CHAPTER-II

FREEDOM OF SPEECH AND
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(a) Meaning and Concept

The idea of ‘freedom of speech’ is necessary for the functioning of a democracy. Without which the polity can not take part in the decision making process of the State or it can not criticize, suggest or elicit proper public opinion for the functioning of a healthy government and also a coordinated social development. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in hierarchy of liberties giving succour and protection to all other liberties. In a democratic society based on rule of law, freedom of expression is not a luxury but a necessity. It constitutes one of the essential foundations of such a society. In a felicitous language of great justice Cardozo, ‘freedom of speech is the matrix, the indispensible condition of nearly every other form of freedom’.

Therefore, it has been truly said that it is the mother of all liberties. In a democracy, freedom of speech and expression opens up channels of free discussion of issues. Freedom of speech plays a

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crucial role in the formation of public opinion on political, social and economic matters. The people's right to know about the state actions and activities is also a facet of this concept of freedom of speech and expression in a democracy. Freedom of expression embodies the people's right to know, their right to receive information from diverse and antagonistic sources. Accountability is the sine qua non of every democratic society. In order to hold the institutions of government accountable it is essential that people should have access to information about the functioning of the government and about every public act that is done in a public way by the public functionaries. Informed public opinion is the most potent of all the checks of maladministration. James Madison a leading figure in the drafting of the US Constitution aptly highlighted the importance upon informed citizenry to democratic governance:

"A popular government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will for ever govern ignorance. And a people who mean to be their own governors must earn themselves with the power which knowledge gives"².

The phrase 'freedom of speech and expression' means the capacity of an individual or a group to express himself or itself through print, visual or by word of mouth, without restraint. Thus, it means the representation or communication of ideas and opinions through any means. This freedom includes in itself the liberty of publication and circulation. The right of propagation of ideas and opinions, which is inbuilt in it, is not confined to propagation of one's own ideas or opinions, which also extends to the propagation of opinions of other people. The Halsbury's Laws of England gather the true import and meaning of the expression 'freedom of expression', we find that freedom of expression incorporates both the right to receive and express ideas and information and the secrecy of private communications. There are, however, constraints imposed by the law on this freedom with regard to the matters is broadly fall within the bounds of blasphemy, obscenity, sedition, treason, the official secretes acts, insulting words or behaviour, incitement to racial hatred, contempt of Court and of Parliament and defamation. Freedom of expression incorporates the freedom of the press.

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5 Srinivas vs. State of Madras, AIR 1951 Mad. 70.
The basic idea of 'freedom of speech and expression' is as old as the human civilization and it is not an exclusively a western concept. It embodies a universal value transcending geographical barriers and national frontiers. Freedom of expression has been humanities yearning in times ancient and modern. In India before independence there was no constitutional or statutory guarantee of individual and/or media freedom. At the most, English Common Law freedom could be claimed by the press, as was observed by the Privy Council – the erstwhile apex Court for India. It was observed in the Constituent Assembly:

"Right to freedom being one of the basic tenets of democracy naturally got priority under the Indian Constitution in its preamble as well as in Chapter 3 which relates to fundamental rights of the citizens. But the more important cause for laying emphasis on this right was protection of life and personal liberty. Nevertheless, fundamental rights guaranteed under the Indian Constitution are not based on the theory of natural rights and reasonable restrictions have been imposed on the exercise of different rights in the interests of the community. Pandit Nehru in this

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connection correctly said 'no individual can override ultimately the rights of the community at large and no community should injure and invade the rights of the individual unless it be for the most urgent and important reasons'\textsuperscript{8}.

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 individual in participating decision making; strengthens the capacity of individual in participating decision making; and iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change\textsuperscript{9}.

The Constitution of India in Article 19 guarantees to all citizens the right to different freedoms. The Clause 2 of the Article lays down restrictions on these freedoms. Clause 1(a) deals with the freedom of speech and expression. It says that, “All citizens shall have the right to freedom of speech and expression”.

According to Clause 2 "nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes

\textsuperscript{8} Constituent Assembly Debates, Vol. IX, p.1194.
\textsuperscript{9} I.E. Newspapers (Bombay) Pvt. Ltd. Vs. Union of India, AIR 1986 SC 515.
reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence”.

Therefore, while the Article provide for freedom of speech and expression for all citizens it also provides restrictions in the interest of and security of the State. The state is empowered to impose reasonable restrictions through law to protect the sovereignty and integrity of the nation. Further, the state is also to protect the decency, morality and public order within the society. The institutions of administration of justice should also have a certain measure of authority to work without criticism, therefore, the laws relating to contempt of Court is kept within the limitation to the power.

The fundamental right to the freedom of speech and expression enshrined in the Article is based on the provisions in First Amendment of the Constitution of U.S.A., and it would therefore, legitimate and proper to the decisions of the Supreme Court of USA in order to appreciate the true nature scope and extent of this right in
spite of the warning\textsuperscript{10} administered by the Supreme Court against the use of American and other cases.

In the US Justice Brandeis in Whitney \textit{vs.} California made a classic remark on the freedom of speech in the context of the US Constitution. He stated:

"Those who own our independence believed that the final end of the state was to make men free to develop their faculties.... They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile .... that public discussion is a political duty; and that this should be a fundamental principle of the American Government"\textsuperscript{11}.

Further, while dealing with the First Amendment to the US Constitution, which guarantees freedom of speech in the USA. The US Supreme Court has observed:

"It is the purpose of the First Amendment to preserve an uninhibited market place of ideas

\textsuperscript{10} State of Travancore-Cochin \textit{vs.} Bombay Co. Ltd., AIR 1952 SC 366; State of Bombay \textit{vs.} RMD, Chamarbaugwala, AIR 1957 SC 699; Express Newspaper Ltd. \textit{vs.} Union of India, AIR 1958 SC 578.

in which truth will ultimately prevail rather than to countenance monopolization of that market whether it be by the Government itself or a private licence". The US Supreme Court in *Thornhill vs. State of Alabama* took the view that "peaceful picketing is free speech non violent Acts are like words. Picketing is a non violent act of persuasion". The same question in India arose in *Re Vangan* where the Court took the view that protection under Article 19(1)(a) cannot be utilized to undermine other provisions of the Constitution. It cannot be granted to create disaffection and strife among different class of people or to promote regionalism.

Therefore, while the Courts in the United States have devised limitations, the Courts in India have interpreted the limitations prescribed in the Constitutional provision. In both the countries however the judiciary has acted the guardian angel of the right, and have strive to attain a balance between social cohesion, State security and individual freedom.

