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Transformative Potential of Right to Privacy: Rewiring the Prejudices Now and Ever

MUSKAAN BANSAL¹

ABSTRACT

Public opinion cannot influence jurisprudence as our constitution is a beacon of freedom. The Indian Constitution protects citizens' rights of free oration & assembly. Constitution pledges the liberty of inflection for plebeians. While Section 377 limits LGBT people's ability to express themselves freely. Both freedoms are discussed in this article, with an emphasis on the Indian constitutional framework. The junction of the constitutional text and the criminal process code enables and restricts the freedom of speech, making it a topic of particular relevance within the area of constitutional law. There are no statutory impediments on the right to congregation. Only the Apex Court's precedents & the hindrances set by the Constitution determine its nature and scope. When it comes to respecting individuals' right to privacy, the Court's rationale falls short. The Supreme Court has not weighed in on the issue of whether or not auxiliary conceptual translucence on the two freedoms is required. Neither has the Court discussed any principles that it must use as a basis for its interpretation of these liberties. Instead, the court has been conducting case-by-case evaluations and developing its own interpretations of the law based on the many groups of people who enjoy these rights and liberties. Instead of having a conversation about strikes, for example, it makes some groups of people (such as attorneys, government workers, and members of critical services regimes) exempt from participating in such actions.

Keywords: *Constitution, Liberty, Privacy, Freedom of Expression, Netizens.*

I. INTRODUCTION

Every² civilization on Earth that aspires to democracy relies on the protection of its citizens' right to free speech. The freedom to speak one's mind freely to others is fundamental to the notion of free speech. As a measure of individual autonomy, it excels all others. One of the extensively indisputable human rights to protect from state repression or limitation, it is

¹ Author is a student at Faculty of Uttaranchal University Law College Dehradun, India.

² Muskaan Bansal, 5th year B.A. LL.B. (Hons.) Student, Uttaranchal University Law College Dehradun

sometimes referred to as the “mother” of all other liberties.³ “The Indian Constitution guarantees the right to free speech under Article 19(1)(a). Articles 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognize the right to freedom of speech as a fundamental human right. It is clear from Article 19(2) that the right to free expression is not unqualified.” However, laws are the only means to restrict people's right to say what they want. Included in this liberty is the liberty to spread, publish, and sell this content. As the word for “foundation” or “basis” in Hindi, Aadhaar is a perfect metaphor for the government's flawed stance: without it, an Indian's citizenship would be based on sand. When faced with instances involving human autonomy, such as those implicating freedom of sermon, representation, sexuality, assemblage, and union, the same court has been reluctant to rule.

II. ESSENCE AND CEILING OF THE FREEDOM OF ASSERTION

Right to free acknowledgment is corroborated by dint of Art 19 (a) of the Constitution, but only in terms of i.e. Indian citizens.⁴ Freedom pertaining to discourse is unobstructed use of language, writing, publishing, drawing, or any other artistic medium to convey ideas and thoughts. In this sense, it includes the use of any visual medium or presentation to convey spoken information, including signs, gestures, symbols, and the like, in order to express one's ideas, emotions, views, and thoughts.⁵ The rights of a free person are insulated via Article 19 of the Constitution. These protections do not originate from any one piece of legislation but rather from the common law or natural law. Therefore, within the framework established by the state, every citizen has the right to exercise their freedoms.⁶ Article 19(1)(a) guarantees the right to express one's sexual orientation and gender identity. In *National Legal Services Authority of India v. Union of India*, the Supreme Court of India ruled as follows: each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.⁷ The Constitutional Court of South Africa in *National Coalition for Gay and Lesbian Equality & Anr. v. Minister of Justice and Ors*, also recognized that We demean and devalue homosexual males as a group when we

³ Dheerendra Patanjali, *Freedom of Speech and Expression, India v America - A Study*.

⁴ *Hans Muller of Nuremburg v. Supdt., Presidency Jail, Calcutta*, (2002) 2 SCC 465; *State of Gujarat v. Ambica Mills Ltd.*, (1974) 4 SCC 656

⁵ *Lowell v. Griffin*, (1939) 303 US 444.

