagreement stops being treated as a legitimate difference of opinion and starts being treated as something to be silenced.

It is worth meeting the sceptic's strongest objection directly, because Ambedkar himself supplied it. A year after his speech on associated living, closing the Assembly's proceedings on November 25, 1949, he warned against resorting tosatyagraha, civil disobedience, and their like once constitutional avenues of grievance were available, calling reliance on such methods nothing but the grammar of anarchy. Ambedkar's warning was addressed to those who would bypass constitutional methods. Justice Bhuyan's address, and the doctrine behind it, protects those who use it.

The Supreme Court has said as much in every generation since the Constitution's very first year. In *Romesh Thapar v. State of Madras* (1950), the court held that freedom of speech lies at the foundation of every democratic organisation, because no popular government can function without the free flow of political discussion that alone equips an electorate to choose wisely. In *Kedar Nath Singh v. State of Bihar* (1962), a Constitution Bench rescued the sedition provision from the fate the framers had wished on it , reading it narrowly to punish only speech that incites violence or public disorder, so that the strongest criticism of a government's policy, however unwelcome to those in office, would remain a citizen's right rather than a crime. In *Balwant Singh v. State of Punjab* (1995), the court went further, holding that the mere raising of anti -national slogans like *Khalistan Zindabad* on an isolated occasion, without any accompanying disorder, could not amount to sedition at all; disagreement, however provocatively expressed, is not itself an offence. And in *S. Rangarajan v. P. Jagjivan Ram* (1989), the Court refused to let a film be silenced merely because some group threatened disorder if it were shown, holding that the State's duty is to protect the speaker against the mob, not the mob's sensitivities against the speaker, the constitutional origin of what lawyers now call the rule against a heckler's veto.

The doctrine kept pace with the century. In *Shreya Singhal v. Union of India* (2015), the Court struck down Section 66A of the Information Technology Act for failing to distinguish discussion and advocacy, both protected, from incitement, which alone may be restrained. In *Bijoe Emmanuel v. State of Kerala* (1986), the Court reinstated schoolchildren expelled for silently declining, on grounds of conscience, to sing the national anthem, holding that Article 19(1)(a) protects the right to remain silent quite as much as the right to speak. In *Anuradha Bhasin v. Union of India* (2020), the Court extended the same architecture to the internet age, holding that expression online is as much a part of Article 19(1)(a) as expression in a newspaper or on a public platform, and that any restrictions post Article 370 abrogation in must satisfy a strict test of proportionality. And as recently as 2023, in Kaushal Kishor v. State of Uttar Pradesh, a Constitution Bench held that the grounds listed in Article 19(2) are exhaustive: no authority, executive or professional, may invent an additional restriction that Parliament never enacted, still less one improvised to punish an inconvenient question.

Critical Speech is Protected Speech

Read together, these are not scattered results. These judgments describe a single continuous doctrine: that speech critical of the powerful is protected speech, not because the Constitution is indifferent to order, but because a constitutional order resting on adult franchise cannot survive if only agreeable speech is permitted a hearing; that the remedy for a feared breach of order lies in ordinary policing, never in the prior silencing of the speaker; and that the burden of justifying a restriction as reasonable, precise, and narrowly drawn falls always upon the State, never upon the citizen who must explain why she spoke at all.

It is against this entire architecture, seventy-five years in the building, that the Bar Council of India's order against NALSAR's students must be measured, however briefly it stood. That the order fell within hours, and fell because the Supreme Court itself insisted on its withdrawal, is not an incidental footnote to Justice Bhuyan's address a fortnight later. It is its occasion, and its vindication in advance.

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A final point deserves to be made plainly, to the graduating class Justice Bhuyan addressed and to every law student who encounters this. The right Justice Bhuyan described is not a licence for cruelty, nor a shield for speech that incites violence or targets a community with hatred; Article 19(2) still stands, and *Kedar Nath Singh* still separates strong criticism from incitement to disorder. But within that boundary, drawn narrowly and policed by courts rather than by administrators, the Constitution asks India's universities and its institutions of law to be places where a student may say to a Chief Justice, a Vice-Chancellor, or a professor, I see this differently, and be met with a counter-argument rather than a punishment. A republic that cannot bear that sentence from its own law graduates

has forgotten why it trained them in the first place.

Universities are the best places to test arguments. Justice Oliver Wendell Holmes Jr. observed in his powerful dissent in *Abrams v. United States* (1919) that in capitalist market-place, the best test of truth is the power of thought to get itself accepted in the competition of market. The underlying assumption is that there is a free market mechanism for ideas. In a war for values which makes man human and able to examine critically what is good and to choose what serves his interests and those of his fellowmen.

Justice Bhuyan called the university the place where 'the habit of thinking freely begins.' He might have added that it is also the place where the Constitution first teaches its future custodians the difference between an argument and an offence, a distinction that, once lost by any institution, judicial, academic, or professional, is not easily recovered. Order that depends on silence was never order at all. It was merely the absence, for a while, of anyone brave enough to ask why.

The views expressed here are personal.

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