CHAPTER 1
AN INTRODUCTION

1.1 Introduction

In the Constitution of our Democratic Republic among the fundamental freedoms, freedom of speech and expression shines radiantly in the firmament of Part III. This is a protection given to citizens\(^1\) against state suppression or regulation.

It serves the following purposes:

- Freedom of speech and expression helps in the discovery of truth.

- Freedom of speech and expression is associated with citizens’ participation in a democracy.\(^2\)

- Freedom of speech and expression is an instrument of self fulfillment in the hands of individuals.

- Freedom of speech and expression provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own belief and communicate them freely to others.

Freedom of speech and expression is a cherished right which is recognized not only by the Constitution of India under Article 19(1)(a), but

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1 Article 19 (1) (a) of the Constitution of India reads that all citizens shall have the right to freedom of speech and expression.

2 The Supreme Court in *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 at 214 has held that the concept of open government is the direct result from the right to know which is implicit in the right of free speech & expression guaranteed under Article 19 (1) (a).
also by international as well as regional human rights documents. It has been held to be basic and indivisible for a democratic polity. It is the foundation of a democratic society. It is essential for the rule of law and liberty of citizens.

In *Romesh Thappar v. State of Madras*, Patanjali Shastri, C.J. observed:

> Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.

Thus, the importance of freedom of speech and expression becomes relevant when the question of accountability of the government comes in. As Dr. B.R. Ambedkar had said that in any representative democracy, the root concerns are two, viz. Stability and Responsibility. The government that the system throws up should enjoy the strength and stability necessary for the security, development and welfare of the people and those called upon to govern should remain responsible to the people and to their representatives.

The present work is an incisive examination of the law relating to freedom of speech and expression. In due course of time, several species of rights unenumerated in Article 19 have branched off from the genus of the Article through the process of interpretation by the Apex Court. The new contours of the freedom of speech and expression would be discussed elaborately.

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4. Secretary, Ministry of I & B v. Cricket Association of Bengal, AIR 1995 SC 1236 at 1293.
7. AIR 1950 SC 124.
Beyond a mere overview, the study would contain perceptive commentaries and closely reasoned critiques of various aspects of freedom of speech and expression. The spectrum of subjects to be covered ranges from issues of constitutional freedoms to vexed questions of censorship, contempt of Court and parliamentary privilege, defamation, privacy, right to information, broadcasting and taxation.

A separate chapter would be there to examine the historical foundations of the law relating to freedom of speech and expression beginning from Home Rule Bill in later 19th Century to the adoption of the present Constitution by the Constituent Assembly in 1950.

Given the social, economic and cultural background of our democratic polity, one understands the relevance of studying the emerging trends pertaining to the freedom of speech and expression. More so, because the legal framework is not adequate to confront the rapidly changing trends and challenges thrown up by the freedom of speech such as privacy rights, right to information hate speech, media trial, broadcasting etc.

A separate chapter covers the study of control mechanism in the form of reasonable restrictions which is the constitutional mandate under Article 19(2).

The study would seem wanting if a comparative analysis is not drawn regarding the freedom of speech and expression in India with the perceptions of other liberal democracies particularly UK, USA, Canada, Australia etc.

The study would be helpful as it would bring out the successes and failures from experiences of various systems and such an exercise is always beneficial for the enrichment of one’s own Political System.

On the whole, the study would appreciate the importance of freedoms of speech and expression in our democratic polity considering various dimensions of this freedom added through the judicial creative approach.
It would bring a person tête-à-tête with the upcoming trends and new horizons scaled by freedom of speech and would also attempt to bring home the idea that like all other freedoms, the freedom of speech is also not an absolute freedom and reasonable restrictions can be imposed upon it in the larger interest of the state and the society.