⁶ *A.K. Gopalan v. State of Madras*, MANU/SC/0012/1950; *Collector of Malabar v. Erimal Ebrahim Hajee*, MANU/SC/0015/1957.

⁷ (2014) 5 SCC 438, para 22.

have a legislation that criminalizes a form of sexual expression for gay men. This clearly violates Section 10 of the Constitution and is an assault on their human rights.⁸

LGBT people's right to free expression is constrained under Section 377. It discourages people from being open about their sexual orientation and gender identity. Article 19(1)(a) may be violated by laws that promote self-censorship. In *Shreya Singhal v. Union of India*,⁹ Section 66-A of the Information Technology Act of 2000 was overturned by this Hon'ble Court due to its stifling impact on free expression.

These two Constitution Bench decisions (*T. Rajagopal v. Tamil Nadu* and *Khushboo v. Kanniammal*) bind us and would apply directly on Section 66A. We, therefore, hold that the Section is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth.

*S. Rangarajan v. P. Jagjivan Ram*¹⁰ accords, As the Court clenched “our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the Community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest.”

Freedom of utterance gravitates four broad connotations:

1. It's a means through which one might realize their own potential;
2. It helps in knowing the truth and revealing it, with the added benefits of revealing reality and the truthfulness of claims and increasing one's ability to engage in decision making.
3. One's capacity for making sound decisions is bolstered and improved by this; and
4. It provides a means of reconciling competing values of social harmony and social equality.

Transformation.¹¹ In the Indian social order, everyone has the freedom to form their own beliefs and voice them publicly. The fundamental idea at work in realizing the aforementioned right is the people's right to access information. Everyone who believes it is important for citizens to

⁸ (1997) 3 SCC 433

⁹ (2015) 5 SCC 1.

¹⁰ (1989) 2 SCC 574

¹¹ J. N. Pandey, *The Constitutional Law of India*, CENTRAL LAW AGENCY, 47th edn., 2010, p. 183.

participate in governance should thus vigorously advocate for the right to free expression. The government must exercise more caution when taxing products associated with the newspaper and media industry than it would when taxing other items due to the high value placed on free speech in our society.¹² Public demonstrations that produce public disturbances, function as nuisances, or result in some actual private or public damage do not come within the purview of Article 19(1)(a), regardless of whether they are religious, political, social, or manifestations of some other concern.¹³

The Indian legal system does not provide special protection for speech that is both novel and commercial in nature. As a result of India's significant legal progress and advancement, "the Supreme Court has determined that 'commercial speech' is entitled to the safeguards of Article 19(1)(a)." The Court made a judgment that so-called "commercial speech" is authorized to protections of First Amendment. Every Indian citizen should be able to freely hear, read, and take part in any and all types of commercial discourse. The freedom to freely engage in the visual, performing, and literary arts is safeguarded by the principle of free speech. The right to seek and share information is now included in the umbrella of protection provided by Article 19(1)(a). *The State of Uttar Pradesh v. Raj Narain*.¹⁴ The Supreme Court held, based on its reading of Article 19(1)(a) of the Constitution, that all people have the right to freedom of speech and the right to access and distribute information of public interest. *Cricket Association of Bengal v. Secretary, Ministry of Information and Broadcasting, Government of India, Secretary, Ministry of Information and Broadcasting, Government of India* argues that the freedom to acquire and distribute information is protected by Article 19(1)(a) of the Indian Constitution.¹⁵

III. ORIGIN AND IMPORTANCE OF THE RIGHT TO SPEECH AND EXPRESSION

In India, the freedom of expression is highly valued. The importance of this is clear when one remembers that the preamble to the Constitution protects everyone's right to freedom of thought, expression, belief, worship, and religion. Article 19(1)(a) establishes freedom of expression as a fundamental civic right, based on the significance it is given in the Preamble. The tradition of free expression is long and storied. You may look for it in modern human rights treaties. It is believed that the concept of free speech emerged somewhere around the fifth or sixth century BC. The Roman Republic was founded on the principles of free expression and religious

