Chapter-2

Concept, Meaning and Scope of Freedom of Speech and Expression
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“The Constitution is not an instrument for the Government to restrain the people, it is an instrument for the people to restrain the Government.”

–Patrick Henry (1736-1799)

2.1 INTRODUCTION

The freedom of speech is regarded as the first condition of liberty. It occupies a preferred and important position in the hierarchy of the liberty, it is truly said about the freedom of speech that it is the mother of all other liberties. In modern time it is widely accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all time. The first principle of a free society is an untrammeled flow of words in an open forum. Liberty to express opinions and ideas without hindrance, and especially without fear of punishment plays significant role in the development of that particular society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

The rights conferred under Article 19 of the Constitution are the rights of free man. These are natural law or common law rights and not created by a statute. As such every citizen is entitled to exercise such rights provided conditions to be imposed whenever so required by the State.

The freedom of speech and expression benefits more the hearer than the speaker. The hearer and the speaker suffer as violation of their spiritual liberty if they are denied access to the ideas of each other. This freedom is also essential for pursuit of truth.

1 Retrieved from <http://www.slideshare.net/nikita96/indian-constitution> visited on 09-08-2012.
The freedom of speech and expression is a very important fundamental right. It is indispensable for the development of one’s own individuality and for the success of parliamentary democracy. It is said that in a democracy the right to free expression is not only the right of an individual but rather a right of the community to hear and be informed.⁵

Our Constitution is based on the principle of checks and balances. The Preamble expresses two ideas which complement each other, namely:

1. Rights of the individual which correspond to the duties of the State towards the individual, and

2. Duties of the individual towards the State which correspond to the rights of the society against the individual.

The State is under an obligation not to infringe upon the rights of the individual. Similarly, the individual is obliged to contribute to the social welfare.⁶ So, every attempt needs to be made so that this reasonable means does not get disturbed. We are given the freedom of speech, we can express ourselves. But, the beauty of the freedom lies in its limits in the interest of the society.

2.2 HISTORICAL BACKGROUND OF FREEDOM OF SPEECH & EXPRESSION

Freedom to express and disseminate one’s opinion is a demand of the European enlightenment on the State which took its root initially in England within the framework of common law precedents.⁷ At the end of the 18th century, freedom of expression of opinion expanded through the first basic rights proclamations. In the context of English legal position, section 12 of the Virginia Bill of Rights, 1776, declared that the freedom of the press is one of the great bulwarks of liberty and can never be restrained by despotic Governments. Contrary to the English tradition of Parliamentary supremacy,

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the 1st Amendment of the Constitution of United States binds Parliament also. The Congress shall make no law abridging the freedom of speech or of the press. in Article II of the French Declaration of the Rights of Man and of the Citizen, 1789, in the sense of enlightenment, the freedom of opinion was proclaimed as a human right “the unrestrained communication of thoughts or opinions being one of the most precious right of man. Every citizen may speak, write and publish freely, provided he be responsible for the abuse of this liberty, in the cases determined by law. In the 19th century, the German States guaranteed freedom of opinion in their constitutions within the framework of general criminal laws mostly by express prohibition of subjecting the press to censor. The Federal Constitutional Court has held that for a free democratic State the basic right to freedom of expression of opinion is an “essential constituent because only it enables permanent intellectual discussion, i.e. combat of opinions which are its life breath.”

According to Abraham Lincoln, the democracy is Government by the people, for the people and of the people. But there can be no Government by the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. Thus, it is the people who are the sovereign in a democracy.

The United Nations convened a Conference at Geneva in 1948 on the subject matter of Freedom of Information which was attended by 54 countries. It passed a series of resolutions for further consideration by the United Nations which ultimately led the General Assembly of the United Nations to declare Freedom of Information a fundamental human right. The Universal Declaration of Human Rights particularly in its Article 19 states that “everyone has right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and

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9 Luth-Urteil case, 7 BverfgE 198.
10 16th President of United States.
import information and ideas through media and regardless of frontiers.”

The plenary words of these proclamations signify both democratic and people oriented right in one hand and also signify the right to information on the other. In 1960, the Economic & Social council of the United Nations adopted a derivative from Article 19 of the Universal Declaration of Human Rights in 1948. Sweden became the first country in the world to enact a provision for access to official information for the citizens. The Rome Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, and came into force on 3rd September, 1953; and particularly Article 10, which spells the freedom of expression states that (i) everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart informations and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises, and (ii) the exercise of these freedoms since it carries with its duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or right of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of judiciary.

In India, the Preamble of the Constitution is not like Preamble of other enactments but it is the gist of intention of the Constituent Assembly. While interpreting any provision of it, Preamble shoul be considered an integral part of the Constitution and should be treated as guidelines for the interpretation of the Constitution, where there is ambiguity. The Preamble of the Constitution also shows that in democracy it is the people who are supreme. The true democracy is governed by five words enshrined in the beginning of the Preamble of the Constitution of India i.e. WE, THE PEOPLE OF INDIA and ending

with five words i.e. *GIVE TO OURSELVES THIS CONSTITUTION*. Broadly speaking, the people of India are largely living in the darker side of the governance of the country and are often uninformed about the public affairs and are dominated by those who wheel power in the executive, legislative and judicative spheres. The jurisprudence of democracy is envisaged in Articles 23 and 25 of the Universal Declaration of Human Rights of the year 1948 and in Part III and Part IV of the Constitution of India which guarantees some rights like right to life, liberty, dignity and decent conditions of life and development. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament, where laws to bind his liberty and property may be enacted. Thus, in a democracy it is the primary right, without it an effective rule of law is not possible. Justice K.K. Mathew has observed as follows:

“As the freedom of expression concerning public affairs is indispensable to the operation of the democratic system, it is a necessary implication from the provisions of the Constitution establishing it”.

### 2.3 MEANING OF FREEDOM OF SPEECH & EXPRESSION

The Constitution of India guarantees various fundamental rights to its citizens. One such important right is right to freedoms under Article 19. This includes right to freedom of speech and expression, right to assemble peacefully and without arms, freedom to form associations and unions, right to move freely throughout the territory of India, right to reside and settle in any part of the territory of India and right to practice any profession or to carry on any occupation, trade or business. Before 44th amendment, there was also a right to acquire, hold and dispose off property under Article 19(f), but the same was omitted by this amendment in 1978. In 44th Amendment, an Article was added as Article 300A to the effect that no person shall be deprived off his property saved by Authority of Law. The effect of this amendment is that now the right to property is no longer a fundamental right under the Indian Constitution.

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17 Article 19(1) (a) of the Constitution of India.
18 Article 19(1) (b) of the Constitution of India.
19 Article 19(1) (c) of the Constitution of India.
20 Article 19(1) (d) of the Constitution of India.
21 Article 19(1) (e) of the Constitution of India.
22 Article 19(1) (g) of the Constitution of India.
Under this research work the researcher closely concerns with Article 19(1)(a) of the Constitution of India. Article 19(1)(a) guarantees that all citizens shall have the right to freedom of speech and expression. This right is available only to every citizen of India and not available to any person who is not a citizen of India i.e. foreign nationals. The freedom of speech and expression has been held to be basic and indivisible for a democratic polity. The freedom of speech and expression means the right to express one’s conviction and opinions freely by words of mouth, writing, printing, pictures, photographs, cartoons or any other mode. It means freedom of speech and expression is to express one’s convictions and opinions or ideas freely, through any communicable medium or visible representation, such as gesture, signs and the like. It means to freely propogate, communicate or circulate one’s opinion or views. In other words, freedom of speech and expression to lay what sentiments, a free citizen pleases, before the public. Freedom of speech is the bulwark of a democratic Government and it attaches great importance to this freedom, because without the freedom of speech appeal to reason, which is the basis of democracy, cannot be made. Freedom of speech opens up channels of free discussions of issues and play a crucial role in public opinion on social, political and economic matters. In, one of the earliest judgments, Romesh Thappar v. State of Madras Chief Justice Patanjali Sastri observed that:

“… (The freedom) lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits.”

