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Freedom of Speech and Expression Scope of Article 19(1) (a) in the Constitutional Framework and Reasonable Restrictions

SOUMYA SRIVASTAVA¹

ABSTRACT

Freedom of Speech and Expression always had a great instrumental value in promoting truth and social values, it is not only quintessential for maintaining democracy as it helps in facilitating the exchange of diverse opinions, but it is also associated with the liberty of an individual and very closely to 'appeal to reason', thus making it the most basic human birth right. Framers of our constitution treasured this ideology and thus incorporated it in our constitution and preamble as well. Not only India but all the other nations have admitted the significance of free speech and have adopted it by incorporating it their legal justice system.

History has taught us that absolute power corrupts, that's why this fundamental right is also not left absolute, but is subjected to certain 'reasonable restrictions' like: sovereignty and integrity of nation, security of state and friendly relation with foreign state, public order, decency, morality and other restrictions mentioned in Art.19(2) of the Constitution. Indian Courts have also been from time to time engaged in justifying the restrictions which this right is subjected to.

This Article opens with the analysis of freedom of speech & expression in a democratic society and the 'reasonableness of the restrictions' imposed on it under the Indian Constitution & other nation's legal system, further various case laws are also enumerated which explained the judicial interpretation of Article 19(1) (a) & 19(2) along with a dialogue on free speech in international legal regime. Finally, the Article is concluded with my understanding on how the scope of freedom of speech and expression has significantly increased over the years by adding 'right to information' and 'freedom of press' in it and how the 'pitfalls' like lack of provisions related to individual privacy, no specific definition for morality/decency, abuse of free speech on internet and unethical media hindrance are serious concern for our current legal framework.

I. INTRODUCTION

Speech is the God's gift to mankind. Through speech a human being expresses his thoughts,

¹ Author is an Assistant Professor at Babu Banarasi Das University, India.

sentiments and feeling to others, it helps in opening channel of free discussion on issues, forming public opinions on social, political and economic matters.¹ It not only allows ordinary people to participate freely in spreading of their ideas and in creation of meanings that help constitute them as persons but it also important for the enjoyment of personal autonomy. As a result making it the most basic human right.² A democratic culture is democratic in the sense that everyone—not just political, economic, or cultural elites—has a fair chance to participate in the production of culture, and in the development of the ideas and meanings that constitute them and the communities and sub-communities to which they belong.³ The freedom of speech and expression is a natural right, which a human being acquires by birth. It is also regarded as the first condition of liberty.

Milton in his *Aeropagitica* says that ‘without this freedom (freedom of speech & expression) there can be no health in the moral and intellectual life of either the individual or the nation’.⁴

Justice P.N. Bhagwati has emphasized on the significance of the freedom of speech and expression in these words:

*“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.”*⁵

Freedom of speech & expression has become the most cherished constitutional rights in liberal democracies. It is entrenched in most contemporary constitutions as well as in international human rights treaties. Nation states from all over the world has imbedded this principle in their legal framework.

The right of free speech is absolutely indispensable for the preservation of a free society in which Government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities.⁶ The freedom of speech and expression means the right to express one’s views, convictions and opinions at any issue freely using any medium, e.g. by words of mouth, writing, printing, films, pictures, movies etc. Through this fundamental right a system of checks and balances, operating as a restraint on tyranny, corruption and ineptitude is carried out⁷. Today the word ‘expression’ has a much wider meaning like - waving a flag, wearing a button with political symbols, producing a movie, cartoons and paintings or any other kind of electronic medium to express are also now protected under this right. While, there are activities that are clearly speech but they are not

protected by the right to free speech, such as hiring somebody to commit murder, making hate speeches against the nation or defaming a person.

The idea of free speech & expression has occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. Over the millennium of struggle we have understood its importance and that is why it has been truly said that – ‘it is the mother of all other liberties’.⁸ The reasons why freedom of speech & expression is so important following grounds are to be considered: it gives liberty to individuals or a sense of individual autonomy, helps in forming opinion in the ‘marketplace of ideas’⁹ & it inspires ‘appeal to reason’, which is the basis of a democracy¹⁰ and also facilitates in growth of true public knowledge.