¹² *Indian Express Newspaper v. Union of India*, (1998) 1 SCC 363

¹³ *Bimal Gurung v. Union of India*, (2018) SCC SC 233

¹⁴ *State of U. P. v. Raj Narain* (1975) 4 SCC 428

¹⁵ *The Secretary, Ministry of Information v. Cricket Association of Bengal & Anr.* 1995 SCC (2) 161

tolerance.¹⁶ Freedom of expression and free speech are essential tenets of the earliest human rights texts. The right to free expression was enshrined in the English Bill of Rights in 1689. The right to free speech was firmly established as a universal principle during the French Revolution of 1789. Over a century ago, in *Abrams v. United States*¹⁷, Justice Oliver Wendell Holmes voiced his dissent, stating that protecting free expression has always been an ongoing process, in one of the first cases to interpret and develop the theory that would come to hold a near-holy position in America's legal character. It has deep roots in democratic principles. The First Amendment of the United States Constitution guarantees the right to free speech. Justice Oliver Wendell Holmes voiced his dissent, stating that protecting free expression has always been an ongoing process, in one of the first cases to interpret and develop the theory that would come to hold a near-holy position in America's legal character. It has deep roots in democratic principles. The First Amendment of the United States Constitution guarantees the right to free speech.

A constitutional provision's adoption is a major event, and it holds essential importance in determining the upcoming legal environment of a country.¹⁸ Adoption, according to some experts, crystallizes a principle.¹⁹ The right to freely express and propagate one's opinion is a claim against the state policies that began in England under common law precedents.²⁰ According to Article 12, 1776's Virginia Bill of Rights, press freedom is a cornerstone of independence and sovereignty and must be protected at all costs against authoritarian regimes. Article 19 of the UDHR guarantees everyone the right to freedom of speech, which includes the unfettered right to have whatever opinion one chooses and the freedom to seek, receive, and spread information and ideas by any means and across any territory.²¹

Justice Bhagwati, in *Maneka Gandhi v. Union of India*²², emphasized the significance of free speech by noting that open debate, discussion, and conversation are the cornerstones of a democratic society and serve as the only corrective of government action in a democratic context. Since democracy is the rule of the people, by the people, and for the people, it follows that every citizen is entitled to full participation in democratic processes, including the free and

¹⁶ M. P. Charlesworth, Freedom of speech in Republican Rome, *The Classical Review*, THE CLASSICAL ASSOCIATION 57 (1): 49, (March 1943).

¹⁷ 250 U.S. 616.

¹⁸ 42 MARYLAND LAW REVIEW.

¹⁹ P. Berger, *Brest's Brief for an Imperial Judiciary*, 40 MD. L. REV. 1, 2-7, 26- 31 (1981)

²⁰ A.V. Dicey, *Introduction to the Study of Law of the Constitution*, MACMILLAN, NEW YORK, 10th edn. 1959, p. 238ff, 247ff.

²¹ United Nations General Assembly Resolution No. 217A (III)

²² *Maneka Gandhi v. Union of India* (U.O.I.) 1978 SCC 248

open discussion of public issues that affect him so that he can make an informed decision when casting his vote.

The request to willingly express one's contentions stands out as the most crucial. Free speech is essential to democratic governments and must be protected at all costs. For democracy to function effectively, this kind of freedom is essential. To be really independent, one must have the freedom to think and speak for oneself. It is at the top of the list because it ensures the safety and security of all other liberties. It's true that this liberty serves as the foundation for all others.²³ The Bench recuperated in the *Mahesh Bhatt v. U.O.I. & Another*.²⁴ that free speech is one of the foundations of Indian Constitution & that it stands up for it. Right entailing speech & articulation is a crucial element of a democratic framework. In order to maintain a functioning democracy, citizens must be informed and educated. Any incursions against free speech, as well as opposing and divergent views of expression, as well as any laws enacted in the manner of putting restrictions, will lead to curbing on free speech.

