

FREEDOM OF SPEECH AND EXPRESSION

ARTICLE 19 (1)(a)

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FREEDOM OF SPEECH AND EXPRESSION Article 19(1)(a)

CHAPTER-I

Introduction

Freedom of speech and expression means the right to express ones own convictions and opinions freely by a words of mouth , writing , printing, pictures or other mode . It thus includes the expression of one's ideas through any communicable medium or visible representation , such as gestures , signs and the like .The expression also connotes publication and thus it also includes freedom of press.

The freedom of speech and expression includes liberty to propagate not ones views only but it also includes the right to propagate or publish the views of other people , otherwise this freedom would not include the freedom of the press.

The Freedom of speech and expression has the following purposes:

- 1)It helps an individual to attain self-fulfillment.
- 2)it assists in the discovery of truth
- 3)it strengthens the capacity of an individual in participating in decision making and
- 4)it provides a mechanism by which it would be possible to establish a reasonable balance between

stability and social change.

Right to Know

Freedom of speech and expression also includes right to know.

In Prabhu Dutt V. Union of India

The Supreme Court has held that the right to know news and information regarding administration of the government is included in the freedom of press.

But this right is not absolute and restriction can be imposed on it in the interest of society and the individual from which the press obtains the information. They can obtain information from an individual when he voluntarily agrees to give such information.

Right to Information Act 2005

The Right to information Act, 2005 repeals the freedom of Information Act 2002.

This legislation entitles every citizen to have access to information controlled by public authorities.

The object of the act is to promote openness, transparency and accountability in administration.

The person desirous of obtaining information shall make a request in writing or through electronic means to the concerned Public Information Officer specifying the particulars of information

sought by him.

This law will certainly strengthen the freedom of press because under the Official Secret Act the authorities usually denied the information relating to Government authorities

The **Right to Information Act (RTI)** is an Act of the Parliament of India "*to provide for setting out the practical regime of right to information for citizens*" and replaces the erstwhile Freedom of Information Act, 2002. The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerise their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005.^[1] Information disclosure in India was restricted by the Official and various other special laws, which the new RTI Act relaxes.

Freedom of Silence

Freedom of speech and expression also includes Freedom of Silence.

In *Bijoe Emmanuel V State of Kerala* popularly known as National Anthem case

(1986) 3 SCC615

The Supreme Court has held that no person can be compelled to sing the National Anthem, "if he has genuine conscientious objections based on his religious faith." In this case, the three children belonging to Jehovah's witnesses were expelled from school for refusing to sing the National Anthem. The circular issued by the Director of Public Instructions Kerala had made it obligatory for

students to sing the National Anthem. The children in this case stood up respectfully when the National anthem was being sung at their school but they did not join in singing it. They refused to sing the National Anthems according to them it was against their religious faith which does not permit them to join in any rituals except if be in their prayer to Jehovah, their God. They challenged the validity of their expulsion before the Kerala High Court which upheld their expulsion as valid on the ground that it was their fundamental duty to sing the National Anthem. On Appeal, the Supreme Court held that there was no law under which their fundamental right under Article 19(1)(a) could be curtailed. The right under Article 19(1)(a) can only be regulated by law and on the grounds mentioned in the Constitution and by executive instructions. They did not commit any offence under the Prevention of Insults to National Honour Act, 1971, because they stood up respectfully when the National Anthem was being sung. Accordingly it was held that the children's expulsion from the school was a violation of their fundamental right under Article 19(1)(a) which also includes the *freedom of silence*.

In case *M. Hassan V. Government of A.P.*

AIR 1998 AP 35 (FB)

In this case it was held that denial by jail authorities to journalist and videographers to interview the contempt prisoners in jail amounts to deprivation of citizens fundamental rights of freedom of speech and expression under Article 19(1)(a).

New Dimension of freedom of speech and expression- Government has no monopoly on electronic media

In a historic judgment in *Secretary, Ministry of I & B V. Cricket Association of Bengal (CAB)*

The Supreme Court has widened the scope and extent of the right to freedom of speech and expression and held that the government has no monopoly on electronic media and a citizen , under Art. 19(1)(a) , a right to telecast and broadcast to the viewers/listeners through electronic media Television and Radio amyl important event

Commercial Advertisement –

Whether commercial advertisements are also part of freedom of speech and expression?