1.2 Problem Profile

The freedom of speech and expression is regarded as the first condition of liberty. In a democratic set up, speech is entitled to a greater degree of immunity from government regulation because of some special values attributed to communication & expression. Therefore, freedom of speech and expression as provided under the Indian Constitution forms the broad area of the present study. Further, it deals with the various facets of freedom of speech and expression as interpreted by the judiciary. However, there was needed a multidimensional study of the various new concepts dealing with freedom of speech and expression that confront us today. The present study addresses certain socio-legal issues of perennial importance and their apparent paradox with the freedom of speech and expression. Since the inception of three major aims, namely information, education and entertainment, there has been an induction of commercialization in the media and with the advancement of science and technology, broadcasting has become the most powerful media in every country. The result is that the media pokes its nose into our daily routine life, office, business, sports and games, morality, politics and what not. An inevitable question which arises here is that as to what an extent should the media be permitted to function? There requires a clear line to be drawn between “liberty” and “licence”. The present study, thus, seeks to examine the constitutional traditions in order to balance freedom of speech & expression against questions like rights of reputation and privacy; hate speech and commercial speech; sexually
explicit conduct and copyrights and other property rights. The study is, thus, an attempt to draw reconciliation between these conflicting issues.

1.3 Research Hypothesis

The freedom of speech & expression is one of the core values that underlie the Constitution. As society evolves in the age of the internet, new challenges are being posed to fundamental Constitutional freedoms, both by the state & non-state entities. The legal framework is not adequate to confront the emerging challenges before the freedom of speech and expression, particularly the media (which includes the press, the electronic and broadcasting media as well as, very recently, the new media). These include issues like privacy which is not a specifically protected constitutional right but has nevertheless gained judicial recognition; hate speech which has gained much topical relevance both in India and globally; the reporting of judicial proceedings which is of special importance in times of trial by media; legislative privileges which often conflict with media rights. Besides, the law struggles to keep pace with the different facets of freedom of speech and expression namely right to information, censorship, obscenity, contempt of Court, advertising and broadcasting issues. The present study explores as to what extent the legal and constitutional framework is adequate to deal with the various dimensions of this multifaceted guarantee i.e. freedom of speech and expression because it is the time to revisit and evaluate the integral components of this freedom and to suggest measures to balance them with the rapidly changing trends and challenges faced both nationally and internationally. The study shall prove helpful to those who believe in individual self fulfillment in a transparent and accountable democratic polity.

1.4 Research Methodology

The present research work is basically doctrinaire and it requires study and analysis of literature relating to freedom of speech and expression
under the Indian Constitution. It would include the study of varied approaches of different legal systems. The work would also explore various case laws in the light of the philosophical and political arguments for free speech guarantees. The researcher proposes to collect the required material from a variety of sources including International Conventions, Municipal Legislations, documents, Journals and pronouncements of the Courts, particularly of India, U.K. and U.S.A.

However, given the diverse and upcoming issues like privacy rights, right to information, intellectual property rights etc. involved in this freedom, an empirical study incorporating extensive field surveys, observation interviews and case studies of the various social groups including legal experts, scholars, media organizations, government departments and NGO’s will form a part of research. Through this empirical study, the perspectives of various groups on freedom of speech and expression would be elucidated.

Thus, on the whole the present work would be a comprehensive study of the concept of freedom of speech and expression perusing the relevant statutes and the cases, thus giving a trenchant analysis of law relating to freedom of speech and expression.

1.5 Plan of Study

1.5.1 Freedom of Speech and Expression: Conceptual Dimensions

The concept of freedom of speech and expression has evolved over a period of time. Political philosophers had been arguing for liberty of opinion and discussion since earlier times. Though philosophers and lawyers may disagree about the justification for a free speech principle, but they all agree on the point that freedom of speech must be given special treatment. The study of historical backdrop makes it clear that much deliberations and efforts had gone into making the freedom of speech and expression as guaranteed fundamental right. The inclusion of a set of fundamental rights in India’s Constitution had its genesis in the forces that operated in the
national struggle during British rule. In pre-independence India, there was no charter of fundamental rights of justiciable nature and even such safeguards as were contained in the various Statutes could be taken away by the authorities making that statute, whether it was the British Parliament or a legislative authority in India. Moreover, there were in existence laws which by the setting up of special Courts or by curtailing a subject’s rights and liberties did violence to the basic principle of fundamental rights. As the freedom struggle gathered momentum after the end of the First World War, clashes with British authorities in India became increasingly frequent and sharp. And the harshness of the executive in operating its various repressive measures strengthened the movement for a constitutional guarantee of fundamental rights.

