

**E-Content for the Students of Bachelor of Laws  
(LL.B), Patna Law College, Patna University**

**Programme- LL,B**

**Subject- Constitutional Law (II)**

**Semester- II,**

**Right to Freedom of Speech and  
Expression Article 19(1) (a)**

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## Learning Objectives:

1. To understand Article 19 (1) (a)- Fundamental Right of Speech and Expression
2. Main elements of Article 19 (1) (a)
3. To understand Freedoms granted under Article 19 (1) (a) and Reasonable Restrictions to these freedoms
4. Landmark Judgements of supreme court/High Court with respect to Fundamental Right of Speech and Expression
5. Issues waiting to be resolved

## Synopsis:

**Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties. John Milton**

Freedom of expression has been humanity's yearning in times ancient and modern. Similarly, censorship or reasonable restrictions are also ancient and universal phenomenon. The founders of Indian constitutions are aware about co-existence of conflicting Right and Restrictions and enacted Article 19 with clear mention of Reasonable restrictions. This has further evolved with progressive judgements of Indian Judicial System.

The freedom of expression cannot be absolute in an orderly society and this raises crucial issues of the permissible limits of restrictions on freedom of expression. Such issues involve consideration of the nature of the restriction, its scope and extent, its duration and the presence or absence of an efficacious corrective machinery to challenge the restriction. Generally it is the judiciary which performs the task of reconciling freedom of expression with certain imperatives of public interest such as national security, public order, public health or morals, and individual rights such as the right to reputation and the right of privacy. The crux of the matter is whether censorship is ever justifiable and, if so, in what circumstances.

In India Judiciary has taken enormous effort to ensure delicate balance between Freedom of Speech and Expression and Reasonable restriction. It has pronounced several landmark judgements.

## Introduction:

The essence of free speech is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution, restrictions or repression by the Government.

The Article 19 (1) of Indian constitution provides 6 fundamental rights in the nature of freedoms which are specifically summarized with sub-clauses of Article 19 (1) as under

- (a) Freedom of speech and expression;
- (b) Assemble peaceably and without arms;
- (c) Form associations or unions;
- (d) Move freely throughout the territory of India;

- (e) Reside and settle in any part of the territory of India; and
- (f) Practise any profession, or to carry on any occupation, trade or business

The article 19(1) (a) of the Constitution of India states that, “all citizens shall have the right to freedom of speech and expression”.

The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizen, liberty of thought and expression. The exercise of this right is, however, subject to “reasonable restrictions” for certain purposes being imposed under Article 19(2) of the Constitution of India.

The Article 19 (2) states that nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

#### **Main Elements of Right of freedom of Speech and Expression:**

1. This right is available only to a citizen of India and not to foreign nationals.
2. The freedom of speech under Article 19(1) (a) includes the right to express one’s views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc.
3. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.
4. This restriction on the freedom of speech of any citizen may be imposed as much by an action of the State as by its inaction. Thus, failure on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of Article 19(1) (a).

#### **Landmark judgements of Supreme Court of India: Freedom of Speech and Expression:**

Judicial creativity, judicial wisdom and judicial craftsmanship have widened the scope of freedom of speech & expression by including in it the following aspects-

- A. Freedom of Press,
- B. Freedom of Commercial Speech
- C. Right to Broadcast
- D. Right to Information
- E. Right to Criticize
- F. Right to expression beyond national boundaries

**G. Right not to speak or Right to silence is also included in the Right to speech and expression.**

**Let us explain each aspect of Right in the light of Supreme Court Judgements**

**A. Freedom of Press-**

Democracy thrives through vigilant eye of Legislature, care and guidance of public opinion and press par excellence. Freedom of speech include right to propagate one's views through print media or any other communication channel e.g radio, television subject to reasonable restrictions imposed under Article 19(2).

1. **Romesh Thappar v. State of Madras(1950 SCR 594, 607; AIR 1950 SC 124)**,was amongst the earliest cases to be decided by the Supreme Court declaring freedom of press as a part of freedom of speech and expression. Patanjali Sastri, J., rightly observed that-  
'Freedom of Speech and of Press lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the process of Government, is possible'.