CASE

In Tata Press Limited V. Mahanagar Telephone Nigam Limited

(1995) 5 SCC 139

In this case the Mahanagar Telephone Nigam was a Government company and it used to publish and distribute Telephone Directories containing white pages, however from 1987 the Nigam started to entrust the work of publication of its telephone directory to outside contractors were allowed to raise Revenue by themselves and such advertisement which was raised by sponsorship were published as yellow pages in the Telephone directories. Later on Tata Press Limited were similarly engaged in the publication of Tata Press yellow pages .Later Nigam filed a suit before the court saying that they alone have a right to print, publish and circulate the list of Telephone subscribers whereas Tata Press Limited has no such right and they should be restrained from publishing the yellow pages.

The Supreme Court held that there is no violation of fundamental right ender Article 19(1)(a).

CASE

In Hamdard Dawakhana V. Union of India

AIR 1960 SC 554

In this case the validity of drug and magic remedies (Objectionable Advertisement Act) was challenged. It prohibited the advertisement of drugs in certain cases and prohibited advertisement of drugs having magic qualities for curing diseases.

The Supreme Court held that an advertisement is also a form of freedom of speech and expression but not all advertisements deal with freedom of speech and expression of ideas.

Telephone Tapping -invasion on right to privacy

Whether telephone tapping amounts to an infringement of right of privacy?

CASE

In the case Peoples Union for Civil Liberties V. Union of India

AIR 1997 SC 568

In this case the petition was filed by an NGO by way of a public interest litigation highlighting the incidence of telephone tapping. The Supreme Court held that the telephone tapping violates Article 19(1)(a) of Constitution unless it is covered within grounds of restriction under Article 19(2).

CHAPTER - II

TERRITORIAL EXTENT OF FREEDOM OF SPEECH AND EXPRESSION UNDER ARTICLE 19(1)(a).

There are no geographical limitations to freedom of speech and expression under Article 19(1)(a), and this freedom is exercisable in India and outside India and if state sets up any barriers to its citizens freedom of expression in any country in the World , it would violate Article 19(1)(a).

CASE

In Maneka Gandhi V. Union of India

AIR 1978 SC 597

The Union of India contented that the fundamental rights guaranteed by the constitution were available only within the territory of India.

The Supreme court rejected this contentions and held that the right of freedom of speech and expression has no geographical limitations .

Freedom of speech and expression carries with it the right gather information as also to speak and express oneself at home and abroad and to exchange thoughts and ideas with others not only in

India but also outside.

Freedom of Press

The fundamental right of the freedom of presses implicit in the freedom of speech and expression and is essential for political liberty and proper functioning of democracy.

"The liberty of the press" as defined by Lord Mandfield "consists in printing without any license subject to consequence of law" thus the liberty of the press means the liberty to print and print what one pleases, without previous permission. The freedom of press is not only confined to newspapers and periodicals but it also includes pamphlets and circulars and every sort of publication.

CASE

In *Ajay Goswami V. Union of India*

AIR 2007 SC 493

In this case a petition was filed to seek protection from the Court to ensure that minors are not exposed to sexually exploitative materials, whether or not the same is obscene and prohibited by the law. The court held that in order to shield minors and children should not forfeit that he same same content cannot be offensive to the sensibilities of adult men and women.

Pre-Censorship invalid

Whether pre censorship is valid or not

The question of validity of censorship came up for consideration in the CASE

Brij Bhushan V. State of Delhi

AIR 1950 SC 129

In this case the Chief Commissioner issued order against the Printer, Publisher and Editor of an English Weekly, called the Organizer which was being circulated in Delhi. This order made mandatory to submit in duplicate a copy of Weekly for the purpose of scrutiny.

The court struck down the order and held that the Pre-censorship of a journal is a restriction on the liberty of the press which is an essential part of freedom of speech and expression under Article 19(1)(a).

CASE

In Romesh Thappar V. State of Madras

AIR 1950 SC 124

In this case a law banning entry and circulation of journal in a state was held to be invalid. The petitioner was a printer, publisher and editor of a weekly journal in English called "Cross Road" printed and published in Bombay. The Government of Madras, in exercise of their powers under Section 9(1-A) of the Maintenance of Public Order Act, 1949, issued an order prohibition the entry into or the circulation of journal in that State . The court said that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom

of circulation and freedom of circulation is essential for the freedom of publication.