The origin of first reason – ‘liberty to individual or a sense of individual autonomy’ can be traced throughout the history of mankind. The core idea is that persons are, in some sense, rationally “self-governing” or “self-directing”¹¹ or according to Kant, autonomy consists simply in the capacity “to use one’s intelligence without the guidance of another”¹² and freedom of speech is part of the human personality itself, a value intimately intertwined with human autonomy and dignity.¹³

Under the conventional marketplace of ideas argument, the protection of speech is conducive in the long run to the discovery of truth, it is based on long-term societal benefits resulting from the protection of speech.¹⁴ Justice Homes gave his dissenting opinion in the case of *Abrams v. United States* argued that "the best test of truth is the power of the thought to get itself accepted in the competition of the market."¹⁵ “The market for ideas is the market in which the intellectual conducts his trade. The explanation of the paradox is self-interest and self-esteem. Self-esteem leads the intellectuals to magnify the importance of their own market.....But self-interest combines with self-esteem to ensure that, while others are regulated, regulation should not apply to them”¹⁶ The marketplace of ideas clearly increases the chances of “true ideas” to appear in the market of ideas, but it also increases the spread of false ideas.¹⁷

The third and foremost important reason is that it inspires ‘appeal to reason’. Democracy is based on the system of checks and balances & the Hon’ble Karnataka High Court has also held that Article 19(1)(a) of the Constitution provides the freedom of speech and expression because the governmental functions must be transparent and the three instrumentalities i.e. Legislature, executive and judiciary of the State should be prevented from deceiving people¹⁸ and this structure of transparency & checks and balances can only be sustained through ‘appeal

to reason' which denotes that the citizens of a democratic nation are entitled to valid justification from its government for motive of its actions.

II. INTERNATIONAL & NATIONAL LEGAL REGIME RELATING TO FREEDOM OF SPEECH & EXPRESSION

INTERNATIONAL PROSPECTIVE

The Canadian Charter of Rights and Freedoms declares “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”, the Constitution of Japan provides: “Freedom of ... speech, press and all other forms of expression are guaranteed”, the German Constitution announces: “Every person shall have the right freely to express and disseminate his opinions in speech, writing, and pictures and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed ...”. The EU Charter of Fundamental Rights provides: “Everyone has the right to freedom of expression”, and then in a separate paragraph of the same article, “The freedom and pluralism of the media shall be respected”. The Constitution of Poland declares, in the chapter on “Personal Freedoms and Rights”: “The freedom to express opinions, to acquire and disseminate information shall be ensured to everyone”, while in its introductory chapter, “The Republic”, it announces: “The Republic of Poland shall ensure freedom of the press and other means of social communication”.

Perhaps the best known example is that of the United States: the First Amendment declares that “Congress shall make no law ... abridging the freedom of speech, or of the press...” Most notably, in the European legal tradition, as best exemplified by the European Convention of Human Rights (ECHR), the term “expression” is used rather than “speech” to describe the concept at work here (“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...”) ¹⁹.

Not only at domestic level but at international level all the nation states have documented the importance of freedom of speech & expression as - “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” ²⁰ and “Everyone shall have the right to hold opinions without interference. 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.”²¹

NATIONAL PROSEPTIVE

The people of India gave to themselves, the Constitution of India, with a view of make it Sovereign, Socialistic, Secular, Democratic Republic. In our democratic society, prestigious place has been provided to the ‘freedom of speech and expression’ through the Preamble which is the grundnorm on which all the laws prevailing in India are based on. Objectives of Indian Constitution are visualised in the Preamble and it is stated as- ‘Constitution of India secures LIBERTY OF THOUGHT AND EXPRESSION to all its citizens.’ Thus placing the Freedom of Speech & Expression among the foremost human fundamental right in India.