In the same judgment, the Court held that the public interest in freedom stems from the requirement that members of the democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves.27

Freedom of speech and expression should, therefore, receive generous support from all those who believe in the participation of people in the administration. The freedom of speech and expression includes freedom of circulation and propagation of ideas and, therefore, the right extends to the citizen to use the media to answer the criticism leveled against the views propagated by him. Every citizen has undoubted right to express what sentiments he pleases. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest.

Justice V.R. Krishna Iyer has observed that:

“Right to express one’s thought is meaningless if it is not accompanied by relaxed right to secure all information on matters of public concern from relevant public authorities. However, to ensure that there is no harm in inserting the freedom of information on a specific corollary to Article 19 of the Constitution”

Freedom of speech and expression has long been a hallmark of a healthy democracy and a free society. In England, this right is enjoyed as a result of the application of the principle of ‘the Rule of Law’. Under English Law the freedom of expression is, of course, intrinsically important. It is valued for its own sake. In an English case, it was held that freedom of expression has four broad social purposes to serve:

(i) It helps an individual to attain self-fulfillment;
(ii) It assists in the discovery of truth;
(iii) It strengthens the capacity of an individual in participating in decision-making; and
(iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

All citizens should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know.

27 Ibid.
Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration.\textsuperscript{28} The freedom of speech is that freedom which promotes the discovery of truth found in John Milton’s Areopagitica\textsuperscript{29} and persuasive opinions by Justice Holmes “the best test of truth is the power of the thought to get it accepted in the competition of the market.”\textsuperscript{30} Lord Steyn explained that “Freedom of speech and expression is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve. People are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake in the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country…”\textsuperscript{31} John Stuart Mill says that if the Government suppresses communications, it may suppress ideas that are true or partly true. Government’s suppression of ideas rests necessarily on a false assumption of infallibility, however, overstates his case. The freedom of speech contributes greatly to the search for truth. It does not depend on whether suppression always represents a claim of infallibility. His sense of truth is broad, covering correct judgments about issues of value as well as ordinary empirical facts and embracing knowledge conducive to a satisfactory personal life as well as facts of general social importance.\textsuperscript{32}

The concept of freedom of expression does not take the form of a positive or enforceable right. It is a negative liberty to communicate with others or immunity from interference by others.\textsuperscript{33} This means that a person may write or say what he pleases so long as he does not infringe any law or the right of others. The freedom unlike an infringed right is subject to statutory curtailment and may be restricted by judicial development of law. Right to fly national flag freely with respect and dignity is an expression and manifestation of his allegiance and feelings and sentiments of pride for

\textsuperscript{28} Attorney General v. Times Newspaper Limited, (1973) 3 ALL ER 54. Also quoted by the Supreme Court in Indian Express Newspaper (Bombay) Pvt. Ltd. v. Union of India AIR 1986 SC 515.
\textsuperscript{29} John Milton, “Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties” (London 1819).
\textsuperscript{30} Abrahm v. United States, 250 US 616, 624 and 630 (1919).
\textsuperscript{31} Regina v. Secretary of State for the Home Department, (2000) 2 LR 115 (AC).
\textsuperscript{33} Wheeler v. Leicester City Council (1985) AC 1054 per Browne-Wilkinson, I.J.
the nation.\textsuperscript{34} Similarly voting can legitimately be regarded as a form of expression.\textsuperscript{35} It is a settled fact that where there is a conflict between the voice of the people and that of the legislative, the former is to be preferred to latter.

The Constitution of India is the law of the land. Therefore, any right and procedure thereof to access should have genesis of any of the rights guaranteed or provided by the Constitution. It also guarantees us many freedoms; one of them is freedom of speech and expression. Liberty of thought is the basis of freedom of speech and expression under Article 19(1)(a) of the Constitution of India, which is an essential component of democratic governance. As the information is the genesis of thought and expression, the right to information has to be an invisible integral part of the right to free speech. Undoubtedly, the information is vital not only for the life of society but also for the life of individual. Article 21 of the Constitution guaranteeing right to life includes basic right to be informed.\textsuperscript{36}

\textbf{2.4 SCOPE OF FREEDOM OF SPEECH AND EXPRESSION}

The judiciary has been enlarging the area covered by the fundamental right to freedom of speech and expression. Freedom of speech and expression is a vital feature that a democracy runs with. For any democracy to thrive, people must be given the liberty to express their feeling without restriction. This very important feature of the freedom of speech and expression is enshrined to the Indian citizens by Article 19(1)(a) of the Constitution of India. It provides that all citizens irrespective of colour, creed and religion have the right to raise their voice in matters of importance or otherwise without any restriction within or without. This freedom comes in for the assumption that rationality of men comes above everything else, and every individual, by his/her own discretion and wisdom knows what is good or bad.\textsuperscript{37}

A constitutional provision is never static; it is ever evolving and ever changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. The constitution makers employed a broad pharseology while drafting the fundamental rights so that

\textsuperscript{34} Union of India v. Navin Jindal, AIR 2004 SC 1559.
\textsuperscript{35} Peoples Union for Civil Liberties v. Union of India, AIR 2003 SC 2363.
they may be able to cater to the needs of a changing society. Therefore, constitutional provisions in general and fundamental rights in particular must be broadly construed unless the context otherwise requires. The scope and ambit of such provisions, in particular the fundamental rights, should not be cut down by too astute or too restricted an approach.\textsuperscript{38}

While discussing the scope of freedom of speech and expression the Supreme Court at many times has said that the words freedom of speech and expression must be broadly constructed to include the freedom to circulate one’s views by words of mouth or in writing or through audio-visual instrumentalities. It therefore, includes the right to propagate one’s views through the print media or through any other communication channel e.g. the radio and the television.\textsuperscript{39} The Court held that these rights are great and basic rights which are recognised and guaranteed as the natural rights and inherent in the status of a citizen in a free country.\textsuperscript{40}

\subsection*{2.4.1 Freedom of Press}

Article 19(1)(a) of the Constitution of India guarantees the freedom of speech and expression but not expressly included the freedom of press. The phrase ‘speech and expression’ is of very wide connotation, ‘expression’ naturally presupposes a second party to whom the ideas are expressed or communicated. But it is implied that freedom of speech and expression includes freedom of press also. The freedom of expression, thus, includes the freedom to propagate one’s own views and the views of others and freedom to communicate views to others. That freedom is ensured by freedom of their publication and circulation. In short, the freedom of speech and expression includes the liberty of the press.\textsuperscript{41} Unlike the American Constitution, Article 19(1)(a) of the Indian Constitution does not specifically or separately provide for liberty of the press.\textsuperscript{42} The


\textsuperscript{40} State of West Bengal v. Subodh Gopal Boss and Others, AIR 1954 SC 92.

\textsuperscript{41} Narinder Kumar, “Constitutional Law of India” Allahabad Law Agency, Faridabad, 2005, p. 188.

\textsuperscript{42} The omission was explained by Dr. B.R. Ambedkar, when he observed that the press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and, therefore, no special mention is necessary of the freedom of the press.
freedom of press means as medium of publication and is closely linked with freedom of person and independence of judiciary.

Justice Marshall in ‘Law of the Press’ had to say as follows:

“It is the liberty of the press that is guaranteed, not the licentisness. It is the right to speak the truth, not the right to bear false witness against your neighbour. Every citizen has a constitutional right to the enjoyment of his character as well as the ownership of his property, and this right is as sacred as the liberty of the Press... As there is always a class of moral preverts and degenerates in every community who feed their morbid appetites upon such scandals and rejoice at the injury thus done to those who are infinitely their superiors that they are not worthy to fasten the latches of their shoes. But to the credit of the newspapers profession it is due here to make a record of the fact that the great majority of the members of that profession do not approve or sanction such practices or such ‘yellow’ journalism, but have a proper appreciation of the rights and purposes and functions of a newspaper and deplore the fact that such unworthy persons are engaged in the profession, as such as lawyers would deploy the black sheep that would sometimes creep into the fold. The contrast between the two classes marks the differences between respectability and indecency, between intelligence and ignorance, between law abiding patriotic citizens and the Ishmaelite, the assassin of character for the accumulation of lucre. The great body of people condemns such practices and such miscreants and the Courts would deserve condemnation and abolition if they do not vigorously and fearlessly punish such offenders. Such practices are an abuse of the liberty of the Press......”