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13 310 U.S. 88.
14 (1951) 2MLJ 241.
(b) Judicial Interpretation

The Article as envisaged in the Constitution is that it lays the foundation of all democratic institutions in the state. Where the object of an enactment in regulating the space for advertisements is to prevent unfair competition, it is directed against circulation of newspaper. When a law is intended to bring about this result, there would be direct interference with the right of freedom of speech and expression guaranteed under Article 19(1)(a)\textsuperscript{15}. The fact that the citizens of India have freedom of speech, freedom to assembly peaceably and freedom to form association or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of these freedoms will come to an end as soon as the right of some one else to hold his property intervenes. Such a limitation is inherent in exercise of those rights\textsuperscript{16}. There are no geographical limitations to freedom of speech and expression guaranteed under Article 19(1)(a) and this freedom is exercisable not only in India but also outside and if State action sets up barriers to its citizen’s freedom of expression to any country in the world, it would

\textsuperscript{15} Sakal Papers vs. Union of India, AIR 1962 SC 305.
\textsuperscript{16} Railway Board, New Delhi vs. N. Singh, AIR 1969 SC 966.
violate Article 19(1)(a) as much as if it inhibited such expression within the country\(^{17}\).

The Supreme Court while considering this provision in *Romesh Thapar*\(^{18}\) opined that “Freedom of speech and the press lay 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”. The Court observed in *Virendra vs. State of Punjab*\(^{19}\) that it is a serious encroachment, if a newspaper is prevented from publishing its own view and that of the others. Further, the Court was of the opinion that the Government cannot cancel the registration of a newspaper without giving the party a reasonable opportunity of being heard\(^{20}\). The Supreme Court in *Life Insurance Corporation of India vs. Manubhai D. Saha*\(^{21}\) rejected the contention of the petitioner that the newsletter published by them is an in-house magazine having the discretion of refusing publication to the respondent. The respondent in that case was the executive trustee of Consumer Education Research Centre, Ahmadabad. He had prepared a research report on the working of the Life Insurance Corporation, a counter to that was published in the LIC

\(^{17}\) Maneka Gandhi vs. Union of India, AIR 1978 SC 597.

\(^{18}\) Supra note 2.

\(^{19}\) AIR 1957 SC 896.

\(^{20}\) Gopal Das vs. District Magistrate, AIR 1973 SC 213.

\(^{21}\) 1992 3 SCC 637.
newsletter by a member of the LIC to which the respondent desired to publish a rejoinder in the same newsletter “Yogakhyama”, which was refused by LIC. The Court directed that LIC to publish the rejoinder in the next issue. The Court took the view that LIC is ‘state’ within the meaning of Article 12 of the Constitution and therefore, it must function within the best interest of the community. The community is entitled to know whether or not the requirement of the statute is complied with by the LIC in its functioning. The in-house magazine is financed by public funds and therefore, the refusal to publish the rejoinder of the respondent was ‘unfair’, ‘unreasonable’ and ‘arbitrary’ and was violative of the respondent’s fundamental right under Article 19(1). The Court however took the view that the decision is applicable in the peculiar situation and does not give a right to all individuals to publish their write-ups in the LIC in-house magazine. The Court explaining the import of the phrase ‘freedom of speech and expression’ held that it must be construed broadly to include the freedom to circulate one’s views by words of mouth or in writing or through audio-visual instrumentality. In Maneka Gandhi vs. Union of India22 Justice Bhagawati has emphasized on the significance of speech and expression in these words:

22 AIR 1978 SC 597.
“Democracy is based essentially on free debate and open discussion, for that is the only corrective of Government action in a democratic setup. If democracy means government of the people and by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential”.

In the classic case, which is referred to as the National Anthem case the Indian Supreme Court took the view that no person can be compelled to sing the National Anthem, if he has 'genuine conscientious objections based on his religious faith'. In this case three school students were expelled from a school owing to the refusal to sing the National Anthem in violation to a circular the Director of Public Instructions, Kerala. The students challenged the order of their expulsion before the High Court and failed, whereupon they appealed to the Supreme Court. The Supreme Court in that case held that there was no law under which their fundamental right under Article 19(1)(a) could be curtailed. The right under the article includes the freedom of silence. They did not commit any offence under the Prevention of

\[23\] Bijoe Emmanuel vs. State of Kerala, 1986 3 SCC 615.
Insults to National Honours Act, 1971 because they stood up respectfully when the National Anthem was being sung.

Therefore, in India the Constitution as well as the Courts have always acted as the champion of the cause of freedom of expression. The Courts while interpreting it to be inclusive of freedom of press and other forms of visual communication has liberally construed the provision. The Court while considering News Print Control Order, regulating the distribution of news print has held that the control order is not newsprint control; it is a camouflaged measure by the executive for newspaper control, as this policy abridges the rights of speech and expression of the petitioners.\(^2\)

The Court, however, refused to interfere in a case when the conditions of service of working journalists were asked to be rescinded as violative of the provision.\(^3\) However, in *P.T.I. vs. Union of India*\(^4\) it was held that the state can not impose a wage structure without regard to the paying capacity of the press and without considering whether the press can pay it or not. Therefore, every executive action in relation to press or newspapers is not an

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\(^{2}\) Bennet Colman and Co. vs. Union of India, AIR 1973 SC 106.

\(^{3}\) Express Newspaper Ltd. vs. Union of India, AIR 1958 SC 578.

\(^{4}\) AIR 1974 SC 1014.
encroachment of the freedom of speech or expression, violating the Constitutional provision.

"In the words of Justice Mathew, "Though freedom of expression is essential to a democratic society, it is not the sole aim of good society. As a private right of the individual, freedom of expression might be an end in itself... But it is not the only end of man as an individual. In its social and political aspects, freedom of expression is primarily a process or method for reaching other goals. It is a basic element in the democratic way of life and as a vital process; it shapes and determines ends of democratic society. But it is not through this process alone that a democracy will attain its ultimate end. Any theory of freedom of expression must therefore, take into account other values such as public order, justice and equality and the progress of the society as a whole and the need for substantive measure desired to promote those ideals. Hence there arises the problem of reconciling freedom of expression with other values and objective sought by a good society. Article 19(1) does not guarantee freedom of speech in absolute terms. Article 19(2) permits the State to impose reasonable restriction on the rights 'in the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in

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relation to contempt of Court, defamation or incitement to an offence”.