The chapter contains an array of developments one after the other resulting in the Constitution which guarantees to every one of her citizens, freedom of expression. The credit for the initiative goes to the constitution of India Bill, 1895 (described by Mrs. Annie Besant as the Home Rule Bill) followed by the Montague-Chelmsford Report (1918), Nehru Committee Report (1928), recommendations at the several Round Table conferences, the Sapru Committee (1944-45), The Objectives Resolution (1947) and the

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9 The position was summed up as follows by B.N. Rau in his report on Human Rights: “With a few exceptions human rights in India today (December 31, 1947) are not guaranteed by the Constitution, but embodied in the ordinary law of the land. Legislative activity in this sphere received a great fillip at the end of World War I, when the League of Nations and the International Labour Organization came into being. India’s membership of these bodies and her participation in their periodical conferences had Gandhi’s powerful and persistent efforts to ameliorate the position of Harijans. Almost simultaneously came the introduction of responsible government in the provinces, at first partially under the Government of India Act, 1919 and later almost completely under the Act of 1935. The legislatures became more and more responsive to public opinion and this had the effect of facilitating, if not compelling, the translation of the new ideals into law. The process was further accelerated by World War II and the establishment, upon its close of the United Nations”, *Year Book of Human Rights for 1947*, (United Nations), see *Id.*, at 16.
10 *Id.*, at 171.
11 *Id.*, at 174.
debates of the Constituent Assembly\textsuperscript{13} which continued for as many as thirty-eight days, eleven days in the sub-committee, two in the Advisory committee and twenty-five in the Constituent Assembly. The Assembly ultimately adopted the comprehensive and impressive array of fundamental rights spread over twenty-two articles and divided broadly into seven categories of rights viz., (i) right to equality, (ii) right to freedom, (iii) right against exploitation, (iv) right to freedom of religion, (v) cultural and educational rights, (vi) right to property and (vii) right to constitutional remedies. The discussion moves a step further by also incorporating the recommendations of Constitutional Review Commission.\textsuperscript{14} After more than two years deliberations, the Commission submitted its final Report to the Government on 31\textsuperscript{st} March, 2002. It contained nearly 250 recommendations of which noteworthy are the inclusions of (i) the freedom of the press and other media, (ii) freedom of information, (iii) defence of justification by truth in contempt of Court cases. It is important to mention here that these recommendations are of vital importance for the survival of democratic polity and free institutions and for ushering in an era of good citizen friendly governance.\textsuperscript{15}

\textbf{1.5.2 Freedom of Speech and Expression: International Legal Regimes}

Freedom of speech and expression as a legal concept cannot be understood in isolation from other constitutional rights and principles, which may be peculiar to a particular system.\textsuperscript{16} This Chapter, thus, puts focus on treatment of free speech in a number of liberal democracies where

\textsuperscript{13} Munshi. The President of Constituent Assembly was authorized to nominated additional members.

\textsuperscript{14} Supra note 8 at 179.

\textsuperscript{15} On completion of fifty years of the working of the constitution, it was considered appropriate to take stock of its successes & failures. On 23\textsuperscript{rd} Feb. 2000, the President of India. Shri K.R. Naryanan appointed the National Commission to Review the working of the constitution (also referred to as NCRWC). The setting up of the high level-II member Commission was a unique example of sustained civil society pressure (1990-2000), successfully impacting policy makers and leading to concrete action. The commission itself said that its appointment was preceded by “a persistent demand in the civil society” that “the working of the Constitution be subjected to a comprehensive review”.

\textsuperscript{16} Dr. Subash C. Kashyap, Constitution of India Review and Reassessment, 3 (2006).

it enjoys significant protection, particularly, England, the United States, Canada and Germany. Besides, this concept has been developed by the European Human Rights Court, interpreting the European Convention on Human Rights and Fundamental Freedoms (ECHR).