Relevant portion in Article 19 of Indian Constitution is as follows:

Article 19. Protection of certain rights regarding freedom of speech, etc. –

1. All citizens shall have the right –
 - a. To freedom of speech and expression;
2. 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.

Article 19 is stated under Part- III of the constitution named – Fundamental Rights, the object of fundamental rights is to establish ‘rule of law and not of men’. Dr. B.R. Ambedkar said that “the object of the fundamental rights ‘is twofold’. Firstly, every citizen must be in position to claim these rights. Secondly, they must be binding upon every authority.”²² Fundamental rights are restrictions or limitations upon all the powers of the Government, Legislative as well as Executive and they are essential for the preservation of public and private rights, notwithstanding the representative character of political instruments.²³ It is tightly related to liberal values such as autonomy, dignity and liberty²⁴ and the Supreme Court has also given it a broad dimension – ‘freedom of speech involves not only communication, but also receipt of information. Communication and receipt of information are the two sides of the same coin.’²⁵ In *State of Uttar Pradesh v. Raj Narain*²⁶ the Supreme Court held that Article 19(1) (a) not only guarantees freedom of speech and expression, it also ensures and comprehends the right of the citizen to know, the right to receive information regarding matters of public concern.

Further in Secretary, Ministry of I&B, Government of India v. Cricket Association of Bengal²⁷, the Supreme Court reiterated the proposition that the freedom of speech and expression includes the right to acquire information and to disseminate the same.

The freedom of speech and expression for the media - both print and broadcast – also originates from this article. Though the scope of this freedom is quite wide, yet not absolute.²⁸ The newspapers serves as a medium of exercise of freedom of speech.²⁹ As stated by the Supreme Court - Freedom of the press has to be reconciled with the collective interest of the society, which is known as “public interest.”³⁰ The right to free speech and expression includes the right not only to publish but also to circulate information and opinion. The freedom of circulation has been held to be as essential as the freedom of publication.³¹ Liberal interpretation has also include right to broadcast³², to advertisement³³ and to interview³⁴ in the term ‘right to freedom of speech & expression’.

III. REASONABLENESS OF REASONABLE RESTRICTIONS

Absolute individual rights cannot be guaranteed by any modern State. The guarantee of each of the right is limited by our Constitution itself by conferring upon the “State’ a power to impose by its laws reasonable restrictions as may be necessary in the larger interests of the community. This is what is meant by saying that the Indian Constitution attempts “to strike a balance between individual liberty and social control”.³⁵ Since the goal of our constitutional system is to establish a ‘welfare State’, the makers of the Constitution did not rest with the enumeration of uncontrolled individual rights, in accordance with the philosophy of *laissez faire*, but sought to ensure that where collective interests were concerned, individual liberty must yield to the common good.³⁶ The Constitution guarantees freedom of speech and expression. But this freedom is subjected to reasonable restrictions imposed by the State relating to:

- a) Defamation
- b) Contempt of court
- c) Decency or morality
- d) Security of the State
- e) Friendly relations with foreign state
- f) Incitement to an offence
- g) Public order

h) Maintenance of the sovereignty and integrity of India.³⁷

Nowhere in the Constitution has the term “reasonable restrictions” been defined. The meaning is not written in stone. It gets new meaning with changing times. And, that is precisely what the Supreme Court is mandated to do.

In I.R. Coelho³⁸ judgment, the Supreme Court observed:

“It is the duty of this Court to uphold the constitutional values and enforce constitutional limitations as the ultimate interpreter of the Constitution.....The constitutional provisions have to be construed having regard to the march of time and the development of law.....The principle of constitutionalism underpins the principle of legality which requires the Courts to interpret legislation on the assumption that Parliament would not wish to legislate contrary to fundamental rights.....”