Freedom of speech and expression under the Indian Constitution has been based on the First Amendment of the U.S. Constitution which lays down. “Congress shall make no law ... abridging the freedom of speech or of the press”\(^{28}\). It is submitted that in substance it is not so. The freedom of speech in the First US Amendment is in absolute terms and the limitations on it have been evolved by the Courts, while freedom of speech under the Indian constitution is subject to limitations laid down in Article 19(2). The task before the Indian Court is not to evolve limitations but to find out whether a law imposing limitations fall within the framework of Article 19(2). The fact of the matter is that our Constitution has tried to resolve the dilemma between the absoluteness of freedom of speech and the curtailment of freedom in the interest of social security. The choice is not between order and liberty. It is between liberty with order and security without order.

The Indian Constitution does not incorporate the *laissez faire* notion of free speech as “market place ideas”. Nor does it subscribe to the U.S. Supreme Court doctrine of the “clear and present

\(^{28}\) Express Newspaper (Private) Ltd. Vs. vs. Union of India, AIR 1973 SC 1091.
danger. The first amendment of the Indian Constitution incorporated Justice Fazal Ali's view in Ramesh Thaper and Brij Bhusan by adding retrospectively public order in Article 19(2). In *K. Narayan vs. State*, the Court while considering the access of the so-called Maoist literature to security prisoners observed that though under Article 19(1)(a), freedom to acquire knowledge by reading books and periodicals or any other literature was included it would be reasonable restriction of this right if security prisoners were denied access to literature which incited them to violence and endangered the security of the State.

Under the Press Council Act 1969, the Press Council was established with a fairly wide jurisdiction so much so that it was empowered to take cognizance of the violation of the Freedom of Press by the State, or in a department or agency of State or Public authority, individuals or any person. It was empowered to take action against any newspaper which offended against the standards of journalistic ethics or if an editor or journalist committed any professional misconduct. It was required to comply with the requirements of natural justice. In the *Express Newspaper Case*, the

29 In Schenck vs. US (1918) 249 US 47, Holmes, J. formulated the doctrine thus: The question in every case is whether the used are of such a nature as to create a clear and present danger that they will bring about the substantive evil that Congress has a right to prevent. It is a question of proximity of danger.
31 AIR 1973, Kerala 97 F.B.
Supreme Court took the view that in today's world freedom of press is the heart of social and political intercourses. though in the interest of general public reasonable restrictions can be imposed. The Press Council is such a Statutory Body, which is entrusted with the authority to examine the reasonableness of such restrictions. The Indian Press Act of 1910 is directed against offences involving violence as well as sedition, which were enhanced by the Criminal Law Amendment Act, 1913 and by the Defence of India Regulations (DIR) which were promulgated on the outbreak of the First World War in 1914. But the launching of the civil disobedience movement, in 1931, for the attainment of Swaraj also necessitated the erstwhile administration to promulgate rigorous laws. After the independence of India, a lot of changes in the laws and the opinions of Courts have taken place.

The Courts in India have also progressively favoured freedom of expression of an individual. In Indira Jaisingh vs. Union of India[^1], focuses the depth of the right to know. The Doordarsan invited Indira Jaisingh to give her views to laws relating to women. While her views were recorded she was critical on Muslim Women Protection of Rights on Divorce Bill 1985. While her talk was telecast on Doordarsan, her views of the Bill were deleted. In a

petition before the Bombay High Court she averred that the censorship of her talk was violative of her rights under Article 19(1)(a). While admitting the right of editing by the media the Court said "the deletion was in effect by way of censorship by preventing circulation of petitioners view on the Bill the authorities had abridged her fundamental freedom of speech and expression.... Censorship or distortion of these views would violate Article 19. The Doordarsan authorities restricted the petitioners right under Article 19(1)(a) arbitrarily by executive fiat". We have two cases where the phrase 'speech and expression' as appearing in Article 19(1)(a) of the Constitution was interpreted. In *Usha Uthup vs. W.B.* the singer was not permitted by the state to perform "at the Theatre under the management and control of the state. Here, the Court held that the refusal by the state was violation of fundamental right under Article 19(1)(a) as the expression 'speech and expression' includes the right to sing. In *Maneka Gandhi vs. Union of India*, the Supreme Court held that the expression has a broad connotation and the right to print or dance or sign or write poetry or literature are covered by Article 19(1)(a).

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33 AIR 1984 Cal. 268.
34 AIR 1978 SC 597.
In *Govind vs. State of M.P.* the Supreme Court through Mathew J. held that assuming that the fundamental rights explicitly guarantees to a citizen to have penumbral zones and that the right to privacy is a fundamental right. Therefore, the right to privacy is also included within Article 19(1)(a), however, once a matter becomes of public importance the right to privacy ceases. Freedom of expression, therefore, incorporates both the right to receive and to express ideas and information and the secrecy of private communications. There are however, constraints imposed by law.

In *Rameswar vs. State* the Court considered the ban on holding of meeting on the day of election was held as a reasonable restriction though in *Kameswar Prasad vs. State of Bihar*, the Supreme Court was of the opinion that demonstration was a visible manifestation of the feelings of an individual or a group and was thus a mode of communication of ideas and in effect was a form of speech and expression. The Court in *Kameswar* took the view that a State cannot ban all types of demonstration as some are within the ambit of Article 19(1)(a).

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35 AIR 1975 SC 1378.
36 Mathew, K.K., Democracy, Equality and Freedom.
37 AIR 1957 Patna 252.
38 AIR 1962 SC 1166.
A person is not deprived of his fundamental right guaranteed by part III of the Constitution on account of his accepting a public office. The code of conduct evolved by the Union Government or the State Government does not contain statutory restrictions; but since the Code cannot be treated as law within the meaning of clauses 2 to 6 of Article 19, the restrictions contained therein cannot be enforced by the Court. Thus, the writ to prohibit the respondent as the chief minister from participating in the film 'Brahmarshi Biswamitra' on the ground that such act amount to corrupt practice of preaching religion or commercial intolerance or to electoral offence was dismissed.

(c) Analogous Provisions in other Constitutions

The Article corresponds to i) the First, Fifth and 14th Amendments of the Constitution of U.S.A.; ii) the common law of England subject to specified statutory laws: iii) Article 40(4) of the Constitution of Eire, 1937; iv) Section 19(1)(e),(f) and (g) of the Constitution of Sri Lanka 1972; v) Articles 50, 51, 54 of the Constitution of USSR, 1977; vi) Section 298 of the Government of India Act, 1935; vii) Article XXXI of the Constitution of Japan, 1946; viii) Article 2(2) of the Constitution of Germany. It also has a close


(d) Picketing, Demonstration and Strike

Within certain limits, picketing or demonstration may be regarded as the manifestation of one’s freedom of speech and expression. "Peaceful picketing is free speech. Non violent acts are like words, "Picketing or demonstration is a non-violent act of persuasion\(^41\).