A study of provisos of International Covenant on Civil and Political Rights also makes the significant importance enjoyed by free speech principle amply clear. Briefer reference would then be made to the protection of free speech in a few other countries like France, Italy and Australia. The main thrust of this Chapter is to set out the relevant Constitutional provisions of the various countries in the light of the interpretations offered by the Courts as it helps in the comparative analysis of the free speech principle.

Further, the study of international framework has become important because of the various developments that have taken place resulting into making free speech law more complex in all the jurisdictions. This is true of England, the United States and Germany. For example, what was the situation in England twenty years ago has changed tremendously with the enactment of the Human Rights Act, 1998. Similarly from the day, the United States or Canada have given statutory recognition to freedom of speech and expression there has been an explosion of challenges in the form of hate speech, invasion of privacy, reputation rights, copyrights, advertising and other property rights. The Courts in these countries also adopt diverse approaches towards these issues. This is particularly important because the text of the Constitution is not adequate to provide clear answers on these matters that are emerging globally.

Finally, since 1992, Australia has also developed distinctive free speech jurisprudence on the basis of the implied Constitutional rights to freedom of political communication. Thus, the study of the international development becomes relevant in order to have a complete overview of the concept of freedom of speech and expression.
1.5.3 Freedom of Speech and Expression: Constitutional and Legislative Measures

India is one of the largest democracies of the world and the study of freedom of speech and expression becomes all the more important because it plays a crucial role in the formation of public opinion on social, political and economic matters. This chapter examines the constitutional and the legislative provisions which form the basis of freedom of speech and expression. It is broadly divided into two parts: the first part would deal with the Constitutional mandate on the freedom of speech and expression and the second would examine the control mechanism in the form of constitutionally permissible restrictions and other legislative enactments.

No freedom is absolute since law has to make a balance between individual liberty and social order. In this chapter, therefore, the conceptual dimensions of the grounds of restrictions shall be considered in the light of recent developments which have made appearance due to diverse approaches adopted by the judiciary in its interpretation. The various grounds of restrictions are security of the State,\footnote{Supra note 7.} friendly relations with foreign states,\footnote{Ram Manohar v. State of Bihar, (1996) 1 SCR 709.} public order,\footnote{Virendra v. State of Punjab, AIR 1957 SC 896.} decency or morality,\footnote{Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881.} contempt of Court,\footnote{Re Arundhati Roy, AIR 2002 SC 1375.} defamation,\footnote{Ram Manohar v. Supdt., AIR 1960 SC 633.} incitement of an offence and sovereignty and integrity of India.\footnote{Visnu Gangadhar v. Govt. of Bombay, AIR 1945 Bom 207.} The restrictions are qualified by the term “reasonable”, which means that the validity of a law in the context of Article 19(1) (a) is judged on the basis of the following considerations:\footnote{P.M. Bakshi, The Constitution of India, 36 (2004).}

(a) Whether the law imposes a restriction on the freedom in question;

(b) Whether the restrictions have been imposed by law;
(c) Whether the restrictions are reasonable; and

(d) Whether the restriction besides being reasonable is imposed for one of the specified purposes relevant to the freedom in question as enumerated in the applicable Clause out of Clauses (2) to (6) of the Article.

Each of these above mentioned conditions must be satisfied.25

The text is clear on most of these restrictions, however, certain grounds like defamation, obscenity, contempt of Court need to be elaborated upon because of several socio-ethical questions involved in them. More so, because the High Courts have been adopting divergent views on these delicate issues. For example the question as to what is the yardstick for measuring “obscenity” becomes relevant particularly in the light of judgment26 from Bombay High Court which relates to exposure of private parts by cabaret dancers at Blue Nile Restaurants at Colaba, Bombay. The High Court did not concentrate on the social and cultural referent involved in the mater rather it focused heavily an the phrase ‘annoyance’ to others and it ultimately held that an act per se indecent and obscene would not warrant prosecution under Section 294 of IPC in the absence of clear evidence of annoyance to others. To an ordinary person, this logic suggests that if the participants in any deviance are not annoyed, no sexualized act of objectification should be culpable 27