Justice Blackstone, in his Commentary on the Laws of England, while dealing about the freedom of press in England observed as follows:

“The liberty of the press, properly understood, is essential to the nature of a free State; but that this consists inlaying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press. But if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity........”

44 Ibid.
Lord Denning, in ‘Freedom under the Law’, while dealing with publication of news and control etc., observed as follows:

“Every country preserves to itself the right to prevent the expression of views which are subversive of the existing Constitution or a danger to the fabric of society......... Free and frank discussion and criticism of matters of public interest must in no way be curtailed, but there comes a point at which every country must draw the line; and that is when there is a threat to overturn the State by force...”

Arthur Hays answers what the freedom of press is in the following words:

“Perhaps we ought to ask ourselves just what freedom of the press really is. Whose freedom is it? Does it merely guarantee the right of the publisher to do and say whatever he wishes, limited only by the laws of libel, public order and decency....? Is it only a special license to those who manage the units of the press? The answer, of course, is No. Freedom of the press -- or, to be more precise, the benefit of freedom of the press belongs to everyone -- to the citizen as well as the publisher. The publisher is not granted the privilege of independence simply to provide him with a more favoured position in the community than is accorded to other citizens. He enjoys explicitly defined independence because it is the only condition under which he can fulfill his role, which is to inform fully, fairly and comprehensively. The crux is not the publisher’s ‘freedom to print’; it is rather the citizens’ right ‘to know’.  

2.4.1.1 Whether Press is Citizen

Article 19(1)(a) of the Constitution guarantees freedom of speech and expression only to human beings who are citizens and non-citizen nationals and foreigners do not enjoy this right. Rather juristic persons, corporations, societies, associations are not citizens. This right is available to natural human beings having citizenship of India. Whereas, Article 19(1)(a) gives freedom to press on the plea that press is constituted of citizens.

The Supreme Court also dealt with the contention that newsprint policy does not directly deal with the fundamental right mentioned in Article 19(1)(a). It was also contended that regulatory statutes which do not control the content of speech but incidentally limit the ventured exercise are not regarded as a type of law. Any incidental

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45 Ibid.
limitations or restrictions on freedom of speech are permissible as the same is essential to the furtherance of important governmental interest in regulating freedom of speech. The Supreme Court negatived the said contention and Justice Nanabhoy Palkhivala said that:

“The test of pith and substance of the subject matter and of direct and incidental effect of the legislation are relevant to the questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights. In our view this is a sound and correct approach to interpretation of legislative measures and State action in relation to fundamental rights. The true test is whether the effect of the impugned action is to take away or abridge fundamental rights. If it be assumed that the direct object of the law or action has to be direct abridgement of the right of free speech by the impugned law or action it is to be related to the directness of effect and not to the directness of the subject-matter of the impeached law or action. The action may have a direct effect on a fundamental right although its direct subject-matter may be different.”

Although Article 19(1)(a) does not mentioned the freedom of the press, it is the settled view of the Supreme Court that freedom of speech and expression also includes freedom of the press and circulation, i.e. the right to print and publish what one pleases, without any previous permission. Therefore, the imposition of pre-censorship on publication is violative of the freedom of the press, unless justified under clause (2) of Article 19.

In the case of Brij Bhushan v. State of Delhi in pursuance of section 7(1)(c) of the East Punjab Public Safety Act, 1949, as extended to the Province of Delhi, the chief Commissioner of Delhi issued an order against the petitioner, the printer, publisher and editor of an English weekly ‘the Organiser’ published from Delhi, directing them to submit, for scrutiny in duplicate before publication till further orders, all communal matters and news and views about Pakistan including photographs and cartoons other than those derived from official sources or supplied by the news agencies. The Supreme Court in its majority decision struck down the said order as violative of Article 19(1)(a) of the Constitution.

48 Sakal Papers Pvt. Ltd. v. Union of India, AIR 1962 SC 305.
50 AIR 1950 SC 129.
Again the Supreme Court in *Virendra v. State of Punjab*\(^5^1\) held that banning of publication in the newspapers of its own views or the views of correspondents about the burning topic of the day. In this case, a petition with regard to the validity of the Punjab Special Powers (Press) Act, 1956, the Court said that:

“It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day. Our social interest ordinarily demands the free propagation and interchange of views but circumstances may require a reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. The Constitution recognizes this necessity and has attempted to strike a balance between the two social interests. It permits the imposition of reasonable restrictions on the freedom of carrying on trade or business in the interest of the general public.”

In *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*\(^5^2\) the Supreme Court after pointing out that communication needs in a democratic society should be met by the extention of specific rights e.g., the right to be informed, the right to inform, the right to privacy, the right to participate in public communications, the right to communicate, etc., proceeded to observe as follow:

“In today’s free world freedom of Press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non formal education possible in large scale particularly in the developing world where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspaper being surveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities. The authors of the article which are published in the newspapers have to be critical of the action of the Government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power.”

The Court pointed out that the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution is not for the benefit of the press as it is for the

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\(^5^1\) AIR 1957 SC 896.

benefit of the public. The people have a right to be informed of the developments that take place in a democratic process and the press plays a vital role in disseminating this information. Neither the Government nor any instrumentality of the Government or any public sector undertaking run with the help of public funds can shy away from articles which expose weaknesses in its functioning and which in given cases pose a threat to their power by attempting to create obstacles in the information percolating to the members of the community.  

In series of cases, the Supreme Court struck down the pre-publication ban on newspapers etc. In *Reliance Petrochemical Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.* the Supreme Court ruled that the pre-publication ban even under a Court injunction could be justified in the interest of justice only when there was a clear and imminent danger to the administration of fair justice and not otherwise.

Thus, a “free press” which is neither directed by the executive nor subjected to censorship, is a vital element in a free State. The success of democracy depends upon free, fair, honest and independent press.

In *R. Rajagopal v. State of Tamil Nadu* the petitioner who was the publisher of a Tamil weekly magazine approached the Supreme Court to restrain the Government from interfering with their right of publication of the autobiography of the condemned person Auto Sankar. The Supreme Court held that the Government or their officials have no right to impose prior restraint upon the publication on the apprehension that they may be defamed. The Court further held that the right to publish the life story of a condemned prisoner, in so far as, it appears from the public records, even without his consent or authorisation, has been held to be included in the freedom of the press guaranteed under Article 19(1)(a) of the Constitution. The Court reasoned that right to privacy is implicit in the right to life and liberty guaranteed under Article 21 of the Constitution. It is a right to be let alone. The prior restrain upon such publication cannot

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53 Ibid.
54 AIR 1989 SC 190.
be imposed. The freedom of the press that the Indian Media enjoys an extension or a further realization of freedom of speech and expression.\textsuperscript{56}

The Hon’ble Andhra Pradesh High Court also held in \textbf{M. Hasan and Another v. Government of Andhra Pradesh}\textsuperscript{57} that refusal to journalists and videographers seeking interview with condemned prisoners amounted to deprivation of citizen’s fundamental right to speech and expression under Article 19(1)(a) of the Constitution. As far as the exercise of fundamental rights concerned, position of a condemned prisoner was on par with a free citizen of the country. The Court ruled that he had a right to give his ideas and he was entitled to be interviewed or to be televised. The Court observed that when such being the settled position we fail to understand why the jail authorities shall apprehend such reporting or videography as not reasonable and not in the interest of safety and security. Even their Jail Manual permits the prisoner to be interviewed by others including a friend provided he is willing. A friend includes a journalist and which in turn includes a videographer. There is a letter written by the condemned prisoners expressing their willingness to be interviewed by the journalist and the videographer. Under these circumstances, it is not just and proper for the jail authorities to prevent the petitioners to interview the condemned prisoners orally and by videographing. Any such denial is deprivation of a citizen’s fundamental right of freedom of speech and expression.