As regards government servants, the judicial view appears to be that while banning demonstrations by them is not valid, a strike by them can be validly prohibited. A rule made by the Bihar Government prohibited government servants from participating in any demonstration or strike in connection with any matter pertaining to their conditions of service. The rule was challenged. The Supreme Court said that a government servant does not, by accepting government service, lose his Fundamental Rights under Article 19. A demonstration, held the Court, is a visible manifestation of the

\(^{41}\) Thornhill vs. Alabama, 310 US 88 (1940).
feelings or sentiments of an individual or a group. It is thus a communication of one’s ideas to others and is in effect a form of speech or expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech and expression. Accordingly, certain forms of demonstration would fall under Article 19(1)(a).

In the instant case, the government justified the rule as being in the interests of ‘public order’. Nevertheless, the Court declared the rule had as it banned every type of demonstration howsoever innocent, and did not confine itself to those forms of demonstrations only which might lead to a breach of public tranquility, or would fall under the other limiting criteria specified in Article 19(2). However, the rule was not held bad in so far as it prohibited a strike, for there was no Fundamental Right to resort to strike 42.

Again in O.K. Ghosh vs. E.X. Joseph 43 a disciplinary rule prohibited government servants from participating in any demonstration. The Court held the rule to be invalid. The Court emphasized that the rule could be valid if a imposed a reasonable restriction in the interests of public order. The Court did however

emphasize that government servants are subject to the rules of discipline which are interested to maintain discipline among them and to lead to the efficient discharge of their duties.

The above-stated principle has been reiterated by the Court in other cases as well. S.3 of the Essential Services Maintenance Ordinance, 1960, authorized the Central Government to prohibit any strike in any essential service in the public interest. Going on a prohibited strike became illegal and punishable with imprisonment. The provision was declared valid as it did not curtail freedom of speech and there was no Fundamental Right to go on a strike.

In a landmark decision in Bharat Kumar, a full Bench of the Kerala High Court has declared “Bandhs” organized by political parties from time to time as unconstitutional being violative of the Fundamental Rights of the people. The Court refused to accept it as exercise of the freedom of speech and expression by the concerned party calling for the bandhs. When a bandh is called, people are expected not to travel, not to carry on their trade, not to attend to their work. A threat is held out either expressly or impliedly that any attempt to go against the call for bandh may result in physical injury.

44 Radhey Shyam vs. P.M.G., Nagpur, AIR 1965 SC 311: (1964) 7 SCR 403.
A call for *bandh* is clearly different from a call for general strike or *hartal*. There is destruction of public property during a *bandh*. Accordingly, the High Court has directed that a call for a *bandh* by any association, organization or political party and enforcing of that call by it, is illegal and unconstitutional. The High Court has also directed the State and all its law enforcement agencies to do all that may be necessary to give effect to the Court order.

The Supreme Court has dismissed an appeal against the above-mentioned High Court decision. The Supreme Court refused to interfere with the High Court decision. The Court has accepted the distinction drawn by the High Court between a ‘*bandh*’ and a strike. A *bandh* interferes with the exercise of the Fundamental Freedoms of other citizens, in addition to causing national loss in many ways. The Fundamental Rights of the people as a whole cannot be regarded as subservient to a claim of Fundamental Right of an individual, or of a section of the people😀.

*In Ranchi Bar Association vs. State of Bihar*😀, following the Apex Court decision mentioned above, the Patna High Court has ruled that no party has a right to organize a *bandh* causing/compelling the people by force to stop them from exercising their lawful
activities. The government is duty bound to prevent unlawful activities like bandh which invades people's life, liberty and property. The government is bound to pay compensation to those who suffer loss of life, liberty or property as a result of a bandh because of the failure of the government to discharge its public duty to protect them.

(e) Freedom of Information

The expression '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 advertisement, movie, article, or speech, etc. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population a country, as well as abroad, as is possible to reach. The Supreme Court has given a broad dimension to Article 19(1)(a) by laying down the proposition that freedom of speech involves not only communication, but also receipt, of information. Communication and receipt of information are the two sides of the same coin. Right to know is a basic right of the citizens of a free country and Article 19(1)(a) protects this right. The right to receive information springs from the right to freedom of speech and expression enshrined in the Article.
The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression. Without adequate information a person cannot form an informed opinion.

In state of Utter Pradesh vs. Raj Narain, the Supreme Court has held that Article 19(1)(a) not only guarantees freedom of speech and expression, it also ensures and comprehends the right of the citizens to know, the right to receive information regarding matters of public concern. The Supreme Court has underlined the significance of the right to know in a democracy in these words:

"In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct there can be but few secrets. People of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one wary, when secrecy is claimed for transactions which can at any rate have no repercussion on public security.

To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.  

In *Secretary, Ministry of Information and Broadcasting, Government of India vs. Cricket Association of Bengal*, the Supreme Court reiterated the proposition that the freedom of speech and expression guaranteed by Article 19(1)(a) includes the right to acquire information and to disseminate the same. In *Dinesh Trivedi, M.P. & others vs. Union of India*, the Supreme Court dealt with the right to freedom information and observed:

"In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government, which have been elected by them, seek to formulate sound policies of the governance and aimed at their welfare. ... Democracy expects openness and openness is concomitant of a

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49 AIR 1995 SC 1236.

50 AIR 1995 SC 1236.
free society and the sunlight is a best disinfectant\textsuperscript{51}.

The Delhi High Court has sought to cleanse the electoral process through the mechanism of right to know of the people. The Delhi High Court has rule that from every candidate for election, the Election Commission shall secure for the voters the following information: i) whether the candidate is accused of any offence punishable with imprisonment; ii) assets possessed by the candidate, his or her spouse and dependent children; iii) facts denoting the candidate's competence and suitability for being Parliamentarian, this should include the candidates educational qualification; iv) Any other relevant information regarding candidates' competence to be a member of Parliament or state legislature.

It needs to be emphasized that through its pronouncement, the Delhi High Court is not seeking to impose any additional qualification over and above what the Constitution and the relevant law prescribed. What the Court is seeking is to achieve that the voter after knowing the background of the candidate will vote properly. As the Court has said, "... Since the future of the country depends upon the power of the ballot, the voters must be given an opportunity for making an informed decision". Exercise of the informed option to

\textsuperscript{51} 1997 (4) SCC 306.
vote in favour or against a candidate will strengthen the democracy in the country and root out the evil of corruption and criminality in politics.