However, recently28 the apex Court has brought out an important link between ‘obscenity’ under Article 19(2) vis-à-vis Section 292, 293 of IPC and the Indecent Representation of Women (Prohibition) Act, 1986. Needless to say here that the phrases “decency” and “morality”29 are elastic

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25 Ibid.
28 (2007) 1 SCC 143.
29 Some of the laws which embody restrictions on the right to free speech in the interest of decency and morality are: The Indian Penal Code 1860; the Cinematograph, Act, 1952; The Dramatic Performances Act, 1876; The Customs Act, 1962; The Post Office Act, 1898; The Indecent Representation of Women (Prohibition) Act, 1986;
notions which evolve over a period of time and differently in different cultures. Moving ahead, ‘defamation’ engages one’s attention as a complex feature entailing both civil and penal consequences. It is another important ground putting restriction on one’s freedom of speech and expression. The law of defamation would involve the study of collateral aspects like defences in the form of reporting parliamentary and judicial proceedings. Finally, ‘contempt of Court’ as a ground is multidimensional. It has to be studied from various aspects viz. civil & criminal contempt, the rationale behind contempt, the various tests adopted by the judiciary to propound the established doctrine of contempt and also the standard of proof in contempt matters.

This Chapter would, thus draw a balance between freedom of speech and expression as a fundamental guarantee for individual self-fulfillment with the greater goal which any civil society wants to achieve i.e. a just social order.

1.5.4 Freedom of Speech and Expression and The Judicial Response

It is noteworthy here that through the judicial creative approach, a list of different rights has flown from the basic freedom of speech and expression. This chapter, thus, studies the judicial response towards the freedom of speech and expression. The honorable Supreme Court has in numerous cases deduced certain fundamental features which are not specifically mentioned in Article 19(1)(a) on the principle that certain unarticulated rights are implicit in the enumerated guarantee. Thus, the judicial craftsmanship owns the credit of widening the horizons of the freedom of speech and expression by including in it certain multifarious

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30 Right to reputation is a facet of the right to life. Where any authority in discharge of its duties traverses into the realm of personal reputation it must provide a chance to the person concerned to have a say in the matter. See State of Bihar v. Lal Krishna Advani, (2003) 8 SCC 361.
aspects like freedom of press, right to receive information, compelled speech, right of convict to express himself, right not to speak, freedom of circulation, right of access to the source of information, no precensorship on press, freedom in volume of news, commercial speech, right to fly the national flag, right to broadcast, right to criticize, right to expression beyond national boundaries, right of the press to conduct interviews and the like. Also, the inter relationship between Article 14, 19 and 21 which has been so finely brought about by the Supreme Court in Maneka Gandhi’s case would be highlighted.

This Chapter, further, studies the emerging issues in the field of freedom of speech and expression and the approach of judiciary towards these latest developments. Given the social, economic and cultural background of our democratic polity, the study of these emerging trends becomes very important. On a closer look, one finds that the law struggles to keep pace with rapidly changing trends and challenges thrown up by freedom of speech such as privacy rights, right to information, hate speech, media trial, broadcasting etc.

To begin with, the question of how satellite television is to be regulated has been differently interpreted in India. The orthodox viewpoint

34 Supra note 7.
37 Union of India v. The Motion Pictures Association, AIR 1999 SC 2334.
38 State, through Supdt, Central Jail v. Charulata Joshi, AIR 1999 SC 1379.
39 Bijoe Emmanuel v. State Kerela, AIR 1987 SC 748.
40 Supra note 36.
41 M. Hasan v. Govt. of Andhra Pradesh, AIR 1998 AP 35.
43 Bennett Coleman and Co. v. Union of India, AIR 1973 SC 106.
47 Supra note 33; Terminiello v. Chicago, 337 U.S. (1949).
of “airwaves” belonging to the public is one that is difficult to enunciate especially with regard to the principles of instrumentality and agency. While constitutional provisions ensuring “freedom of expression” remain open ended on the matter of regulation, the debate itself has juxtaposed the interests of the television networks vis-a-vis the ministry of information and broadcasting while the public, in whose ostensible interests the debate is being waged, remains entirely in the dark. In this regard the Supreme Court has mentioned that Doordarshan being a State controlled agency funded by public funds cannot deny access to screen a documentary except on specified valid grounds. The state cannot prevent open discussion, however, hateful to its policies.