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| 1. <b>Romesh Thappar v. State of Madras(1950 SCR 594, 607; AIR 1950 SC 124)</b>         |
| 2. <b>Indian Express v. Union of India,(1985) 1 SCC 641</b>                             |
| 3. <b>Sakal Papers Ltd. v. Union of India,[AIR 1962 SC 305]</b>                         |
| 4. <b>Bennett Coleman and Co. v. Union of India,[AIR 1973 SC 106; (1972) 2 SCC 788]</b> |
| 5. <b>Brij Bhushan v. State of Delhi(AIR 1950 SC 129)</b>                               |
| 6. <b>Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd</b>                             |
| 7. <b>Odyssey Communications (P) Ltd .v. Lokvidayan Sanghatana</b>                      |
| 8. <b>Union of India v. Assn. for Democratic Reforms</b>                                |
| 9. <b>Bijoe Emmanuel v. State of Kerala 1986 3 SC 615</b>                               |

2. **Indian Express v. Union of India,(1985) 1 SCC 641**, it has been held that the Press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of Press includes freedom of publication, freedom of circulation and freedom against pre-censorship.

3. **In Sakal Papers Ltd. v. Union of India,[AIR 1962 SC 305]** the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price and in **Bennett Coleman and Co. v. Union of India,[AIR 1973 SC 106; (1972) 2 SCC 788]**,the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Supreme Court of India holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court struck down the Government's stand that it would help small newspapers to grow."

4. In the case of **Brij Bhushan v. State of Delhi(AIR 1950 SC 129)**, the validity of order imposing pre-censorship on an English Weekly of Delhi, which directed the editor and publisher of a newspaper to submit for scrutiny, in duplicate, before the publication, all communal matters, all the matters and news and views about Pakistan, including photographs, and cartoons, on the ground that it was a restriction on the liberty of the press, was struck down by court.

## **B. Freedom of Commercial speech**

In **Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd.**, the Supreme Court held that a commercial advertisement or commercial speech was also a part of the freedom of speech and expression, which would be restricted only within the limitation of Article 19(2). Supreme Court held that advertising, which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product-advertised. Public at large are benefited by the information made available through the advertisements. In a democratic economy, free flow of commercial information is indispensable.

## **D. Right to Broadcast**

The concept speech and expression has evolved with the progress of technology and include all available means of expression and communication. This would include the electronic and the broadcast media.

In **Odyssey Communications (P) Ltd .v. Lokvidayan Sanghatana**, the Supreme Court held that the right of a citizen to exhibit films on the State channel – Doordarshan is part of the fundamental right guaranteed under Article 19(1) (a). In this case, the petitioners challenged the exhibition on Doordarshan of a serial titled “**Honi Anhonion**” on the ground that it encouraged superstitious and blind faith amongst viewers. The petition was dismissed as the petitioner failed to show evidence of prejudice to the public.

## **E. Right to information**

The freedom of 'speech and expression' comprises not only the right to express, publish and propagate information, its circulation but also to receive information. This was held by the Supreme Court in a series of judgements which have discussed the right to information in varied contexts from advertisements enabling the citizens to get vital information about life-saving drugs, to the right of sports lovers to watch cricket and the right of voters to know the antecedents of electoral candidates.

The Supreme Court observed in **Union of India v. Assn. for Democratic Reforms** (2002) 5 SCC 294., "One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions".

## **F. Right to criticize**

In **S. Rangarajan v.P. Jagjivan Ram**, everyone has a fundamental right to form his opinion on any issues of general concern. Open criticism of government policies and operations is not a ground for restricting expression. Intolerance is as much dangerous to democracy as to the person himself. In democracy, it is not necessary that everyone should sing the same song.

## **G. Right to expression beyond national boundaries**

In **Maneka Gandhi vs Union of India**, the Supreme Court considered whether Article 19(1)(a) of Indian Constitution was confined to Indian territory and held that the freedom of speech and expression is not confined to National boundaries.

## **H. Right not to speak or Right to silence is also included in the Right to speech and expression.**

In the case of National Anthem, three students were expelled from the school for refusal to sing the national anthem. However, the children stood up in respect when the national anthem was playing. The validity of the expulsion of the students was challenged before the Kerala High Court and they upheld the expulsion of the students on the ground that it was their fundamental duty to sing the national anthem. However, on an appeal being filed against the order of the Kerala High Court before the Supreme Court, it was held by the Supreme Court that the students did not commit any offence under the Prevention of Insults to National Honour Act, 1971. Also, there was no law under which their fundamental right under Article 19(1) (a) could be curtailed. **Bijoe Emmanuel v. State of Kerala** 1986 3 SC 615

## **Landmark judgements of Supreme Court of India: Reasonable Restrictions on Freedom of Speech and Expression**

The freedom of speech & expression is subject to reasonable restrictions and Supreme Court of India has included following aspect in the meaning of reasonable restriction

- A. Security of the state
- B. Friendly relation with foreign state
- C. Public order
- D. Decency and morality
- E. Contempt of court
- F. Incitement to an offence
- G. Sovereignty and Integrity of India

## **Let us explain each aspect of Reasonable restrictions to Freedom of Speech and Expression in the light of Supreme Court Judgements**

### **A. Security of the State:**

Reasonable restrictions can be imposed on the freedom of speech and expression, in the interest of the security of the State. The term security of state has to be distinguished from public order. For security of state refers to serious and aggravated forms of public disorder, example rebellion, waging war against the state [entire state or part of the state], insurrection etc.