The Supreme Court have justified the restrictions on free speech imposed by Article 19(2) on utilitarian grounds: some restrictions on freedom may be necessary so that others may also enjoy their liberties. As noted by Sastri J in A. K. Gopalan (1950):

‘Man, as a rational being, desires to do many things, but in civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals... Liberty has, therefore, to be limited in order to be effectively possessed.’³⁹

Also defined in Ram Manohar Lohia (1960), such public order is necessary for citizens to ‘peacefully pursue their normal avocations of life.’⁴⁰ As the Supreme Court put it in Praveen Bhai Thogadia (Dr)(2004), the right to freedom of expression ‘may at times have to be subjected to reasonable subordination to social interests, needs and necessities to preserve the very core of democratic life – preservation of public order and rule of law.’⁴¹ In Ramji Lal Modi, the Supreme Court of India upheld the constitutionality of section 295A of the Indian Penal Code as a ‘reasonable’ restriction upon free speech ‘in the interests of’ public order.⁴²

The expression ‘reasonable restriction’ seeks to strike balance between the freedom guaranteed and the social control permitted by any of the exception. The Supreme Court has said⁴³ that a restriction is reasonable only when there is a proper balance between the rights of the individual and those of the society. The Supreme Court has held that in examining the reasonableness, one has to keep in mind following important points: The D.P.S.P must be considered, the restriction is not arbitrary or goes beyond the interest of general public, the test of reasonableness should not be universal but rather it shall vary from case to case depending upon the circumstances and a just balance has to be struck between the restrictions imposed and satisfaction of prevailing social values.⁴⁴ Each of the restrictions are explained below:

Sovereignty and Integrity of India- This restriction was a reaction of the tense situation prevailing in different parts of the country. Chinese incursions have started in the north-east in 1960. Also, around this time, there were strong demands led by Master Tara Singh for a separate Sikh homeland. The Law Minister Ashok Kumar Sen introduced a bill in the Lok Sabha on 21st January, 1963 describing its object as giving “appropriate powers to impose restrictions against those individuals or organisations who want to make secession from India or disintegration of India as political purposes for fighting elections.”

Friendly Relations with Foreign States - include not only libel of foreign dignitaries but also propaganda in favour of rivals to authority in a foreign state after India has recognised a particular authority in that state, or propaganda in favour of war with a state at peace with India.

Public Order and Security of The State - In *Madhu Limaye v. Sub-Divisional Magistrate*⁴⁵, the Supreme Court held that “public order” includes the absence of all acts which are a danger to the security of the State and also the acts described by the French as *Ordre Publicque*, that is, the absence of insurrection, riot, turbulence, or crimes of violence.

Incitement of An Offence - the provocation of an act which, at the time, is a punishable offence under an existing law.⁴⁶

Decency & Morality – It is not confined to sexual morality alone. It indicates that the action must be in conformity with the current standers of behaviour or propriety.⁴⁷ In *Ranjit D. Udeshi v. State of Maharastra*⁴⁸, ‘Obscenity’ has been defined by the Supreme Court as “the quality being obscene which means offensive to modesty or decency; lewd; filthy and repulsive”.

Contempt of Court - The term refers to civil or criminal contempt under the Court of the Contempt Act, 1971. The law of contempt is for keeping the administration of justice pure and undefiled while the dignity of the court is to be maintained at all costs.⁴⁹

Defamation - The law of defamation seeks to attain a balance between these competing freedoms and reasonable restriction under Article 19(2). A statement is said to be “defamatory” when it injures the reputation of the person to whom it refers and “exposes him to hatred, ridicule and contempt” or which causes him to be shunned or avoided or which has a tendency to injure him in his office, profession or calling.⁵⁰

Thus, it is evident that freedom of speech and expression cannot confer upon an individual a licence to commit illegal acts or to incite others to overthrow the established government by force or unlawful means. No one can exercise his right of speech in such a manner as to violate another’s such right.⁵¹

IV. CONCLUSION

We have completed a full circle. We began by analysing the traditional rationales for free speech *i.e.* marketplace of ideas, individual's autonomy & appeal to reason. We suggest that without the power of self-governance to individuals, the ability to discover truth & the system of checks and balances protecting democracy and enhancing autonomy of individuals would be unachievable. There is thus a close dependence between the values underlying rights and the activities protected by rights. We then turned to explore the international and national statutes relating to free-speech. In India the enshrinement of free speech in preamble, Constitution together with Supreme Courts broad and liberal interpretation of Article 19(1) (a) lead to recognition of various rights like, right to receive and disseminate information, right to know, right to remain silent and as well right to fly the National Flag freely with respect and dignity as expressions of one's feeling of pride for the nation.