The Supreme Court while considering the above ruling of the Delhi High Court in *Union of India vs. Association for Democratic Reforms*\(^2\) has emphasized that the right to receive information acquires great significance in the context of elections. The Court directed upholding the High Court judgement and substantially agreeing to the opinion of the High Court issued certain directions to the Election Commission requiring the candidates to file an affidavit detailing information about themselves under certain specific heads. This was done to control criminalization and politics. It is now common knowledge that there is criminalization of politics in India. It is a matter of great concern that anti-socials and criminals are seeking to enter the political arena through the mechanism of elections to state legislatures and even to Parliament. Parliament has not yet been able to enact a law to uproot the evil. People have a right to know about the candidates for whom they are being urged to vote. The right to know flows from Article 19(1)(a). Democracy cannot survive without free and fairly informed voters. The Court observed:

"... One-sided information, dis-information, mis-information and non-information will equally create an unformed citizenry, which makes democracy a farce ... Freedom of speech and expression includes right to impart and receive information, which includes freedom to hold opinions".

The common man may think twice before electing law breakers as law makers. Reiterating that law makers are public servants and, therefore, the people of the country have a right to know about every public act by public functionaries, including M.Ps. and M.L.As. who are public functionaries. Rejecting the argument that the voters do not have a right to know about the ‘private’ affairs of the public functionaries, the Court has observed that there are widespread allegations of corruption against persons holding post and power. In such a situation, "the question is not of knowing personal affairs but to have openness in the democracy for attempting to cure the cancerous growth of the corruption by a few rays of light".

It will be appreciated that the judiciary has used its craftsmanship to harness the right to information to achieve an extremely commendable social objective that of preventing criminalization of politics.

(f) Advertisement

How far are advertisements protected under Article 19(1)(a)? The Supreme Court has considered this question in *Hamdard Dawakhana vs. Union of India*[^54].

Parliament enacted an Act with a view to control advertisements of drugs in certain cases. The Act was challenged on the ground that restriction on advertisements was a direct abridgment of the freedom of expression. The Court ruled that the predominant object of the Act was not merely to curb advertisements offending against decency or morality, but also to prevent self-medication by prohibiting instruments which might be used to advocate or spread the evil. The Court stated that an advertisement, no doubt, is a form of speech, but its true character is to be determined by the object which it seeks to promote. It may amount to an expression of ideas and propagation of human thought and thus, would fall within the scope of Article 19(1)(a). But a commercial advertisement having an element of trade and commerce and promoting business has an element of trade and commerce, and it no longer falls within the concept of freedom of speech for its object is not to propagate any ideas – social, political or economic or to further literature or human thought.

[^54]: AIR 1960 SC 554; (1960) 2 SCR 671.
An advertisement promoting drugs and commodities, the sale of which is not in public interest, could not be regarded as propagating any idea and, as such, could not claim the protection of Article 19(1)(a).

An advertisement meant to further business falls within the concept of trade or commerce. A commercial advertisement advertising an individual’s business cannot be regarded as a part of freedom of speech.

But the Supreme Court has modified its view expressed in *Hamdard Dawakhana* somewhat in later cases. In *Sakal and Bennett Coleman*, the Supreme Court has dilated upon the great significance of advertisement revenue for the economy of newspapers. In *Indian Express Newspapers*, differing from *Hamdard Dawakhana* ruling, the Court has observed: “We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution merely because they are issued by business men”. Advertising pays large portion of the costs of supplying the public with newspapers. “For a democratic press the advertising “subsidy” is crucial”. With the curtailment in advertisements, the price of newspaper will be forced up and this will adversely affect its
circulation and this will be a direct interference with the right of freedom of speech and expression guaranteed under Article 19(1)(a).

Reading *Hamdard Dawakhana* and *Indian Express* together, the Supreme Court has concluded in *Tata Press*\(^{35}\) that "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 Article 19(1)(a). The public at large has a right to receive the "commercial speech". Article 19(1)(a) protects the rights of an individual "to listen, read and receive" the "commercial speech". The protection of Article 19(1)(a) is available both to the speaker as well as the recipient of the speech.

Advertising is a 'commercial speech' which has two facets:

(1) Advertising which is no more than a commercial transaction, nonetheless, disseminates information regarding the product advertised. Public at large stands benefited by the information made available through advertisement. In a democratic economy, free flow of commercial information is indispensable. Therefore, any curtailment of advertisement

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would affect the Fundamental Right under Article 19(1)(a) on the aspects of propagation, publication and circulation.

(2) The public at large has a right to receive commercial information. Article 19(1)(a) protects the right of an individual to listen, read and receive the said speech. The protection of Article 19(1)(a) is available to the speaker as well as the recipient of the speech.

(g) Freedom of the Press

Press is a very powerful institution of modern times. It is undoubtedly the greatest public educator. It has countless uses from spreading news and advertising commercial products and goods to reforming traditions and customs of a country. It has now become one of the very important necessities of modern social life. Democracy can thrive not only under the vigilant eye of its legislature, but also under the care and guidance of public opinion and the press is, par excellence, the vehicle through which opinions can be articulated. Freedom of press, in a democratic country keeps the government system of its toes and protects the citizens not only from any abuses of power by the government but also from economically or otherwise strong forces which might in any way oppress the comparatively weaker section of the society. Freedom of press is an institutional
freedom. It urges that the institution, represented by the newspaper must be free to express, the comment and to criticize. The late Prime Minister of India Pt. Jawaharlal Nehru who loved free press and free society told the All India Newspapers Editors conference that persons in authority should be subjected to criticism, to friendly criticism, to ceaseless criticism but criticism as strong as possible. He made the following significant observation on the freedom of the press:

"To my mind the freedom of the press is not just a slogan from the larger point of view, but it is an essential attribute of the democratic process. I have no doubt that even if the government dislikes the liberties taken by the press and considers them dangerous, it is wrong to interfere with the freedom of the press. By imposing restrictions you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them to spread further. Therefore, I would rather have a free completely free press with all the dangers involved in the wrong use of that freedom then a suppressed or regulated press."\(^{56}\)

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\(^{56}\) Extract from the speech of Pt. Nehru at the all India Newspapers Editors Conference, Dec. 3 1950.
The late Prime Minister of India, Pt. Nehru was justified in his view he had taken of the freedom of the press. It is true that a suppressed or a regulated press can never be expected to serve the cause of democracy. The right of the press to state argue and defame its case and to differ from and to criticize governmental measure has to be conceded. A subsidized or regulated press weakens the plant of democracy and retards the human progress. But if a ruling party has a democratic temper and wants to observe the rules of the game, it must not unnecessarily interfere with the liberty of the press by imposing unnecessary restrictions. Desirable restrictions do not violate the liberty of the press, but restrictions which are uncalled for killed the very spirit of that freedom. It is, there, in the fitness of things that the limits of restrictions should be well defined. In the absence of this doctrine of limited restrictions, the freedom of the press will always be in danger. The liberty of the press, therefore, has to be secured against legislative and executive ambition. The ambit of political liberty is narrowed down if the press is not free, but the press must know that its faults and errors have ceased to be private vagaries and have become public dangers. The primary responsibility of the press is to the public at large and not to the government of a country. The Indian Press Commission has also laid emphasis on the social
responsibility of the press. In this connection, the Commission has rightly observed:

"The right of free expression is derived from the responsibility for the common good, acceptance of that responsibility is the only basis for this right which has been accepted as fundamental. Freedom of the press does not mean freedom from responsibility for its exercise. Democratic freedom in India, and the freedom of the press, can have meaning only if this background is properly understood."\(^{57}\)

It is the primary duty of all the national Courts to uphold the freedom of the press and invalidate all laws and administrative actions which interfere with such freedoms against Constitutional mandate. In order to check the malpractices of intervening with the free flow of information, the democratic constitutions all over the World provided guarantee of freedom of Speech and expression underlying the circumstances under which reasonable restrictions can be imposed. The press seeks to advance public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgements. Articles and news are published in the press from time to time to expose the weaknesses of the government. This

leads at times to the suppression of the freedom of the press by the government. In the U.S.A. the first amendment, mentioned above specially protects a free press. The view developed by the USA Supreme Court is that freedom of the Press includes more than merely serving as a “neutral form of debate. The prime purpose of the free press guarantee is regarded as creating a fourth institution outside the government as an additional check on three official branches—executive, legislative and the judiciary. It is the primary function of the press to provide comprehensive and objective information on all aspects of the country’s social, economic and political life. The press serves as a powerful antidote to any abuse of power by government officials and as a means for keeping the elected officials responsible to the people whom they were elected to serve. The democratic credentials of a State as judged today by the extent of the freedom of press enjoys in that State. Justice Dougals, of the USA Supreme Court has observed that, “acceptance by governments of a dissident press is a measure of the maturity of the nation”[^58]. Suppression of the right of the press to praise or criticize government agents and to clamour and content for or against change violates the first amendment by restraining one of the vary agencies the framers of the

USA Constitution selected to improve the American society and to keep it free. The freedom of speech and of the press is protected only from direct government encroachment but also from more subtle government interference. The USA Supreme Court has emphasized that it has power to nullify "action which encroaches on freedom of utterance under the guise punishing libel"\textsuperscript{59}.

The Indian Constitution does not use the expression "freedom of press" in Article 19 but it is included in one of the guarantees in Article 19(1)(a), Justice Venkatramiah in \textit{Indian Express Newspaper vs. Union of India}\textsuperscript{60} observed that the freedom of press is one of the items around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal Constitution prevails. The effect of Article 19 on the freedom of press was analysed by the Apex Court in \textit{Express Newspaper vs. Union of India}\textsuperscript{61} where two earlier decisions of the Court in \textit{Ramesh Thapar vs. State of Madras}\textsuperscript{62} and \textit{Brij Bhusan vs. State of Delhi}\textsuperscript{63} were also considered. The Court while interpreting the scope of Article 19(1)(a) of the Constitution held that freedom of speech and expression includes freedom of propagation of ideas which freedom was ensured

\textsuperscript{60} AIR, 1986 SC, 515.
\textsuperscript{61} AIR, 1958 SC 578.
\textsuperscript{62} AIR 1950 SC 124.
\textsuperscript{63} AIR 1950 SC 129.
by the freedom of circulation and that the liberty of press consisted in allowing no previous restraint upon the publication. It was further observed that the fundamental freedom of speech and expression enshrined in our Constitution was based on the provisions to the first amendment of the Constitution of the USA. Thus press freedom consist in the right of the citizen who keeps a printing press, or in his right of an editor or a publisher to maintain the press, employ the suitable staff of working journalists, adopt and propagate a policy, disseminate information, and in absence of restraint on publication of views, ideas and opinion. It includes the freedom of publication of ideas of the newspapermen, and opinion and comments of its readers. Publication means and includes dissemination and circulation. The definition given by Blackstone is rather restrictive. He said: "the liberty of the press consist in laying no previous restraint upon, publication, and not in freedom from censure for criminal matters when published. Every freemen has an unbounded right to lay what sentiments he pleases before the public, to forbid this is to destroy the freedom of the press"64. The freedom of a newspaper to publish any number of pages in its issues, any number of copies, and to price them with an eye on volume of circulation to any increased number of readers is accepted. Freedom of press has, subsequently been held to

connote an optimum volume of circulation of any number of pages printed in an issue of a newspaper or periodical, and discretion to fix its price considering the cost of its production, its advertisement revenue, and its general financial condition and economically feasibility. In the above case the policy of improving the financial position of the smaller newspapers, and putting restraint on monopolistic trends in the newspaper industries, and with a view to give effect to certain recommendations of the press commission, the government initiated appropriate legislation. Parliament passed it, and there under it authorize the government to frame rules and orders to carry out the said legislative policy, making any breach of the statutory instruments punishable. Accordingly, the government issued the newspapers (price and page schedule) Order..., whereby, it formulated a basis for page: price ratio. The price page schedule acted as a double edged knife. It cut circulation by a price rise, and curtails publication and disseminations of news, ideas and knowledge by restricting column space consequent of decrease in the number of pages.

_Bennet Colman and Co. vs. Union of India_ is a case of great significance in the area of freedom of speech and expression.

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66 AIR 1973 SC 106.
This case arose at a time when India faced a shortage of indigenous newsprint and hence, newsprint has to be imported from foreign countries. Because of the shortage of the foreign exchange, quantity of newsprint imported was not adequate to meet all requirements. Some restrictions, therefore, became necessary on the consumption of newsprint. Accordingly, a system of newsprint quota for newspapers was evolved. The actual consumption of newsprint by a newspaper during the year 1970-71 or 1971-72, which ever was less, was taken as the base. For dailies with a circulation up to 1 lakh copies, ten per cent increase in the basic entitlement was to be granted, but for newspapers with a larger circulation, the increase was to be only 3 per cent. Newspapers with less than ten pages daily could raise number of pages by 20% subject to the ceiling of 10. A few more restrictions were imposed on the user of the newsprint. This newsprint policy was challenged in the Supreme Court. By a majority, the Supreme Court declared the policy unconstitutional. While the government could evolve a policy of allotting newsprint on a fair and equitable basis, keeping in view of the interests of small, medium and big newspapers, the government could not, in the garb of regulating distribution of newsprint, control the growth and circulation of newspaper. In effect, here the newsprint policy became the newspaper control policy. While newsprint quota
could be fixed on reasonable basis, post quota restriction could not be imposed. The newspapers should be left free to determine their pages, circulation and new editions within their fixed quota. The policy of limiting all papers whether small or large, in English or an Indian language, to ten pages was held to be discriminatory as it treated unequal as equals. The restrictions imposed cut at the very root of the guaranteed freedom. The Court stated:

"The effect and consequences of the impugned policy upon the newspapers is directly controlling the growth and circulation of newspapers. The direct effect is the restrictions upon the circulation of papers. The direct effect is upon growth of newspaper through pages. The direct effect is that newspapers are deprived of their of advertisement. The direct effect is that they are exposed to financial loss. The direct effect is that freedom of speech and expression is infringed"\(^67\).