Chief Justice Patanjali Shastri, in *Romesh Thappar v. State of Madras*²⁵, expressed his views, that without open political deliberation and general pedagogy relevant operational approach of the prevalent governmental institutions won't be possible. Issues of misuse of these rights might arise from the bestowal of humongous freedom. Madison, the primary force behind the First Amendment's creation, believed that it is preferable to leave in some demerits in the concept rather than remove all of the merits of the same only to ensure that the demerits don't reflect, and the framers of the Constitution may have shared this view. As free speech about civic matters is critical to the functioning of our intricate system of democracy, it is an obligatory outcome of the co institutional provisions creating it, Justice K.K. Mathew has observed²⁶. The right to free expression is a crucial and indispensable component of a nation having adopted democracy. The majority of people believe that democracy is simply about a vote-based election system, but that is not the case, though. Democracy entails far more than just voting. Netizens have the right of partake in country's functioning even after elections and after administrations are created²⁷. Citizens are allowed to express their opinions about the democratic processes well after the elections as well. It does not only mean that a citizen can express his views only in an eloquent, logical, or courteous manner. It can very well include discourteous, insulting,

²³ M. P. Jain, *Indian Constitutional Law*, 6th edition., 2012, page 1078.

²⁴ *Mahesh Bhatt v. U.O.I. & Another* 2009 SCC Online Del 104

²⁵ *Romesh Thappar v. State of Madras* AIR 1950 SC 124

²⁶ "K.K. Mathew, *Democracy, Equality and Freedom in Upendra Baxi* (eds.), Eastern Book Company, Lucknow, 1978, p. 98.

²⁷ *M.Siddiq (D) Thr. Lrs. vs Mahant Suresh Das* 2019 SCC SC 1440

illogical, and even puzzling expressions. This has therefore required the constitution to put reasonable restrictions on this right so that it can be regulated by the state by bonafide means.

IV. INTERNATIONAL STANCE ON FREEDOM OF SPEECH AND EXPRESSION

The right to free speech is a bedrock principle of international law. The right to free speech has become an established principle of international law as a consequence of treaties, regional human rights legislation, and newly enacted human rights legislation at the state level. Everyone has the right to freedom of expression under Article 19 of the UDHR. This includes the right to freely seek for, acquire, and disseminate any and all information.

The ICCPR ensures the freedom to strive, acquire, & interchange assertions and quintessential details of any sort, irrespective of the geography or limits, in addition to the freedom to express oneself verbally, in penmanship, print, art, or via any media of one's choosing.²⁸ It shelters all forms of expression, from verbal ones like writing and speaking to nonverbal ones like visual arts and music.²⁹ If people are not allowed to speak their minds, they are unable to exercise their other rights in society. International, national, and regional laws all protect the right to free expression. Several international treaties and conventions recognize this right, including the “Human Rights Convention (Article 13), the International Covenant on Civil and Political Rights (Article 19), the African Charter on Human and People's Rights (Article 9), and the European Convention on Human Rights (Article 10).”

Having the liberty to willingly express one's notions & political viewpoints is essential to the development of a healthy society and functioning government. Consequently, it provides an anatomy for pummeling an equilibrium between stability and societal progress. Its value in a democratic society lies in the fact that it facilitates citizens' input into policymaking. Protecting people's right to speak freely is essential since it is integral to their growth and happiness.

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One of democracy's heavy credos is the right to say things that are kind about other people. This liberation seeks to enable a person to achieve self-fulfilment, aid in the detection of truth, compress the capacity of a soul to make choices, and promote a harmony between societal

²⁸ United Nations, 1966, Article 19(2).

²⁹ UN Human Rights Committee, 2011, para. 12.

stability and change.³⁰ In Warsame, Committee of Human Rights harbored the prospect to translate the utterance 'exclusive country'.³¹ Warsame's examination is intended to complement the ethnicity-based genuine connection test and increase awareness of statelessness in international law. It's crucial to be able to express yourself freely and articulate your thoughts because that's what gives your life meaning. This chance is being held up as the embodiment of a free society. The right to freedom of expression is proclaimed as fundamental in both the Preamble and Article 19 of the 1948 Universal Declaration of Human Rights.

V. LEEWAY OF PERORATON & LIBERTY OF THE JOURNALISM

Freed speech is truly vital in a democratic setup, especially accompanied by a free press. Voltaire, George Orwell, Thomas Jefferson, and Calvin Coolidge are just a few of the great minds who have articulated the importance of press freedom. Having a free and independent press is essential for a well-functioning democracy and the protection of individual liberties. The press's right to report news independently falls within the broader umbrella of the public's right to freely express themselves.