\textbf{2.4.2 Telecasting or Broadcasting Rights}

The Supreme Court in \textbf{Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal (CAB)}\textsuperscript{58} has expanded the right to freedom of speech and expression by saying that the right to freedom of speech and expression includes the right to receive and impart information. For ensuring the right of free speech of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A

\textsuperscript{56} Retrieved from \texttt{<http://wiki.answers.com/Q/What_is_Article_19_1_a_of_the_constitution_of_India>} visited on 10-04-2011.


\textsuperscript{58} AIR 1995 SC 1236:(1995) 2 SCC 161.
successful democracy posits an aware citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. All these developments of law giving meaning to freedom of speech and expression or personal liberty are not required to be reconsidered nor there could be legislation so as to nullify such interpretation except as provided under the exceptions to fundamental rights.

In this case, six nations cricket match was held in 1993. Cricket Association of Bengal (CAB) requested Doordarshan to telecast the match. It agreed to pay royalty to Doordarshan. Later on, the right of telecast was given to foreign T.V. CAB moved Calcutta High Court pleading that it had fundamental right under Article 19(1)(a) to telecast the cricket match. It was included in freedom of expression. Subsequently, in Supreme Court the same plea was taken. The Supreme Court upheld this plea and directed Doordarshan to provide facilities for telecast. The claim of monopoly of State over electronic media was denied. Monopoly was not a ground given in Article 19(2) of the Constitution. No new ground can be evolved for restraining right under Article 19(1)(a).

2.4.3 Commercial Advertisements

Advertisement is included in Article 19(1)(a) of the Constitution of India. In Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.⁵⁹ is an authority for proposition that right to issue advertisement even if of commercial nature is covered by Article 19(1)(a). It can be restricted only on any ground given in Article 19(2). The telephone authorities permitted ‘Tata Press Yellow Pages’ containing advertisements of commercial nature in telephone directory. A civil suit for injunction was filed by Nigam and also Union of India claiming monopoly in publication of directory under Indian Telegraph Act. In an appeal by Tata against injunction issued by Trial Court and confirmed by the High Court. The appeal was allowed by the Supreme Court and High Court’s order was set aside on the ground that advertisement is a kind of commercial speech and is covered by Article 19(1)(a). Commercial speech is no doubt a commerical transaction, nevertheless, it is dissemination of information regarding product for the benefit of

⁵⁹ AIR 1995 SC 2438.
public at large. In democratic setup, flow of commercial information is indispensable. Economic system, in democracy, would suffer handicapped without freedom of commercial speech. Article 19(1)(a) of the Constitution protects right of individual to listen, read and receive the commercial speech in advertisements even if it so issued by business for promotion of trade and business. The protection of Article 19(1)(a) of the Constitution is available both to the speaker as well as the recipient of the speech. Therefore, the Nigam or the Union of India could not restrain the appellant from publishing the ‘Tata Press Yellow Pages’.

In *Hamdard Dawakhana v. Union of India*\(^\text{60}\) the Supreme Court had held earlier that an advertisement of commercial nature was not protected by Article 19(1)(a) of the Constitution. After Tata Press case\(^\text{61}\), this view is overruled. As such Hamdard Dawakhana view is now limited to protection of obnoxious advertisements of commercial nature. Tata Press case view applies to all advertisements except that are obnoxious. The Court, however, made it clear that the Government could regulate the commercial advertisements, which are deceptive, unfair, misleading and untruthful.

**2.4.4 Right to Reply or Answer the Criticism against One’s Views**

The right to reply, i.e. the right to get published one’s reply in the same news media in which something was published against or in relation to a citizen, was a part of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution, held by the Supreme Court. The Court also stated that a liberal interpretation should be given to the right to freedom of speech and expression guaranteed under Article 19(1)(a).\(^\text{62}\)

In *Life Insurance Corporation of India v. Manubhai D. Shah*\(^\text{63}\) respondent, the executive trustee of the Consumer Education and Research Centre (CERC), Ahmedabad, after undertaking research into the working of the Life Insurance Corporation (LIC), published a study entitled “A Fraud on Policy Holders - A Shocking Story”. The study paper portrayed the discriminatory practices adopted by the LIC which adversely

\(^{60}\) AIR 1960 SC 554.  
\(^{61}\) AIR 1995 SC 2438.  
\(^{63}\) AIR 1993 SC 171.
affected the interest of a large number of policy holders. The underlying idea was to point out that unduly high premiums were charged by the LIC from those taking out life insurance policies thereby denying access to insurance coverage to a vast majority of people who cannot afford to pay the high premiums. Mr. N.C. Krishnan, a member of the LIC prepared a counter to the respondent’s study paper and published the same as an article titled ‘LIC and its policy holders’ in the ‘Hindu’, a daily newspaper, challenging the conclusions reached by the respondent in his study paper. The respondent prepared a rejoinder ‘Raw deal for policy Holders’ which too was published in the same newspaper.

Thereafter, the LIC published its member’s article which was in the nature of a counter to the respondent’s study paper in its magazine ‘Yogakshema’. On the respondent learning about the same, he requested that in fairness his rejoinder which was already published in the ‘Hindu’ should also be published in the said magazine to present a complete picture to the reader. The LIC refused his request on the ground that their magazine was an in-house magazine circulated amongst subscribers who were policy holders, officers, employees and agents of the Corporation and it is not put up in the market for sale to the general public. On refusal of the LIC to publish his rejoinder in its magazine ‘Yogakshema’, the respondent filed a writ petition in the Gujarat High Court which came to the conclusion that the LIC’s stand that the magazine was an in-house magazine was untenable because it was available to anyone on payment of subscription; and it invited articles for publication therein from members of the public. The High Court accepted this petition on the grounds that the magazine was an in-house magazine the Corporation and members of the public are invited to contribute articles for publication. LIC covered under the ambit of ‘State’ within the meaning of Article 12 and LIC cannot under the guise of publication of an in-house magazine violate the fundamental right of the respondent. Thus, the Hon’ble Gujarat High Court held the refusal by LIC to publish respondent’s rejoinder was arbitrary and violative of Articles 14 and 19(1)(a) and also directed the LIC to publish the rejoinder of the respondent in the next issue of the said magazine. The LIC appealed against the decision of the High Court to the Supreme Court. The Hon’ble Supreme Court rejected the appeal of the LIC
and held that the LIC being a ‘State’ within the meaning of Article 12 must function in the best interest of the community. The LIC was created under the Life Insurance Corporation Act, 1956, to carry on Life Insurance business to the best advantage of the community. Therefore, the community was entitled to know whether or not this requirement of the Statute was being satisfied in the functioning of the LIC. The Supreme Court pointed out that the attitude of the LIC was unfair and unreasonable; unfair because fairness demanded that both viewpoints were placed before the readers and unreasonable because there was no justification for refusing publication. By refusing to print and publish the rejoinder the LIC had violated the respondent’s fundamental right guaranteed under Article 19(1)(a) of the Constitution.

2.4.5 Right to Exhibition of Films etc.

In a democracy it is not necessary that every one should sing the same song. The freedom of expression is the rule and it is generally taken for granted. Every one has a fundamental right to form his opinion on any issue of general concern. He can form and inform by any legitimate means. The democracy is Government by the people via open discussion. The Court has accepted that movies, films etc doubtless covered under the ambit of freedom of speech and expression under Article 19(1)(a) of the constitution. But at the same time the fundamental freedoms under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicks and of convenience or expediency.\(^64\)

One’s ideas, views etc., can be expressed and conveyed by many other modes apart from the press, for instance, radio, movies, television and cinematograph which includes videograph. The films are more popular in our country and especially with the rural masses, if the freedom of speech and expression includes freedom of press the same can be extended to expression through radios, movies, films, television and videographs. It is needless to say that freedom of speech and expression includes freedom of propagation.