In the above ruling the Court maintained that the freedom of the press embodies the right to people to speak and express. The freedom of speech and expression is not only in the volume of circulation but also in the volume of news and views. The press has

\(^{67}\) AIR 1973 SC 106 (120-1).
the right of free publication and their circulation without any obvious restraint on publication. In the words of the Court:

"Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content"\textsuperscript{68}.

The Court further stated through Justice Mathew observed that:

"With the concentration of mass media in a few hands, the chance of an idea antagonistic to the idea of proprietors of the big newspapers getting access to the market has become very remote.... There can be no doubt that any mass medium having the greatest circulation will influence the political life of the country because the ideal for which the paper stands has got the greatest chance of getting itself known to the public. It will also affect the economic pattern of the society"\textsuperscript{69}.

The learned judge further referred to the following observations of the Mahalanobis Committee on distribution of income and levels of living.

".... of these, newspapers are the most important and constitute a powerful ancillary to sect oral and group interests. It is not,

\textsuperscript{68} AIR 1973 SC 106 (130).
\textsuperscript{69} (1972) 2 SCC 788.
therefore, a matter of surprise that there is so much interlinking between newspapers and big business in the country, with newspapers controlled to a substantial extent by selected industrial houses directly through ownership or through membership of their Board of Directors.... In a study of concentration of economic power in India, one must take into account this link between industry and newspaper which exists in our country to a much larger extent then is found in any of the other democratic countries in the world”.

The Judge further quoted:

“The mass media’s development of an antipathy to ideas antagonistic to their novel or unpopular ideas, unorthodox points of view which have no claim for expression in their papers makes the theory of market place of ideas through unrealistic....what is therefore required in an interpretation of Article 19(1)(a) which focuses on the idea that restraining the hand of the government is quite useless in assuring free speech, if a restraint on access is effectively secured by private groups”70.

70 Ibid., p.135.
The phrase "freedom of the press" must now cover two sets of rights and not one only. With the right of editors and publishers to express themselves, there must be associated a right of the public to be served with substantial and honest basis of facts for its judgement of public affairs. Of these two, it is the latter which today tends to take precedence and importance. The freedom of the press has to change its point of focus from the editor to the citizen"71.

The imposition of customs and auxiliary duties on news prints imported by different categories of newspapers was challenged by several newspapers. The Supreme Court while considering these accepted the plea taken by the newspapers that it has a direct effect of crippling of freedom of speech and expression and the carrying on the business of publishing newspapers as it had led to an increase in the price structure resulting in reduction of the circulation. The Court observed:

"What may, however, have to be observed in levying a tax on newspaper industry is that which should not be an overburden on newspapers which constitute the Fourth Estate of the country. Nor should it single out newspaper industry for harsh treatment. A wise administrator should realize that the

imposition of a tax like the custom duty on newsprint is an imposition on knowledge and would virtually amount to a burden on a man for being literate.

The fundamental principle involved was the "peoples' right to know". Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration. The Court noted that with a view to checking malpractices interfering with the free flow of information, democratic constitutions the world over make provisions guaranteeing freedom of speech and expression and laying down the limits of interference therewith. It is therefore, the primary duty of all national force to uphold this freedom and invalidate all laws or administrative actions which interfere with this freedom contrary to the constitutional mandate. The Court pointed out that the imposition of custom duty on newsprint amount to an imposition of tax on knowledge and virtually amounts to a burden imposed on a man for being literate and for being conscious of his duty as a citizen to inform himself of the world around him. It is on account of the special interest which society has in the freedom of speech and expression that the approach of the Government must be more cautious while levying taxes on matters.

72 Indian Express Newspaper (Bombay) Pvt. Ltd. Vs. Union of India, AIR 1986 SC 515 (539).
concerning newspaper industry than while levying taxes on other matters.

The Court directed the Government to consider within six months the entire question of levy of import duty or auxiliary duty on news print with effect from March 1981, if on such reconsideration, the government decided to modify the levy of the duty, it should take necessary steps to that end. Quashing the impugned notification would have led to the petitioners’ paying much higher duty and the result would have been disastrous to them. The Court further emphasized that it did not wish the Government to be deprived of the legitimate duty which the petitioners would have to pay on the imported newsprints. The Court thus rejected the plea of the petitioners that no duty could be levied on the newspaper industry. Having regard to the facilities like telephone, postal, tele-printers, transport and other communication amenities provided by the State at considerable cost to itself, the newspapers “have to bear the common fiscal burden like the others”. However, such a levy was “subject to review by Courts in the light of the provisions of the Constitution”.

The Court has to reconcile the social interests involved in the freedom of speech and expression with the public interest involved in the fiscal levies imposed by the Government, especially because
newsprint constitutes the body, if expression happens to be the soul. The importance of the freedom of press in democratic society, the Court has stated that in to-day's free world, freedom of press is the heart of social and political intercourse. The purpose of the press is to advance the public interest by publishing the facts and opinions without which a democratic electorate cannot make responsible judgements. With a view to checking malpractices interfering with the free flow of information democratic constitutions all the world over make provisions guaranteeing the freedom of speech and expression and laying down limits of interference with it.

The newspapers reporters can interview the prisoners condemned to death if they are willing to be interviewed. Unless, in a given case there are weighty reasons for denying the opportunity to condemn prisoner, the right of the press to interview the prisoners should not be denied. The reasons for denying the interview should be recorded in writing. In this case the President had declined to commute the death sentence to life imprisonment; the convicted prisoners were willing to be interviewed. Accordingly, the Court ruled that the denial of right to the petitioner press reporters to interview to these condemned prisoners, in the absence of any weighty considerations was not justified. In another case, i.e. *M. Hassan vs.*

State of Andhra Pradesh\textsuperscript{74}, the Andhra Pradesh High Court has held that the denial of permission to a press reporter to interview a willing condemned prisoner on a ground not falling within Article 19(2) is not valid. The Court said:

"Any such denial is deprivation of citizen's fundamental right of freedom of speech and expression".