CASE

In Sakal Papers Ltd. V. Union of India

AIR 1962 SC 305

In this case the Daily Newspapers order, 1960 fixed a minimum price and number of pages which a newspaper was entitled to publish. This order was challenged as unconstitutional by the Petitioner on the ground that it infringes liberty of the press.

The Supreme Court struck down this order as being violative.

FILM CENSORSHIP

Whether film censorship is valid or not

CASE

In K.A. Abbas V. Union of India

AIR 1971 SC 481

In this case the petitioner had challenged the validity of censorship as violative of his fundamental right to freedom of speech and expression as according to him it imposed unreasonable restriction.

The court held that the pre censorship of films was justified under Article 19(2) on the grounds that the films have to be so treated separately from other forms of art and expression because a motion picture was able to stir up emotions more deeply than any other product of. Hence classification of films between two categories was held to be valid.

CASE

In Bobby Art International V. Om Gopal Singh Hoon (Banidt Queens case)

(1996) 4 SCC 1.

In this case the Respondent filed a Writ Petition in the court for quashing the certificate of exhibition of the Bandit Queen and restraining the exhibition in India.

The Supreme Court held that the certificate issued to the film Bandit Queen upon conditions imposed by the Appellate Tribunal is valid and is therefore restored

CHAPTER - III

GROUNDINGS OF RESTRICTIONS TO ARTICLE

Under Indian law, the freedom of speech and of the press do not confer an absolute right to express one's thoughts freely. Lord Denning, in his well-known book Road to Justice, stated that press is the watchdog to see that every trial is conducted fairly, openly and above board, but the watchdog may sometimes break loose, pointing out facts and incidences which the authorities do not wish the public to know, and has to be punished¹ for 'misbehavior' With the same token Clause (2) of Article 19 of the Indian constitution enables the legislature to impose certain restrictions on free speech under following heads:

- a) Security of the state
- b) Friendly relations with foreign state
- c) Public order
- d) Decency of Morality
- e) Contempt of Court
- f) Defamation
- g) Incitement of an Offence
- h) Sovereignty and integrity of India

A) Security of the state

Under clause (2) of Article 19 reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of the state.

Case

Romesh Thapper V Union Of India

AIR 1950 SC 124

The Supreme Court occasion to interpret the meaning of the words Security of the state .the court said that there are different grades of offences against public order .Every public disorder cannot amount to be regarded as threatening the security of the public disorder . The term security of the state refers only to serious and aggravated forms of public disorder eg waging war against the state.

b) Friendly relations with foreign state

This ground of restriction was added by the Constitution (1st Amendment) Act, 1951 and the object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state which may jeopardize the maintenance of good relations between India and the state.

(It is to be noted that members of the Commonwealth including Pakistan is not a foreign state for the purpose of this Constitution. The result is that the freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.)

c) Public Order

This ground was added by the Constitution (1st Amendment), Act, 1951, in order to situations arising from the Supreme Court's decision in Romesh Thapper's case

It was held that restrictions could only be imposed on the grounds mentioned in Article 19(2). As a result of this decision the expression 'public order' was added to Article 19(2) as one of the grounds for imposing restrictions on the freedom of speech and expression.

Public order is synonymous with public peace safety and tranquility.

The expression public order was added as one of the ground for imposing restrictions on the freedom of speech and expression as it was the result of decision of Supreme Court in Romesh Thappers case wherein the Supreme Court struck down a law banning the entry of journal in the state of Madras in the Interest of Public Order. It was held that restrictions could only be imposed on the grounds mentioned in Article 19(2) .

In *Kishori Mohan v. State of West Bengal*,

The Supreme Court explained the differences between three concepts: law and order, public order, security of State. Anything that disturbs public peace or public tranquillity disturbs public order. But mere criticism of the government does not necessarily disturb public order. A law punishing the utterances deliberately tending to hurt the religious feelings of any class has been held to be valid as it is a reasonable restriction aimed to maintaining the public order.

It is also necessary that there must be a reasonable nexus between the restriction imposed and the achievement of public order.