Justice Patanjali Shastri vented in Romesh Thapar case ruling³² that the autonomy of the the fourth estate, imbibed within the concession to free sermon, acts as the grounding for every democratic organization, and that in absence of unrestricted political dialogue and instruction the democratic structures will wither away. Lord Mansfield also commented on the press's liberty consisting of printing of texts unescorted by any backing to retributions of law of land. So, columnists freedom is having the option to publish anything you want without having to get approval beforehand. Press freedom applies to more than just print publications. Publications such as pamphlets, circulars, and newspapers that are used to disseminate news and arguments are also included.

Freedom of the press is extremely vital to democracy, and there is no freedom when a man cannot openly unrestrain their opinions to one another, even though delinquent free speech subsists at the outset of a freed society, and tools for every aim of actualizing autonomy are already existent. As a result, among the rights, free expression is unique according to the American Press Commission.³³ The Indian Press Commission shares this view; it argues that for a democracy to thrive, it needs more than just the oversight of the legislature; it also needs

³⁰ "Stephen Schmidt, Mack C. Shelly et. al, American Government and Politics Today 11 (Cengage Learning, USA, 2014).

³¹ *Jama Warsame v Canada* Comm no CCPR/C/102/D/1959/2010 (UN Human Rights Committee, 1 September 2011)."

³² *Supra* note 19.

³³ *Lowell v. Griffin*, (1938) 303 US 444; *Sakal Papers Limited v. Union of India*, AIR 1962 SC 305

the delinquency of public opinion, & the newshounds are the considerably effective means of disseminating the latter.³⁴

Unlike the United States of America's Constitution, India's Constitution does not directly mention press freedom in Art. 19(1) nonetheless, "it has been held that press freedom is included in the freedom of speech and expression. There are no special rights granted to the press that are not also granted to or asserted by an individual in his private capacity. This is because the editor or the management of a media channel are simply utilizing their liberty of speech when publicizing their opinion, and for the same, no special rights are required just for the sake of it coming under a press publication."³⁵

The term "expression" also refers to "publishing," hence press freedom is covered under this category. The objective must be the unrestricted sharing of ideas, which may be accomplished via any number of channels and mediums. The unrestricted and widespread spread of ideas and views is ensured by the right to freely circulate them. Like the freedom to publish, the freedom to distribute is crucial to protecting the right to free expression. Even if publishing were permitted, the journal's significance would be little if circulation were restricted.³⁶ "The right to free speech entails the right to disseminate other people's views and ideas as well. It includes within its ambit the right to spread or publish the opinions and thoughts of others³⁷"; otherwise, the press would be excluded from this freedom.

The Supreme Court decided in *Prabha Dutt v. Union of India*³⁸ that the right to access and acquire news and information on government management falls within the ambit of the freedom of the press. However, this said right is not unlimited, and in the interests of individuals and society from whom the press acquires information, limits can be imposed. Justice Blackstone has also made essential observations discussing the freedom of the press in England in his *Commentary on the Laws of England*, highlighting its need for a free state yet subject to restrictions.

The Apex Court observed in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*³⁹ that the right to privacy, the right to inform, the right to be informed, the right to communicate, the right to participate in civic activities, and so on, should be extended in a democratic

³⁴ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129

³⁵ Dr. Ambedkar's Speech : (CAD), VII, 980.

³⁶ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124; *Life Insurance Corporation. Of India v. Manubhai D. Shah*, (1992) 3 SCC 637

³⁷ *Srinivas v. State of Madras*, AIR 1950 SC 124

³⁸ *Prabha Dutt v. Union of India* 1982 1 SCC 1

³⁹ *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India* 1985 1 SCC 641

democracy to accommodate the need for conversation. The press has now begun the process of acting as a public instructor, enabling large-scale education, both formal and informal, primarily in developing countries where not all members of the society enjoy equitable access to broadcast television and other means of contemporary communications technology.