In K.A. Abbas v. Union of India\(^{65}\) the constitutionality of exhibition of films, as a media of expression, and its pre-censorship came up before the Supreme Court. Under the Cinematograph Act, 1952, films are categorised as ‘U’ films and ‘A’ films. ‘U’ films are meant for unrestricted exhibitions, whereas ‘A’ films can be shown to adults only. The petitioner, unable to get ‘U’ certificate for his motion film named “Tale of Four Cities”, questioned the validity of the Cinematograph Act, 1952 along with the rules made thereunder. The Supreme Court upheld the validity of the Cinematograph Act, 1952, and said that pre-censorship of films was justified under Article 19(2) as imposing a reasonable restriction. The Court observed that films have to be 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 art. Thus, the classification of films into two categories, i.e. ‘U’ & ‘A’ films, was, therefore, held to be valid and a film can be censored on the grounds mentioned under Article 19(2) of the Constitution.

With regard to the power of precensorship, Chief Justice Hidayatulla observed therein as follows:

“The task of the censor is extremely delicate. ....... The standards that we set out for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationship as banned in toto and for ever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average man, moral man begins to feel embarassed or disgusted at a naked portrayal of life without the redeeming touch of art of genius of social value. If the depraved begins to see in these things more than what an average person would, in much the same way as it is wrongly said, a Frenchman sees a woman's legs is everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth.”\(^{66}\)

In Odyssey Communications Pvt. Ltd. v. Lok Vidayan Sanghatana\(^{67}\) a stay order issued by the Bombay High Court, restraining telecasting of certain episodes of the

\(^{65}\) AIR 1971 SC 481.
\(^{66}\) Ibid.
\(^{67}\) AIR 1988 SC 1642.
serial named “Honi Anhonee” was challenged before the Supreme Court. The leading question before the Court was whether these episodes should be prohibited from being telecast. The Supreme Court held that the right of citizens to exhibit films on Doordarshan, subject to the terms and conditions to be imposed by the Doordarshan, is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a), which can be curtailed only under circumstances set out in Article 19(2) of the Constitution. The Court observed that a citizen’s right to exhibit films on television is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisements, hoardings etc. subject to the terms and conditions of the owners of the media. The episodes in question did not violate any law or any right of the petitioners nor was the serial likely to affect prejudicially the well being of the people. Thus, showing of these episodes was not likely to endanger public morality.

In *S. Rangarajan v. P. Jagjivan Ram* the appellant is a film producer. He produced a Tamil film “Ore Oru Gramathile” and applied for certificate for exhibition of the film. The examination committee upon seeing the film refused to grant the certificate but on a reference being made to the 2nd Revising Committee for review and recommendation, the Committee by a majority of 5:4 recommended the grant of a ‘U’ certificate subject to deletion of certain scenes. ‘U’ certificate was challenged in the High Court by means of writ petitions. It was contended before the High Court that the film is treated in an irresponsible manner, the reservation policy of the Govt. has been projected in a biased manner and the so-called appeal in the film that ‘India is one’ is a hollow appeal which touches caste sensitivity of the Brahmin forward caste. It was also asserted that the film would create law and order problem in Tamil Nadu. The writ petitions were dismissed by the Single Judge but upon appeal they were allowed and the ‘U’ certificate issued to the appellant-producer was revoked. These two appeals, one by the producer of the film and the other by the Union of India have been filed by special leave of challenging the decision of the High Court. The principal contentions raised on behalf of the appellants were:

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68 (1989) 2 SCC 574.
(i) That the fundamental right of freedom of free expression guaranteed under the Constitution covers even the medium of movies; that the opinion on the film ought not to be rested on the isolated passages disregarding the main theme and its message;

(ii) That the Court should not concern itself with the correctness or legality of the views expressed in the film and the Court cannot limit the expression on any general issue even if it is controversial and that the writings of the film must be considered in a free and liberal manner in the light of the freedom of expression guaranteed under the Constitution.

It was asserted that the theme of the film is that reservation could be on the basis of economic backwardness instead of caste. The counsel for the respondents was critical about the manner in which the reservation policy of the Government has been condemned and the events and the characters portrayed in the film, as they are depicted in a biased manner and reaction to the film in Tamil Nadu is bound to be volatile and likely to create law and order problem. The Supreme Court observed that the motion pictures were originally considered as a form of amusement to be allowed to titillate but not to arouse. They were treated as mere entertainment and not an art or a means of expression. Movie motivates thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The movie had unique capacity to disturb and arouse feelings. It has as much potential for evil as it was for good. It has an equal potential to instil or cultivate violent or good behaviour. Censorship by prior restraint is, therefore, not only desirable but also necessary. The Censors Board should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country. The moral values in particular, should not be allowed to be sacrificed in the guise of social change or cultural assimilation. The censors should be responsive to social change and they must go with the current climate. The censors may display more sensitivity to movies which will have a markedly deleterious effect to lower the moral standards of those who see it. If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of
demonstration and processions or threats of violence. That would tantamount to
ever negation of the rule of law and surrender to blackmail and intimidation. It is the duty of
the State to protect the freedom of expression since it is a liberty guaranteed against the
State. The State cannot plead its inability to handle the hostile audience problem. It is its
obligatory duty to prevent it and protect the freedom of expression. The Revising
Committees have approved the film. The members thereof come from different walks of
life with variegated experiences. They represent the cross section of the community.
They have judged the film in the light of the objectives of the Act and the guidelines
provided for the purpose. There is nothing wrong or contrary to the Constitution in
approving the film for public exhibition. The framework of the Indian Constitution
differs from the First Amendment to the U.S. Constitution. Article 19(1)(a) guarantees
to all citizens the right to freedom of speech and expression. The freedom of the
expression means the right to express one’s opinion by words of mouth, writing,
printing, picture or in any other manner, it would thus include the freedom of
communication and the right to propagate or publish opinions. The communication of
ideas could be made through any medium, newspaper, magazine or movie. But this
right is subject to reasonable restrictions on grounds set out under Article 19(2).
Reasonable limitations can be put in the interest of 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. In
matters of certification of films, it is necessary to take prompt action by the respective
authorities. The producer who has invested a large capital should not be made to wait
needlessly. He has a statutory right to have the validity of the film determined in
accordance with law. It would be, therefore, proper and indeed appreciative if the film
is reviewed as soon as it is submitted. It is not proper to form an opinion by dwelling
upon stray sentences or isolated passages disregarding the main theme. The democratic
form of Government itself demands its citizens’ an active and intelligent participation as
a basic features and a rational process of democracy which distinguishes it from all
other forms of Government Public discussion on issues relating to administration had
positive value. Our commitment to 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 interests. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a ‘spark in a power keg’. It is difficult to understand how the expression in the film with criticism of reservation policy or praising the colonial rule will affect the security of the State or sovereignty and integrity of India. There is no utterance in the film threatening to overthrow the Government by unlawful or unconstitutional means. There is either no talk of secession nor is there any suggestion for impairing the integration of the country. The film seems to suggest that the existing method of reservation on the basis of caste is bad and reservation on the basis of economic backwardness is better. The film also deprecates exploitation of people on caste considerations. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Art. 19(2) and the restriction must be justified on the anvil of necessity and not the quicks and of convenience and expediency. Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself. The Court allowed the appeals, set aside the judgment of the High Court and dismissed the writ petitions.

The Apex Court felt the necessity of environment education and directed the concerned authorities to make it mandatory for the cinema halls to show slides upon environment education before the exhibition of movies. The Court further directed to the Government, Media, Doordarshan and All India Radio to ensure environment related programs to educate the masses. In a wider interpretation to the phrase ‘speech and expression’ the Apex Court held that it is a fundamental right to be educated in the matters of environment conservation and directed the Universities and the Education Boards to make ‘environment education’ as a compulsory subject in their courses.\(^{69}\)

The Supreme Court in Life Insurance Corporation of India v. Manubhai D. Shah\(^{70}\) held that a film-maker has a fundamental right to exhibit his film on Doordarshan under

\(^{69}\) M.C. Mehta v. Union of India, 1992 SCC 382.
\(^{70}\) AIR 1993 SC 171.
Article 19(1)(a) of the Constitution. In this case, the respondent, Cinemart Foundation produced a documentary film on the Bhopal Gas Disaster titled “Beyond Genocide” which was awarded the Golden Lotus, being the best non-feature film of 1987. At the time of the presentation of awards, the Union Minister for Information & Broadcasting, had declared that the award winning films would be telecast on Doordarshan. The respondent submitted his film to Doordarshan for telecast but Doordarshan refused to telecast the same on the grounds that (i) the film was out dated (ii) it had lost its relevance (iii) it lacked moderation and restraint (iv) it was not fair and balanced (v) political parties have raised various issues concerning the tragedy and (vi) claims for compensation by victims were sub-judice. Thus, the Court observed that the respondent had the right to convey his perception of the gas disaster in Bhopal through the documentary film. Merely because, it was critical of the State Government was no reason to deny selection and publication of the film. In fact, the community was keen to know what actually had happened, what was happening, what remedial measures the State Government was taking and what were the likely consequences of the gas leak.