In *Superintendent, Central Prison v. Ram Manohar Lohiya*

(AIR 1960 SC 633),

The Court held the Section 3 of U.P. Special Powers Act, 1932, which punished a person if he incited a single person not to pay or defer the payment of Government dues, as there was no reasonable nexus between the speech and public order. Similarly, the court upheld the validity of the provision empowering a Magistrate to issue directions to protect the public order or tranquillity.

d) Decency or morality

Section 292 to 294 of the Indian Penal Code provides instances on restrictions on the freedom of speech and expression in the interest of decency and morality. This section prohibits the sale or distribution of obscene articles. The word 'obscenity' is identical with the word 'indecent' of the Indian Constitution. In an English case of *R. v. Hicklin*, the test was laid down according to which it is seen 'whether the tendency of the matter charged as obscene tend to deprave and corrupt the minds which are open to such immoral influences'. This test was upheld by the Supreme Court in *Ranjit D. Udeshi v. State of Maharashtra* (AIR 1965 SC 881). In this case the Court upheld the conviction of a book seller who was prosecuted under Section 292, I.P.C., for selling and keeping the book *Lady Chatterley's Lover*. The standard of morality varies from time to time and from place to place. Distribution or exhibition of obscene words, etc. in public places.

e) Contempt of Court

Restrictions on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court

According to section 2 contempt of court may be either civil contempt or criminal contempt

Contempt of court: The constitutional right to freedom of speech would not allow a person to contempt the courts. The expression Contempt of Court has been defined Section 2 of the Contempt of Courts Act, 1971. The term contempt of court refers to civil contempt or criminal contempt under the Act. But judges do not have any general immunity from criticism of their judicial conduct, provided that it is made in good faith and is genuine criticism, and not any attempt to impair the administration of justice. In *In re Arundhati Roy* ((2002) 3 SCC 343), the Supreme Court of India followed the view taken in the American Supreme Court (Frankfurter, J.) in *Pennekamp v. Florida* (328 US 331; 90 L Ed 1295 (1946)) in which the United States Supreme Court observed: “If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise”. In *E.M.S. Namboodripad v. T.N. Nambiar* ((1970) 2 SCC 325; AIR 1970 SC 2015), the Supreme Court confirmed the decision of the High Court, holding Mr. Namboodripad guilty of contempt of court. In *M.R. Parashar v. Farooq Abdullah* ((1984) 2 SCC 343; AIR 1984 SC 615.), contempt proceedings were initiated against the Chief Minister of Jammu and Kashmir. But the Court dismissed the petition for want of proof.

f)Defamation

Section 499 of I.P.C., contains the criminal law relating to defamation. These sections are saved as being reasonable restrictions on the freedom of speech and expression .A statement which injures a man's reputation amounts to defamation.

g)Incitement to an offence

This ground was also added by the Constitution (1st Amendment), Act, 1951 The word offence used here is not defined in the Constitution. Under General Clauses Act the word offence shall mean any act or omission made punishable by any law for the time being in force.

h)Integrity and Sovereignty of India

This ground was added to clause 2 of Article 19 by the Constitution (Sixteenth Amendment) Act, 1963. Under this Clause, freedom of speech and expression can be restricted so as to permit to anyone to challenge the integrity or sovereignty of India or to preach cession of any part of India from the Union.

In the opinion of Brajesh Rajak, author of *Pornography Law: XXX Must not be Tolerated*, "Freedom of speech and expression cannot be an excuse for distribution of indecent and immoral content to average person of the society".

CHAPTER -IV

Conclusion

Expression through speech is one of the basic guarantees provided by civil society. However in modern world Right to freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. It is a right to express and self realization. Two big democracies of world i.e. America and India have remarkably protected this right. As far as India is concerned, this important right is mentioned in Article 19(1) (a), which falls in fundamental right category. Indian courts have always placed a broad interpretation on the value and content of Article 19(1) (a), making it subjective only to the restrictions permissible under Article 19(2).

The words 'in the interest of public order', as used in the Article 19 include not only utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. There should be reasonable and proper nexus or relationship between the restriction and achievement of public order. Initially, the American constitution was not having any provisions directed to protection of freedom of speech and expression. It was inserted in the constitution vide first amendment of the constitution. The First Amendment has been drafted in broad and sweeping

terms, and for this reason, the text of the First Amendment does not contain any standard for determining permissible restrictions on freedom of speech. The restrictions that are permissible now are those that have been developed by the Supreme Court in its interpretation of the First Amendment.

The United States has a complex First Amendment jurisprudence that varies the protection offered free speech according to form. Similarly, India developed its own free speech jurisprudence that applies a "reasonable restrictions" test based on eight mentioned restrictions. The real difference in freedom of speech enjoyed in the United States and India is a question of degree. This difference in degree is attributable to the reasonable restrictions provision and the moral standard of the communities.

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