The press's goal is to preserve the public good by disseminating information and viewpoints that might otherwise prevent a democratic electorate from making well-informed decisions. Newspapers regularly print information that is distasteful to governments and other subsidiary organizations holding power, as assessors of news and ideas having an influence on government administration. In order to reveal the government's flaws, the pieces put out in journals must turn out to be skeptical about the government's actions. Such publications might become a source of annoyance or even a danger to authority. There is no specific protection of journalistic freedom provided in the gamut of "Freedom of Speech and Expression Act", leeway gets incorporated in the expanse of countenance itself that has been granted to all citizens.⁴⁰ This decision also established that the freedom of ordinary citizens surpasses the freedom of the press as per India's Constitution.

There are recent controversies that emerged regarding the right to free speech by media personnel. Freedom of the press is a fundamental democratic principle since the media is responsible for disseminating important information to people and ensuring government accountability. The Supreme Court established a link between press freedom and privacy protection, underscoring the role of the media in upholding constitutional values.⁴¹ The Court said that protecting this freedom was fundamental to the concept of free speech.

In *U.O.I. v. Manohar Lal Sharma*⁴², After the Pegasus investigation found that several journalists, politicians, and activists had been the targets of such invasive practices, the Court issued an interim order forming a Technical Committee to monitor the probe. The Supreme Court made clear that any invasion of personal privacy must be proportional to the legitimate governmental interest at stake. The Central Government cannot hide under the guise of national security. The Court affirmed the intertwined nature of free expression and privacy rights, highlighting the risk of "self-censorship" from unauthorized disclosure of personal information. To them, the threat of surveillance was a "assault" on the press, which they called "democracy's fourth pillar" because of its vital role in maintaining public trust in government and the protection of individual liberties.

⁴⁰ *Virender v. State of Punjab*, MANU/SCOR/73584/2012; *Sakal Papers v. U. O. I.* MANU/SC/0090/1961.

⁴¹ Gauri Kashyap, SC Judgment Review 2021: Freedom of the Press, S. C. O.(Feb. 20, 2022, 9:29 PM),

⁴² *U.O.I. v. Manohar Lal Sharma* 2021 SCC Online SC 985

In *Vinod Dua vs. Union of India & Ors.*⁴³, The petitioner was a deceased journalist who was charged with sedition in 2021 because of a video he posted to YouTube in which he voiced his opposition to government policy. He claimed that he had done nothing wrong and was only expressing his right to free speech under Article 19(1)(a) of the Constitution. Based on the case *Indian Express Newspapers (Bombay) Private Ltd v Union of India*, a two-judge bench of the Supreme Court dismissed the FIR in June 2021.⁴⁴, declared that press freedom was at the heart of social and political interaction. As a result, Article 19 (1(a) covers the right to broadcast. The right to knowledge is a crucial part of freedom of expression. The right to receive, know, and transmit information has been recognized as a component of the right to free speech. A citizen is authorized of the basic right to utilize the most effective method of transmitting as well as intercepting information, including access to telecasting for that purpose. Section 8 of the Right to Information Act, 2005, which specifies the people's right to seek government officials for information, restricts the disclosure of certain materials. These exclusions are typically used to justify reasonable limitations on free speech under Article 19(1) of the Constitution.

VI. RTI

RTI is an acronym that is placed for Right to Information. “Right to Information” subsists as the segment of justice of “speech and expression” as included in article 19(1)(a) of the Indian constitution, according to *People's Union for Civil Liberties v. Union of India*.⁴⁵ As a result, the right to information is unquestionably a fundamental right. The Supreme Court said in *Govt. of India v. The Cricket Association of Bengal*⁴⁶ that the freedom to learn and teach is an integral part of the right to free expression.” It makes it possible for individuals to discuss important moral and social concerns with one another. The freedom of expression protects both the giver and receiver of knowledge and the right to spread and receive information and enjoyment.

Records, documents, memoranda, emails, comments, words of advice, press releases, bulletins, authorizations, logbooks, agreements, reports, paper works, specimens, information held in any electronic form, and data relating to any private body that can be used by a governmental entity under any other law currently in force are all examples of information under Section 2(f) of the RTI Act.