Again in Bobby Art International v. Om Pal Singh Hoon\textsuperscript{71} the Hon’ble Supreme Court upheld the grant of ‘A’ certificate to the film named “Bandit Queen” and held that the censor of nudity, rape and the use of expletives exhibited in the film were in aid of the theme and were not intended to arouse prurient or lascivious thoughts, but intended to arouse revulsions against the perpetrators and pity for the victim.

\subsection*{2.4.6 Right to Fly National Flag}

The Hon’ble Supreme Court in Union of India v. Naveen Jindal\textsuperscript{72} held that right to fly the National Flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1)(a) of the Constitution, being an expression and manifestation of his allegiance and feelings and sentiments of pride for the Nation, so long as the expression is confined to nationalism, patriotism and love for motherland. It cannot be used for commercial purpose or otherwise. The same is not an absolute right but a qualified one, subject to reasonable restrictions under clause (2) of Article 19 of the Constitution. The Emblems and Names (Prevention of Improper Use) Act, 1950,

\textsuperscript{71} AIR 1996 SC 1846:(1996) 4 SCC 1. 
\textsuperscript{72} AIR 2004 SC 1559:(2004) 2 SCC 476.
and the Prevention of Insults to National Honour Act, 1971, regulate the use of the National Flag.

2.4.7 Right to Remain Silent

In *Bijoe Emmanuel v. State of Kerala*73 three children belonging to Jehovah’s Witnesses were expelled from the school for refusing to sing the National Anthem during school prayers. They used to stand up respectfully when the National Anthem was being sung, but did not join in singing it. The Kerala High Court upheld their expulsion from the school on the ground that they committed an offence under the Prevention of Insults to National Honours Act, 1971. However, the Hon’ble Supreme Court reversed the decision of the Kerala High Court. The Supreme Court held that no person could be compelled to sing the National Anthem, if he has genuine conscientious objections based on his religious belief. There is no provision of law which obliges anyone to sing the National Anthem nor do we think that it is disrespectful to the National Anthem, if a person who stands up respectfully when the National Anthem is sung does not join the signing. It is true Article 51-A(a) of the Constitution enjoins a duty on every citizen of India “to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.” Proper respect is shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing. Thus, the expulsion of the children from that school was a violation of their fundamental right under Article 19(1)(a) of the Constitution which also included freedom of silence.

2.4.8 Right against Noise Pollution

The emerging judicial view is that the freedom of speech can be exercised by a person subject to keeping the level of noise pollution within bearable limits. Although noise pollution has not been mentioned in Article 19(2) as a ground for which reasonable restrictions can be imposed on the freedom of speech, the Courts have implied this limitation from Article 19(1)(a) itself. The Courts raised the question: can a person exercise his right, so as to interfere with the freedom of others? The Courts have answered this question as follows:

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73 AIR 1987 SC 748:(1986) 3 SCC 615.
“when a person enjoys his rights under Article 19(1)(a), he must do so causing very minimum inconvenience to others. A person cannot claim his freedom of speech so as to interfere with the human rights and fundamental rights of others”.

In K. Venu v. Director General of Police a single Judge of the Kerala High Court expressed the view that he was not inclined to hold that the right to use loudspeakers was fundamental right in itself on the ground that sound pollution was an accepted danger and indiscriminate use of loudspeakers could not be permitted. Further in P.A. Jacob v. Superintend of Police, Kottayam the Kerala High Court has taken noise pollution into account saying “exposure to high noise is a known risk.” The Court has observed that “if an absolute right is conceded in this behalf, it will be an unlimited charter for aural aggression”. However wide a right is, it cannot be as wide as to destroy similar or other rights of others. And, further the High Court has said: “The right to speech implies the right to silence. It implies freedom, not to listen, and not be forced to listen”

The Calcutta High Court in Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal held that Article 19(1)(a) of the Constitution protected the citizens against excessive sound and upholding the restrictions on the use of loudspeakers at the time of giving azan on the ground of noise pollution. The Court has stated that excessive noise certainly causes pollution in society. Under Article 19(1)(a), read with Article 21, the citizens have a right of a decent environment and have a right to live peacefully, right to sleep at night and a right to leisure which are all necessary ingredients of the right to life guaranteed. The Court further held that no one can, under Article 19(1)(a), claim an absolute rights to suspend others basic human rights and fundamental rights.

The Hon’ble Supreme Court has ruled in Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association that the question of religious freedom

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74 New Road Brothers v. Commissioner of Police, Ernakulam, AIR 1999 Ker. 262.
75 AIR 1990, Ker. 344.
76 AIR 1993 Ker 1.
77 AIR 1999 Cal. 15. Also see Masood Alam v. Commissioner of Police, AIR 1956 Cal. 9 and Bijayananada Patra v. District Magistrate, Cuttack, AIR 2000 Orissa 70.
does not arise as no religion requires that prayers be performed through voice amplifiers. The Court directed the guidelines framed by the Government under the relevant rules framed under Environment Protection Act, 1986, must be followed by the concerned authorities. The Court further observed that:

“Undisputedly, no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice amplifiers or beating of drums. In our view, in a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during daytime or other persons carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighbourhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere. A student preparing for his examination is entitled to enjoy reasonable quietness during their leisure hours without there being any unnecessary disturbance by the neighbours. Similarly, the old and the infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution. Aged, sick, people afflicted with psychic disturbances as well as children up to 6 years of age are considered to be very sensible to noise. Their rights are also required to be honoured.”

2.4.9 Right to Receive Information

The right to ‘freedom of speech and expression’ in Article 19(1)(a) has been held to include the right to acquire information and disseminate the same. It includes the right to communicate it through any available media whether print or electronic or audio-visual, such as advertisements, movie, articles or speech etc. This freedom includes the freedom to communicate or circulate one’s opinion without interference to as large a population in the country, as well as abroad, as it is possible to reach. The Supreme Court giving a broad dimension to Article 19(1)(a) said that freedom of speech not only includes communication but also receipt of information as they are the two sides of the same coin. Right to know is a basic right of the citizens of a free country and Article 19(1)(a) of the Constitution protects this right. The right to receive information springs from the right to freedom of speech and expression guaranteed under Article 19(1)(a). The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression because without adequate information, a person cannot form an informed opinion.79

In *State of Uttar Pradesh v. Raj Narain*\(^8\) 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. The Government is not the owner, but timely trusted with rights of the real beneficiary on the estate of the State. Similar views were expressed, while upholding that “right to know is implicit in right of free speech and expression, and disclosure of information regarding functioning of the Government must be the rule.”\(^8\)

The Hon’ble Supreme Court observed that:

“We are in a democratic polity where dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the Government. It is equally the responsibility of society to adequately educate every component of it so that the social level is kept up.”\(^8\)

Further in *Secretary, Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal*\(^8\) the Supreme Court reiterated the proposition that the freedom of speech and expression includes the right to acquire information and to disseminate the same. In the *Tata Press Case*\(^8\) the Supreme Court concluded that the “commercial speech” cannot be denied the protection of Article 19(1)(a) merely because the same is issued by businessmen. “Commercial speech” is a part of freedom of speech guaranteed under the Article 19(1)(a). The public at large has a right to receive the “commercial speech” and the Article protects the right of an individual “to listen, read and receive” the “commercial speech”. The protection of the Article is available both to the speakers as well as the recipient of the speech.