As far as Article 19(2) is concern framers knew how important restriction are for striking balance b/w the individual's liberty to speak freely & devising public order in the society and the Hon'ble Supreme Court by attributing these connotations to the liberal interpretation of Article 19(1) (a) is doing a great service to the nation by rendering the meaning to the fundamental rights which the framers of the Constitution would ever desire of.

V. REFERENCES

- ¹ See M.P. Jain, “Indian Constitutional Law” Wadhwa and Company Nagpur, New Delhi, 2003, p. 1152.
- ² See Life Insurance Corporation of India v. Mannubhai D. Shah, AIR 1993 SC 171.
- ³ See J.M. Balkin, Populism and Progressivism as Constitutional Categories, 104 YALE L.J. 1935, 1948–49(1995).
- ⁴ See Johan Milton, Aeropagitica and Other Tracts, 27 (1644).
- ⁵ See Menaka Gandhi v. Union of India AIR 1978 SC 597: (1978) 1 SCC 248.
- ⁶ See Speiser v. Randall, 357 US 513.
- ⁷ See Freedom of Speech and Freedom of Press (available at: <http://www.lincoln.edu/criminaljustice/hr/Speech.htm>)
- ⁸ See Report of the Second Press Comm., Vol. I, 34-35.
- ⁹ See Abrams v. United States, 250 U.S. 616, 624-31 (1919) (Holmes, J., dissenting). Also Joseph Blocher, Institutions in the Marketplace of Ideas, 57 DUKE L. J. 821, 871 (2008); Frederick Schauer, Hohfeld's First Amendment, 76 GEO. WASH. L. REV. 914, 922-23 (2008).
- ¹⁰ See V.N. Shukla, “The Constitution of India” Eastern Book Company, New Delhi, 2004, p. 105. Also Jennings, W.I., Cabinet Government, 13. [Cited in Dr. Madhabhusi Sridhar, The Law of Expression, An Analytical Commentary on Law for Media 18 (Asia Law House, Hyderabad, 18, (2007)].
- ¹¹ See Brian Leiter, The Case against Free Speech (available at: <http://ssrn.com/abstract=2450866>) at pg. 23.
- ¹² See Immanuel Kant, What is Enlightenment? (1784).
- ¹³ See Freedom of Speech and Freedom of Press (available at: <http://www.lincoln.edu/criminaljustice/hr/Speech.htm>)
- ¹⁴ See Alon Harel, Freedom of Speech (available at: <http://ssrn.com/abstract=1931709>) at pg. 5.
- ¹⁵ See Abrams v. United States, 250 U.S. 616, 624-31 (1919) (Holmes, J., dissenting)
- ¹⁶ See Coase, R. H. “The Market for Goods and the Market for Ideas,” 64 The American Economic Review: 384–391 (1974); Also Coase, R. H. “Advertising and Free Speech,” 6 The

Journal of Legal Studies: 1–34 (1977).

¹⁷ See Schauer, F., *Free Speech: A Philosophical Enquiry*, Cambridge: Cambridge University Press. 28 (1982); Also Ingber, S. “The Marketplace of Ideas: A Legitimizing Myth,” *Duke Law Journal* 7 (1984).

¹⁸ See *K. Ravikumar v. Bangalore University*, AIR 2005 Kar. 21.

¹⁹ See Art. 10.1 ECHR. No mention of “press”, “media”, “mass communication” or equivalent concepts is made elsewhere in the Convention.

²⁰ See Article 19, Universal Declaration of Human Rights, 1948.