In the case of **People's Union for Civil Liberty y versus Union of India** AIR 1997 SC 568 a public interest litigation (PIL) was filed under Article 32 of the Indian Constitution by PUCL, against the frequent cases of telephone tapping. The validity of Section 5(2) of The Indian Telegraph Act, 1885 was challenged. It was observed that "occurrence of public emergency" and "in the interest of public safety" is the **sine qua non** for the application of the provisions of Section 5(2). If any of these two conditions

are not present, the government has no right to exercise its power under the said section. Telephone tapping, therefore, violates Article 19(1) (a) unless it comes within the grounds of reasonable restrictions under Article 19(2).

### **B. Friendly relations with foreign States:**

This ground was added by the Constitution (First Amendment) Act of 1951. The State can impose reasonable restrictions on the freedom of speech and expression, if it hampers the friendly relations of India with other State or States.

1. **People's Union for Civil Liberties (PUCL) v. Union of India**
2. **Kishori Mohan v. State of West Bengal]**
3. **Ranjit D. Udeshi v. State of Maharashtra (AIR 1965 SC 881)**
4. **E.M.S. Namboodripad v. T.N. Nambiar (1970) 2 SCC 325; AIR 1970 SC 2015)**

### **C. Public order:**

This ground was added by the Constitution (First Amendment) Act, 1951 in order to meet the situation arising from the Supreme Court's decision in **Romesh Thapar's, case** (AIR 1950 SC 124). As per hon'ble Supreme court, **public order is different from law and order** and security of state [**Kishori Mohan v. State of West Bengal**]. The expression 'public order' connotes the sense of public peace, safety and tranquillity. Anything that disturbs public peace disturbs public order [**Om Prakash v. Emperor**, AIR 1948 Nag, 199]. But mere criticism of the government does not necessarily disturb public order. A law, which punishes the deliberate utterances hurting the religious feelings of any class has been held to be valid and reasonable restriction aimed to maintaining the public order.

### **D. Decency and Morality**

Decency and morality section 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression on the grounds of decency and morality, it prohibits the sale or distribution or exhibition of obscene words. The standard of morality changes with changing times. Supreme Court in **Ranjit D. Udeshi v. State of Maharashtra** (AIR 1965 SC 881) 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*.

### **E. 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.

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.

### **F. Defamation:**

The clause (2) of Article 19 prevents any person from making any statement that defames the reputation of another. Defamation is a crime in India inserted into Section 499 and 500 of the I.P.C. Right to free speech is not absolute. It does not mean freedom to hurt

another's reputation which is protected under Article 21 of the constitution. Although truth is considered a defence against defamation, but the defence would help only if the statement was made 'for the public good.' and that is a question of fact to be assessed by the judiciary.

#### **G. Incitement to an offense:**

This ground was also added by the Constitution (First Amendment) Act, 1951. The Constitution also prohibits a person from making any statement that incites people to commit offense.

#### **H. Sovereignty and integrity of India:**

This ground was added subsequently by the Constitution (Sixteenth Amendment) Act, 1963. This is aimed to prohibit anyone from making the statements that challenge the integrity and sovereignty of India.

#### **Major Learnings/Summary:**

1. The right of freedom of Speech and Expression available to ONLY citizen.
2. It is not only granted by Indian constitution but also various international conventions like Universal declaration of Human rights, International convention on Civil and Political Rights.
3. It includes Freedom of Press, Freedom of Commercial Speech, Right to Broadcast, Right to Information, Right to Criticize, Right to expression beyond national boundaries, Right not to speak or Right to silence is also included in the Right to speech and expression.
4. **This right is subject to reasonable restrictions stated under Article 19 (2) and elaborated and pronounced by various SC judgments. For example** sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.
5. **Public order, a ground of reasonable restriction, is different from Law and order.**
6. **Right to information, a major enactment is result of progressive judicial decision with respect to Article 19 (1) (a).**
7. **It is one of the most basic elements of a healthy, open minded, and flourishing democracy.**