Right of the people to be informed calls for channelizing and streamlining DD’s control over the national telecast media vehicle. Another area of study would be advertisements and election campaigns through the electronic media. The Supreme Court had shown its creative role in preventing malpractices in election. The judicial intervention was to prevent the commission of malpractice by using Cable TVs and television channels, by introducing the device of pre-censorship.

The Court had ordered that political parties had to take prior permission from the Election Commission for the telecast of advertisement, wherein, they should accompany copies of proposed advertisements in electronic form along with a duly attested transcript thereof and it should be open to the Election Commission to direct deletion/modification of any part of the advertisement. Further, the Court issued directions for the effective implementation of the said order.

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52 Ibid.
54 Ibid.
No doubt freedom of speech has gained momentum with growth of broadcasting media. But there is another aspect associated with it. The communication revolution in recent years, particularly the advent of information technology, has resulted in rampant transborder piracy and its impact has been felt most drastically in the entertainment industry, films & music in particular. Ironically, the very advances in technology which have revolutionized the entertainment industry have also facilitated large scale and institutionalized copying of films & music. This is an issue of concern which has its solution somewhere in the law of copyright which is another area of study in the present work. The law of copyright is intended to prevent plagiarism and unfair exploitation of creative work. It is a natural extension of the freedom of speech and expression protected under Article 19 (1) (a) of the constitution. If an individual enjoys the freedom of speech and expression, he must also be guaranteed protection of the intellectual property in his expression, be it in the form of a literary, dramatic, musical or artistic work, a film or a sound recording.

The study would be incomplete if it does not bear a link between the freedom of speech and the substantive right to privacy. This right to privacy would be considered in the light of various facets of privacy in the Indian perspective vis-à-vis also the doctrinal aspect of freedom of speech and expression, also how far the media can encroach upon the personal privacy of an individual. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child and Article 19 of the Constitution gives to every citizen the right to freedom from such unwarranted governmental intrusion. Thus, privacy is that sphere of the life of an individual into which the Government cannot interfere. It may at times be a pure right i.e.

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58 Ibid.
the right, literally, to be left alone in the confines of one’s house so long as
no unlawful activity is carried out. It may also be the right to an unhindered
exercise of some or the other constitutional right, so long as the right is
exercised in a private or personal arena. It is a protection of the basic
inviolable nature of the human personality. In the Indian context, it
embodies a freedom from unwarranted, arbitrary and unnecessary
surveillance, search and seizure. It signifies the power to decide what kind
of personal information may be disclosed, and the choice of whom the
disclosure may be made to. The Chapter would also discuss this right as a
safeguard of the exercise of choice in matters fundamental to our existence.
It is not merely an informational right, but a truly substantive right. The
Chapter would also study the prospects of “personal privacy of an individual
unrelated with any public activity” as a ground on which freedom of speech
and expression could be reasonably restricted.

Further, the enactment of the Right to information Act, 2005 has
revolutionized the concept of freedom of speech and expression. This
enactment has come in the wake of Apex Court’s judgments which have laid
down important guidelines regarding disclosure of antecedents for free and
fair elections. Right to information is multifaceted so as to include right of
consumers to be informed about the quality, quantity, purity, standard and
price of goods or services, disclosure by a journalist of the source of
information, and the like. Further the Apex Court has firmly laid down
that “Right of information” is a facet of the right of “speech and expression”
as contained in Article 19(1) (a) of the Constitution. Right to information,
thus, indisputably is a fundamental right.