⁴³ *Vinod Dua vs. Union of India & Ors* 2021 SC 177

⁴⁴ *Supra* note 28.

⁴⁵ *People's Union for Civil Liberties v. Union of India* 1997 1 SCC 301

⁴⁶ *Govt. of India v. The Cricket Asscn. of Bengal* 1995 2 SCC 161

Section 2(j) shapes “right to information” (RTI) is defined as conforms to: Term “Right to Information” refers to the ability to access and review materials owned or controlled by a government agency.

- i. Inspect activity, documents, and records;
- ii. Takedown comments, gist, or certified copies of records;
- iii. Take certified copies of documents or records;
- iv. Obtain information on video disks, or tapes.

People cannot communicate or express themselves until they know, as the Court opined in *Raj Narain v. State of UP*⁴⁷ in 1976. Article 19 thus encircles the rectitude to information. The Top Court outlying clarified in a democracy like India, the people themselves serve as the rulers.

Thus, the masters have a justifiable interest in knowing the inner workings of the government that is meant to serve them. As an example of this pressing need, consider the fact that every taxpayer has a right to know how tax dollars are being put to use for the public good.

Due to the importance of information, the right to access, intercept, and distribute data has been acknowledged as a facet of the right to concession of speech. Every person has the constitutional freedom to use any lawful means, including broadcasting, to disseminate and collect any and all information. Certain documents cannot be made public in accordance with Section 8 of the ability to Information Act, 2005, which addresses the public's ability to request information from government authorities. Article 19(2) of the Constitution of India lays forth the exceptions that might be made to the general right to free speech.

VII. GROUNDS FOR RESTRICTIONS ON SPEECH AND EXPRESSION FREEDOM

Only a 'Law,' not operative or departmental directives, can impose restrictions on rights under Article 19(1).⁴⁸ There can be no total or unrestrained freedom. Article 19(2) of the Constitution limits freedom of speech and expression by allowing the State to impose reasonable restrictions on the below-mentioned grounds:

1. “Sovereignty and integrity of India”- Article 19(2) was amended to recognize “India's sovereignty and integrity via the Constitution (Sixteenth Amendment) Act of 1963. It is possible to restrict free speech such that no one may advocate for the secession of any part of India from the Union” or dispute India's integrity or sovereignty. It should be noted that clause (2) makes no mention of sedition, which is a legal foundation for limiting free speech. *Debi Soron v. State*

⁴⁷ *State of U. P. v. Raj Narain* (1975) 4 SCC 428

⁴⁸ M. P. Jain, *Indian Constitutional Law*, LEXIS NEXIS BUTTERWORTHS WADHWA, 6th edn., 2012, p. 1104.

of Bihar said the following.⁴⁹ that Article 19(2) of the Constitution fends S. 124A and 153A of the IPC because they establish justifiable limits indispensable to bolster general order.

2. “Security of the State”- Free speech may be limited in appropriate ways for the godsend of national safety. *Romesh Thappar v. State of Madras*, Apex Court was tasked with determining what “security of the state” meant.⁵⁰ The Supreme Court recognized a hierarchy of 'public order' violations. Not all acts of disorder in public may be seen as threats to national security. When we talk about the “security of the state,” we're not referring to everyday violations of law and order like illegal assembly, rioting, or affray; rather, we're talking about major upheavals like a coup d'etat or a state-on-state conflict, or an all-out uprising. As a result, individual comments or expressions that instigates or promotes the performance of serious criminal acts, such as rape or murder, are concerns that would jeopardize the state's security.⁵¹

3. “Friendly relations with foreign states”- When the Amendment Act pertaining to the Constitution was enacted in 1951, this provision was included. The goal of this article is to prevent unchecked dissemination of propaganda that is not in favor of a foreign friendly state and might damage ties between India & that country. It should be documented that this constitution does not classify countries like Pakistan as “foreign states” since they are members of the Commonwealth. Therefore, the argument that restricting free speech would be good for Pakistan is not valid.