It has been ruled that when a substantially significant population body is illiterate or does not have easy access to ideas or information, it is important that all available means of communication, particularly audio-visual communication, are utilised not just for entertainment but also for education, information, propogation of scientific ideas and the like.\(^8\)

\(^{80}\) AIR 1975 SC 865:(1975) 4 SCC 428.
\(^{82}\) M.C. Mehta v. Union of India, 1992 SCC 382.
\(^{83}\) AIR 1995 SC 1236.
\(^{85}\) Union of India v. The Motion Picture Association, AIR 1999 SC 2334.
The Hon’ble Supreme Court in *Dinesh Trivedi, M.P and Others v. Union of India*\(^{86}\) observed that in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare. The Court further observed that democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant. The Delhi High Court emphasised that the right to receive information acquires great significance in the context of elections\(^{87}\) and ruled that the Election Commission shall secure the antecedents of the candidates including assets, education etc. for the perusal of the voters. This is not an extra qualification imposed by the High Court but what the Hon’ble High Court was seeking to achieve is that a voter after knowing the background of the candidate will vote properly. On appeal the Hon’ble Supreme Court agreed with the Delhi High Court and upheld the right of a voter to know about the antecedents of a candidate as a part of his fundamental right under Article 19(1)(a). Democracy cannot survive without free and fairly informed voters. Subsequently the Central Government amended the Representation of the People Act, 1951, by passing the Representation of the People (Third Amendment) Act, 2002.

It is, thus, quite clear that right to acquire and get information is a fundamental right under the Indian Constitution. But what type of information it includes? Obviously, not all types of information, but only the information relating to matters of public or common importance affecting people in general. Till now, most of the Government Departments were denying information to the public under the Official Secret Act. But various judgments quoted above have given this right to people and it will no longer be possible for Government to deny such information unless it does not concern the public at all.\(^{88}\)

**2.5 REASONABLE RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION**

In modern State, it has been realised that freedoms cannot be guaranteed in absolute terms and cannot be uncontrolled. For, an organised society it is a pre-condition for civil

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\(^{87}\) Association for Democratic Reforms v. Union of India, AIR 2001 Del.126.

liberties. While absolute power results in tyranny, absolute freedoms lead to ruin and anarchy.\(^{89}\) Justice Patanjali Shastri observed that:

> “Man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals.”\(^{90}\)

The fundamental rights of citizens and of human beings in civilized society, based upon co-operation, are not absolute and unconditional. They are defined and limited by the very nature of the social organization, the demand of industry and the needs of mutual co-operation in a widespread division of labour. Freedom is a convenient term to express some of these rights. But absolute freedom, in the sense of freedom to action by undisciplined impulses can only belong to the savage cave dwellers or the beast of the jungle. Rights are coupled with or counterbalanced by obligations or duties of citizenship, which need as much to be emphasized as rights.\(^{91}\)

The Supreme Court while dealing with the question as to how far the above rights can be exercised held that possession and enjoyment of such rights are subject to reasonable restrictions and conditions. As such control is necessary and essential to the safety, health, peace, general order and morale of the community. In a free and democratic society a citizen has right to say what he wishes.\(^{92}\) However, it is the duty of the Constitution that a balance be struck between individual liberty and social control as explained by the Supreme Court.\(^{93}\)

It is difficult to give an exact definition of the word ‘reasonable’.\(^{94}\) What is reasonable restriction or whether such a restriction abuses a fundamental right? There is no definite test to adjudicate reasonableness of a restriction. It is the duty of the Court to decide and each case is to be judged on its own merits. In other words, no abstract standard or general pattern of reasonableness is applicable uniformly to all cases.\(^{95}\) The

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\(^{89}\) Willis, “Constitutional Law and the United States” p. 477.
fundamental rights are allowed to be enjoyed and there shall be great restraint of their interference by executive action and the executive cannot interfere without the sanction of law authorising such act or interference.

The term ‘reasonable’ implies intelligent care and deliberation, i.e. the choice of a course, which reason dictates. It seeks to strike a balance between the individual right secured by Article 19(1) and social control permitted by Article 19(2) to (6) of the Constitution. However, this right is not absolute and reasonable restrictions can be imposed 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. It may be noticed that reasonable restrictions under clause (2) of Article 19 can be imposed only by a duly enacted law and not by executive action unsupported by law.

The limitations imposed by Articles 19(2) to 19(6) on the freedoms guaranteed by Articles 19(1)(a) to (g) of the Constitution serve two fold purposes, viz.,

i) they specify that these freedoms are not absolute but are subject to regulation;

ii) they put a limitation on the power of a legislature to restrict these freedoms. A legislature cannot restrict these freedoms beyond the requirements of Articles 19(2) to 19(6).

The Supreme Court also took note of the test of reasonableness in these words:

“It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.”

96 Union of India v. Motion Pictures Association, AIR 1999 SC 2334.
97 Article 19(2) of the Constitution of India.
99 M.P. Jain, p. 1072.
The Supreme Court, in several cases, has laid down the following guidelines for determining the reasonableness of restrictions:

1. It is the Courts and not the Legislature that will decide whether a restriction is reasonable or not.\(^{101}\)

2. Restriction must not be arbitrary, unbridled and excessive. Moreover, the restriction must not be beyond what is required in public interest and must be consistent with Article 14 of the Constitution.\(^{102}\)

3. There is no fixed standard for reasonableness. Each case must be decided on its own merits.\(^{103}\)

4. The restriction must be reasonable from both substantive as well as procedural standpoint and the time and duration of the restriction cannot be unlimited.\(^{104}\)

5. Restrictions imposed due to implementation of Directive Principles may deem to be reasonable.\(^{105}\)

6. The test of reasonability must be objective in the sense that it does not matter what a Judge or Court thinks what is reasonable but what a normal reasonable person would think.\(^{106}\)

7. There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object sought to be achieved and must not be excessive.\(^{107}\)

8. It is the reasonableness of the restriction which is to be determined by the Court and not the reasonableness of the law authorising the imposition of restriction.\(^{108}\)

9. Restriction, under certain circumstances, may also amount to prohibition.\(^{109}\)

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\(^{102}\) Papnasam Labour Union v. Madura Coats Ltd., AIR 1995 SC 2200.

\(^{103}\) Dharam Dutt v. Union of India, AIR 2004 SC 1295.

\(^{104}\) Papnasam Labour Union v. Madura Coats Ltd., AIR 1995 SC 2200.


\(^{106}\) Sharda v. Dharampal, AIR 2003 SC 3450.

\(^{107}\) M.R.F. Ltd. v. Inspector, Kerala Government, AIR 1999 SC 188.

\(^{108}\) N.B. Khare v. State of Delhi, AIR 1950 SC 211.

\(^{109}\) Narendra Kumar v. Union of India, AIR 1960 SC 430.
A principle of freedom of speech asserts some range of protection for speech that goes beyond limitations on Government interference with other activities. While a minimal principle of liberty maintains that Government should not inhibit communications that pose no legitimate threat of harm, a distinctive principle of freedom of speech posits more robust constraints.\textsuperscript{110}

\subsection*{2.5.1 Grounds of Restrictions on Freedom of Speech and Expression}

It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some curbs on this freedom for the maintenance of social order. No freedom can be absolute or completely unrestricted.\textsuperscript{111} Article 19(2) specifies the grounds to which reasonable restrictions on the freedom of speech and expression can be imposed:

\begin{itemize}
  \item[a)] \textbf{Security of State:} Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of State. The term ‘security of state’ refers only to serious and aggravated forms of public disorder e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. While, speeches or expressions on the part of an individual, which incite to or encourage the commission of violent crimes, such as murder, are matters which would undermine the security of State.\textsuperscript{112} The expression ‘security of the state’ in Article 19(2) does not merely mean as danger to the security of the entire country, but endangering the security of a part of the State would also involve a threat to the security of the State.\textsuperscript{113}
  \item[b)] \textbf{Friendly relations with Foreign States:} This ground was added by the Constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardise the maintainance of good relations between India and that State. No
\end{itemize}