²¹ See Article 19 (2), International Covenant on Civil and Political Rights, 1966.

²² See Dr. B. R. Amedkar, *Constitutional Assembly Debates*.

²³ See *Hartado v. People of California*, 28 Led 232 (per Mathews J.).

²⁴ See *Supra* note 14 at p. 3.

²⁵ See *Supra* note 1 at p.1154-1155.

²⁶ AIR 1975 SC 865,884:(1975) 4 SCC 428

²⁷ AIR 1995 SC 1236; *infra*, 1177-78

²⁸ See Anurag K. Agarwal, *Corporate Governance: Confidentiality and Role of Media in Changing Times*, IIM –AHMEDABAD, W.P. No. 2012-10-02 at pg. 10

²⁹ See *Hindustan Times v. State of U.P.*, (2003) 1 SCC 591.

³⁰ See *Gitlow v. New York*, (1925) 263 US 652; Also *Kochuni v. State of Madras*, AIR 1960 SC 1080

³¹ See *Romesh Thappar v. State of Madras*, AIR 1950 SC 124; *Virendra v. State of Punjab*, AIR 1957 SC 896; *Sakal Papers v. Union of India*, AIR 1962 SC 305.

³² See *Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana* (1988) 3 SCC 410.

³³ See *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139.

³⁴ See *State v. Charulata Joshi* (1999) 4 SCC 65.

³⁵ See *Gopalan v. State of Madras* (1950) S.C.R 88 (253-54).

³⁶ See Dr. Durga Das Babu, “Introduction to the Constitution of India” LexisNexis, Nagpur, 20th Ed. (2011), p. 102.

³⁷ Sovereignty and Integrity of India were added as new grounds for the restriction of the

freedoms of speech, assembly and association by the Constitution (16th (Amendment) Act, 1963. After the amendment, it would be competent for the Legislatures to combat movements like the D.M.K movement in the South and the Plebiscite movement in Kashmir or parties advocating anarchism, by enacting appropriate laws. In pursuance of this amendment Parliament has enacted the Unlawful Activities (Prevention) Act, 1967.

³⁸ See *I.R. Coelho v. State of Tamil Nadu*, AIR 2007 SC 861

³⁹ See *A. K. Gopalan v. State of Madras* AIR 1950 SC 27, 69.

⁴⁰ See *Superintendent, Central Prison v. Ram Manohar Lohia* AIR 1960 SC 633.

⁴¹ See *Baragur Ramachandrappa and ors. v. State of Karnataka* (2007) 3 SCC 11.

⁴² See *Ramji Lal Modi v. State of Uttar Pradesh* AIR 1957 SC 620 (“*Ramji Lal Modi*”).

⁴³ See *Dwarka Prasad v. State of U.P.*, (1954) S.C.R 803. Also *Chintamanrao v. State of M.P.*, (1952) S.C.R 759; *State of Maharastra v. Himmatbhai*, AIR 1970 S.C 1157.

⁴⁴ See *M.R.F. Ltd v. Inspector Kerala Govt.*, (1998) 8 S.C.C. 277 (para 13).

⁴⁵ (1970) 3 SCC 746: AIR 1971 SC 2486.

⁴⁶ See *Superintendent, Central Prison v. Ram Mahohar Lohia*, AIR 1960 SC 633.

⁴⁷ See *Ramesh Yeshwant Prabhoo (Dr.) v. Prabhakar Kashinath Kunte* (1996) 1 S.C.C 130 (para 28 and 29): AIR 1996 S.C 1113.

⁴⁸ AIR 1965 SC 881.

⁴⁹ See *Shukuntala Sahadevram Tewari v. Hemchand M. Singhania*, (1990) 3 Bom CR 82 (Bom).

⁵⁰ See *Nevill v. Fine Arts and General Ins.*, (1897) AC 68.

⁵¹ See *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*, (1995) 2 S.C.C. 161(para 152): AIR 1995 S.C. 1236.