The questions pertaining to freedom of speech vis-a-vis privileges of
Parliament is another area of study. It, further, involves significant
questions of media reports of parliamentary proceedings. What is the scope

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60 Ozair Husain v. Union of India, AIR 2003 Del 103.
of freedom of speech in Parliament under Article 105 (1) as compared to the scope and limitations of free speech guaranteed by Article 19(1)(a) requires special mention. In the present age of information and accountability, what are the legal ramifications of precisely defining and codifying the parliamentary privileges & immunities, would form an interesting area of study. Further, there is need to codify the privileges of members of Parliament and the legislatures. The privileges being claimed under the existing arrangement without the visualized legislation under Article 105 and 194 are not people friendly, and some of them appear to conflict with the guaranteed fundamental freedoms under the constitution. The Supreme Court decision in the JMM Bribery case has created a piquant situation. While there is need to judicially correct the majority opinion in that case, it is time to cure the aberrations by the much needed and long overdue legislation contemplated by Articles 105 and 194 and, if need be by suitable amendments in the provisions. These issues require to be considered.

Another crucial question is whether imposing taxes on the media mean that unreasonable restrictions are being imposed on the freedom of speech and expression. This shall be discussed in the light of various cases of the Hon’ble Supreme Court as well as the constitutional mandate on the power of taxation.

Another aspect associated with freedom of speech and expression is the reporting of judicial proceedings. How far they are beneficial and to what extent they should be checked are some vital questions to be attended. No doubt, publicity of Court cases serves an important public purpose i.e. justice must not only be done but seen to be done. It enhances public knowledge and appreciation of the working of the law and the administration of justice. However, on the downside, press reporting can

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66 Supra note 55 at 230.
generate unwarranted publicity and sensationalism which does no service to the public interest because a judge should be able to decide the merits of a case objectively and in an atmosphere unclouded by public opinion. The Apex Court68 has held that reporting of the trial by newspapers tends to interfere with the course of justice. The discussion would, thus be in the light of legal69 & judicial control mechanism.

Finally, the study would not be complete if the concept of freedom of speech and expression is not understood in the backdrop of information technology. The internet represents a communication revolution. It is an important means of expression and communication but equally important is its role as a source of information 70 Thus, it is an important facet from the standpoint of Article 19(1)(a). Ironically, the very qualities about the internet that have revolutionized communication are the qualities that have made it amenable to misuse. The internet has become an engine for rampant piracy of copyrighted, music, for pornography and obscenity, for defamation, for hate speech and lately for terrorist planning and propaganda.71 All these important issues would be studied in the light of the Information Technology Act, 2000. Thus, on the whole, these are some of the important contours of freedom of speech and expression that have emerged recently from the genus of Article 19(1)(a) particularly in the wake of scientific advancements globalization and also due to several legislative enactments and through the process of judicial interpretation.

1.5.5 Freedom of Speech and Expression: An Empirical Survey

Interactions will be carried out with various groups including legal experts, scholars, media organizations, Government Departments and NGO’s in order to bring out the non-doctrinal aspect of the concept of freedom of speech and expression.

67 Id., at 231.
69 The Indian Penal Code, 1860; the Hindu Marriage Act, 1955; the Official Secrets Act, 1923; the Contempt of Court Act, 1971.
70 Supra note 55 at 22.
71 Ibid.
1.5.6 Suggestions and Conclusion

The present study is not merely an overview of freedom of speech and expression rather it covers a spectrum of subjects ranging from the constitutional mandate of freedom of speech and expression to the much debated issues of censorship, hate speech, privacy rights, reputation, contempt of Court, copyrights, taxation, broadcasting, commercial speech and right to information. The study is an attempt to provide a closely reasoned critique of the various aspects of freedom of speech and expression alongwith certain fruitful suggestions. It is a rewarding exercise for the researcher who wants to unravel the socio-legal dimensions that govern or sometimes fail to govern the subject and it is a collection of information received after an incisive study of the law so that the work becomes useful for the readers and researchers in the field of freedom of speech & expression.