\textsuperscript{112} State of Bihar v. Shailabala Devi, AIR 1952 SC 329.
\textsuperscript{113} Ram Nandan v. State, AIR 1959 All. 101.
similar provision is present in any other Constitution of the World. In India, the 
Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian 
citizens against foreign dignitaries. Interest of friendly relations with foreign States,
would not justify the suppression of fair criticism of foreign policy of the 
Government. It is to be noted that members of the Commonwealth including 
Pakistan is not a ‘foreign state’ for the purposes of this Constitution. The question 
arises before the Supreme Court whether a restriction can be imposed on the freedom 
of speech and expression on the ground of its prejudicial to a Commonwealth 
country. The Court stated that a country may not be regarded as a foreign State for 
the purpose of the Constitution, but may be regarded as a foreign power for other 
purposes.\textsuperscript{114} The result is that freedom of speech and expression cannot be restricted 
on the ground that the matter is adverse to Pakistan.

c) **Public Order:** This ground was also added by the Constitution (First Amendment) 
Act, 1951. The concept of ‘public order’ is wider than ‘security of state’.\textsuperscript{115} ‘Public 
order’ is an expression of wide connotation and signifies that state of tranquility 
which prevails among the members of political society as a result of internal 
regulations enforced by the Government which they have established. Public order 
is something more than ordinary maintenance of law and order. ‘Public order’ is 
synonymous with public peace, safety and tranquility.\textsuperscript{116} The test for determining 
whether an act affects law and order or public order is to see whether the act leads to 
the disturbances of the current of life of the community so as to amount to a 
disturbance of the public order or whether it affects merely an individual being the 
tranquility of the society undisturbed.\textsuperscript{117}

Anything that disturbs public tranquility or public peace disturbs public order. Thus, 
communal disturbances and strikes promoted with the sole object of causing unrest 
among workmen are offences against public order. Public order thus, implies 
absence of violence and an orderly state of affairs in which citizens can peacefully

\textsuperscript{114} Jagan Nath v. Union of India, AIR 1960 SC 675.
\textsuperscript{117} Collector & District Magistrate v. S. Sultan, AIR 2008 SC 2096.
pursue their normal avocation of life. Thus, creating internal disorder or rebellion would affect public order.\textsuperscript{118} However, mere criticism of Government does not necessarily disturb public order.\textsuperscript{119} In its external aspect ‘public safety’ means protection of the country from foreign aggression. Under public order the State would be entitled to prevent propaganda for a state of war with India. The words ‘in the interest of public order’ includes not only such utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. Thus, a law punishing utterances made with the deliberate intention to hurt the religious feelings of any class of persons is valid because it imposes a restriction on the right of free speech in the interest of public order since such speech or writing has the tendency to create public disorder even if in some cases those activities may not actually lead to a breach of peace. But there must be reasonable and proper nexus or relationship between the restrictions and the achievements of public order.\textsuperscript{120}

d) Decency or Morality: These are terms of variable content having no fixed meaning for ideas about decency or morality; vary from society to society and time to time depending on the standards of morals prevailing in the contemporary society.\textsuperscript{121} Thus, words ‘morality’ or ‘decency’ are words of wide meaning. Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places.\textsuperscript{122} The Apex Court\textsuperscript{123} ruled that the words ‘decency and morality’ is not confined to sexual morality alone. The ordinary meaning of the ‘decency’ indicates that the action must be in conformity with the current standards of behaviour or propriety. The Court has cited with approval the following observations from an English case\textsuperscript{124}

\textsuperscript{118} Brij Bhushan v. State of Delhi, AIR 1950 SC 129.
\textsuperscript{122} Ranjit Udehsi v. State of Maharashtra, AIR 1965 SC 881.
\textsuperscript{123} Ramesh Y. Prabhuo v. Prabakar Kashinath Kunte, AIR 1996 SC 1113.
“….Indecency is not confined to sexual indecency; indeed it is difficult to find any limit short of saying that it includes anything which an ordinary decent man or woman would find to be shocking, disgusting or revolting….”

e) **Contempt of Court:** Restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. It cannot be held as law that in view of the constitutional protection of freedom of speech and expression, no one can be proceeded with for the contempt of court on the allegation of scandalising or intending to scandalise the authority of any Court.\(^{125}\) Section 2(a) of the Contempt of Courts Act, 1971, provides that ‘contempt of court’ may be either ‘civil contempt’ or ‘criminal contempt’.

f) **Defamation:** A statement, which injures a man’s reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. According to Winfield\(^{126}\), defamation is the publication of a statement which reflects on a person’s reputation and tends to lower him in estimation of right-thinking members of society generally or tends to make them shun or avoid him. The civil law relating to defamation is still uncodified in India and subject to certain exceptions. Section 499 of the Indian Penal Code, 1860, defines the offence of defamation. It recognises both slander and libel.

g) **Incitement to an offence:** This ground was also added by the Constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offences. The word ‘offence’ is defined as any act or omission made punishable by law for the time being in force. The incitement to an offence does not refer to incitement to break a law. Thus, an incitement to a breach of every civil law is not necessarily contemplated by Article 19(2).

h) **Sovereignty and Integrity of India:** This ground was also added to Article 19(2) by the Constitution (Sixteenth Amendment) Act, 1963. The main purpose is to guard the freedom of speech and expression from being used to assail the sovereignty and territorial integrity of the Country.

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\(^{125}\) Re: Arundhati Roy, AIR 2002 SC 1375.

\(^{126}\) Winfield and Jolowicz on Tort, 274 (1979).
**Sedition:** It should be noted that the sedition is not mentioned in clause (2) of Article 19 as one of the grounds on which restrictions on freedom of speech and expression may be imposed. As understood by English law, sedition embraces all those practices whether by words, or writing which are calculated to disturb the tranquility of the State and lead ignorant person to subvert the government. The Supreme Court held that section 124-A of the Indian Penal Code, 1860 was limited to acts involving an intention or a tendency to create disorder or disturbance of law and order or incitement to violence and was not violative of Article 19(1)(a) read with Article 19(2) of the Constitution.\(^{127}\)

2.5.2 **Fundamental Duties**

Further restrictions have been imposed on the freedom of speech and expression by Article 51A defining fundamental duties of a citizen (42nd Amendment in 1976). Under Article 51A, no one should in exercise of the freedom of expression or of the press do any of the following acts:

1. to disparage the constitution, its ideals and institutions, the National Flag or the National Anthem;
2. to undermine the sovereignty, unity and integrity of India;
3. to disrupt the spirit of common brotherhood among all the people; and
4. to insult the rich heritage of our composite culture.

2.6 **WHY WE NEED SEPARATE ENACTMENT INSPITE OF CONSTITUTIONAL PROVISIONS**

The right to access information held by public bodies is a fundamental human right of every citizen, protected under the Constitution of India. It is accepted by Supreme Court that Right to information is an inherent part of right to freedom of speech and expression under Article 19(1)(a) and the right to life and personal liberty under Article 21 of the Constitution. But then, the question arises why we need a separate law for freedom of information when there is a constitutional provision. In spite of Constitutional provisions, which guaranteed fundamental rights, there are certain reasons to do so, like, (i) the provisions of Part-III are not only providing the

fundamental rights, these are just the enabling clauses authorizing the Parliament to enact laws for creating the provisions for interpretation of various fundamental rights enshrined in Part III of the Constitution of India. We need comprehensive legislation on each and every right guaranteed under Part III of the Constitution. That is why, right to information must be guaranteed by a strong legislation and the process of law-making itself must be participatory; and (ii) we have not been able to create a culture and climate where values of freedom, rights and a democratic way of life are respected. One of the purposes of making laws like the right to information, which is primarily a human right, is to help create this culture.\textsuperscript{128}

2.7 CONCLUSION

It can be easily concluded that right to freedom of speech and expression is one of the most important fundamental rights. It includes circulating one’s views by words or in writing or through audio-visual instrumentalities, advertisements or through any other communication channel. It also comprises of right to information, freedom of press etc. Thus, this fundamental right has a vast scope. From the above case law analysis, it is evident that the Court has always placed a broad interpretation on the value and contents of Article 19(1)(a), making it subjective only to the restrictions permissible under Article 19(2). Efforts by intolerant authorities to curb or choke this freedom have always been firmly repelled, more so when public authorities have betrayed tyrannical tendencies.