4. “Public order”- Public order is an expansive expression that mentions the condition of calm that persists among affiliates of political society. Consequent to internal restrictions imposed by the government that this state of tranquility has formed. The phrase 'public order' was absent from Article 19(2). It was decided that only the grounds stated in that article may be used to impose limits. “The term 'public order' was introduced in Article 19(2) as one of the legitimate criteria for restricting free speech as a result of this ruling. Public order is disturbed by anything that upsets public serenity or harmony.⁵² Thus, community disturbances⁵³ and strikes organized solely for the purpose of generating dissatisfaction among workers⁵⁴ are violations of public order.” Public order is not always disrupted by simple criticism of the government.⁵⁵ The Union

⁴⁹ Criminal P.C. (5 of 1898)

⁵⁰ *Supra*, n 19.

⁵¹ *State of Bhar v. Shailabala Devi*, AIR1952 SC 329

⁵² *Om Prakash v. Emperor*, MANU/NA/0126/1947.

⁵³ *Noor Mohammad v. Rex*, 1949 CriLJ 131.

⁵⁴ *Supra*, n 44.

⁵⁵ *Raj Bahadur Gond v. State of Hyderabad*, MANU/SC/0054/1958.

Government would be able to ban the propaganda being spread by a country that is at war with India under 'public order.'⁵⁶

5. “Morality or decency”- The terms “morality” and “decency” have a wide range of meanings. Limits on free speech are provided under the provisions 292-294 of IPC for rationales of public order and morality. “against unpretentiousness or decency; vulgar, dirty, and disgusting” is how Indians define obscenity. In it, it was said that each individual article must be judged on its own merits, but that the “test of obscenity” is whether or not the whole publication has the potential to degrade and morally corrupt individuals whose minds are susceptible to such immoral effects.

6. “Contempt of court”- If a certain expression guised under freedom of speech goes beyond a logical and rational extent of free speech and analogous to revulsion, it might be constrained. Contempt Act of 1971 specifies that “contempt of court” orchestrates “civil contempt” / “criminal contempt.” Contempt of civil nature transpires when a plebeian knowingly and willfully flouts a decree, judgment, dictum, directive, writ, any other procedure approved by a judge or when a person knowingly and willfully disobeys any command given by a judge. By “criminal contempt,” we mean the communication of any information or the execution of any action, whether, in writing, visually, or sort of any other pars. It includes any act that:

- (i) Lowers or tries to lower the authority of any Court,
- (ii) Prejudices, impedes or tends to hamper the due process of justice administration; or
- (iii) Impedes or obstructs or tends to hamper the administration of justice in any other way.

Legitimate criticism of a judicial act; well-reasoned complaints against presiding judicial personnel; the release of a complete and unbiased record of court proceedings; Legal proceedings held behind closed doors or in chambers are not deemed contemptuous if appropriate information about them is made public.

7. “Defamation”- Defamation is defined as a remark that damages a person's reputation. Exposing a guy to hatred, mockery, or contempt is what it is all about. The criminal legislation governing defamation in India is established as per Section 499 of IPC. It doesn't set off defamatory statements directed at the ears or eyes, or between slander and libel. These portions have been kept as legitimate limitations on freedom of expression.⁵⁷

⁵⁶ *Rex v. Amir Hussain*, MANU/UP/0122/1940.

⁵⁷ *Dr. Suresh Chandra v. Panbit Goala*, MANU/WB/0038/1951.

8. “Incitement to an offence”- The footing was positioned in Indian Constitution (Amendment) Act in 1952. While free speech is guaranteed, it does not include the freedom to encourage illegal behavior. The constitutional term 'offence' is not defined. The 1972 General Clause Act, elucidates an “offence” is “any act or omission made penal by any legislation in force at the time.” The Court must evaluate whether or not there was incitement based on the evidence and context of each instance.

VIII. EPILOGUE

Encapsulating in a nutshell It is reasonable to argue that the value of free expression is defined by the magnitude to which citizens may exercise it. One of the most important civic liberties is the freedom of expression. It provides a stable foundation for representative government. Democracy itself needs to have healthy public discourse. Each individual has the inherent freedom to freely share their thoughts and opinions with others. Communication of one's thoughts, emotions, and attitudes to others is impossible without the gift of speech. It is a crude right that a human receives at birth. Encapsulating, no individual must be deprived of this fundamental right to free speech.