So conviction not wholly denuded of their fundamental rights. During the course of a trial of a suit for damages, the judge ordered that the evidence of a witness should not be published in the newspaper. The Supreme Court rejected the plea that the order infringed the fundamental right of a press reporter under Article 19(1)(a). In the case of Naresh Mirajkar vs. State of Maharashtra\textsuperscript{75}, the Court observed that, as a judicial decision purports to decide the controversy between the parties before the Court and nothing more, a judicial verdict pronounced by a Court in relation to a matter brought before it for its decision would not affect the right of citizen of Article 19(1). The press is immune from taxation or general labour laws or civil or criminal assault, kidnapping, abduction or a like offence should not be published in the press. The right of privacy of public servants, however, stands on different footing. In a free democratic

\textsuperscript{74} AIR 1998 AP. 35.
\textsuperscript{75} AIR 1967 SC 1.
society public officials must always be open to criticism. The Court accordingly held that the petitioners were entitled to publish the autobiography of Auto Shanker as it appeared from the public records. The Supreme Court has ruled that neither the State nor its officers have any authority in law to impose any prior restraint on publication of any material in the press on the ground that it is defamatory of the State or its officers.

(h) Film Censorship

The first case, i.e. *KA. Abbas vs. Union of India*,\(^7\) in which the question regarding prior censorship of films is included in Article 19(2) came for the consideration of the Supreme Court of India. The petitioner had challenged the validity of censorship as violative of his fundamental right of freedom of speech and expression as according to him it imposed unreasonable restrictions. Under the Cinematograph Act, 1952 films are divided into two categories, i.e. "U" films and "A" films. "U" films are meant for unrestricted exhibition while "A" films can be shown to adults only. The petitioners films "Tale of Four Cities" was refused "U" certificate. He also contended that there were other forms of speech and expression besides the films and none of them were subjected to any

\(^7\) AIR 1971 SC 481.
prior restraint in the form of pre-censorship and claimed equality of treatment with such other forms. The Court, however, held that pre-censorship of films was justified under Article 19(2) on the ground that films have to be so 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. Hence classification of films between two categories, i.e., within “A” (for adults only) and “U” (for all) was held to be valid. In Bobby Art International vs. Om Pal Singh Hoon popularly known as “Bandit Queen case”. The film was presented for certification to the Censor Board. The examining committee of the Censor Board referred it to the revision committee recommended that the film be granted an “A” certificate for (adults only) subject to certain modification and cuts. Aggrieved by the decision of the revision committee an appeal was filed before the Appellate Tribunal. The Tribunal consisted of a Chairman and three other members who were ladies. The Tribunal granted the film an “A” certificate. The respondent then, filed the writ petition in the Delhi High Court seeking to quash the certificate granted to the film and restraint its execution in India. He contended that though the audiences were led to believe that the film depicted the character of “a former queen of ravines” also known as Phulan Devi, the depiction

77 1996 4 SCC 1.
was “abhorrent and unconscionable and a slur on the womanhood of India”. The respondents and his community had been depicted in a most depraved way specially in the scene of rape by Babu Gujjar, which scene was “suggestive of the moral depravity of the Gujjar community”. The scene of rape was obscene and a slur on the face of the Gujjar community. The High Court held that the film was obscene and quashed the order of the Tribunal. The Supreme Court allowing the appeal held that the certificate issued to the film Bandit Queen upon conditions imposed by the Appellate Tribunal is valid and, is therefore, restored. The Court held that the film must be “judged in its entirety form the point of view of its overall impact”. The story of the film is a serious and sad story of a village born female child becoming a dreaded dacoit. The film levels an accusing finger at the members of society who compelled her to become a dreaded dacoit. The scene where she is humiliated strived, naked, paraded, made to draw water from the well within the circle of hundreds men, the exposure of her breasts and genitals to those men is intended by those who strip her to demean her to try. This does not arose the cinema goer’s lust but to arise in him sympathy for the victim and disgust for the perpetrators. Nakedness does not always arise the baser instinct. “Bandit Queen tells a powerful human story and to that story the scenes of Phulan Devi enforced naked parade is central. It helps to
explain why Phulan Devi became what she did, her rape and vendetta against the society that had heaped indignities upon her. The rape scene also helps to explain why Phulan Devi becomes what she did. It shows that a terrible and terrifying effect rape and lust can have upon the victim. A film that illustrates the consequences of a social evil necessarily must show that social evil. The guidelines in the Cinematograph Act must be interpreted in that light. A film that carries the message that social evil is evil cannot be impermissible on the ground that it depicts the social evil. The Tribunal is a multi member body. It consists of a person who gauges public reactions and except in cases of stark breach of guidelines, should be permitted to about its task. In the present case, apart from the Chairman, three members of the Tribunal were women. It is hardly to be supposed that three women would permit a film to be screened which denigrates women, insults Indian womanhood, or is obscene or phonographic. Instead, the Tribunal took the view that it would do women some good to see the film. The Tribunal had viewed the film in its true perspective and had in compliance with the requirement, of the guidelines granted to the film an “A” certificate. The High Court ought not to have entertained the respondent’s petition challenging the grant of certificate to the film. The Supreme Court, accordingly, set
aside the judgement of the High Court and restored the order of the Appellate Tribunal.

Article 19 of the Universal Declaration of Human Rights, 1948, declares the freedom of press and so does Article 19 of the International Covenant on Civil and Political Rights, 1966, Article 10 of the European Convention and Human Rights, provides that (1) every one has the right to freedom of expression. This right shall include freedom to hold opinion and to receive and impart information and ideas without interference by a public authority and regardless of the frontiers. This Article shall not prevent states from the requiring the licensing of broadcasting, television and cinema enterprise. (2) the exercise of these freedoms, since it carries with it duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by the law and are necessary in a democratic society, in the interest of the national security, territorial integrity or public safety, for the prevention of the disorder or crime, for the protection of health and morals, for the protection of reputation or rights of the others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.
(i) Right to Privacy

The right to privacy as an independent and distinctive concept originated in the field of law of tort under which a new cause of action for damages resulting from unlawful invasion of privacy was recognized. This right has two faces which are but two faces of the same coin: (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful government invasion. In recent times, however, this right has acquired a constitutional status. A more elaborate appraisal of this right to privacy took place in a later decision in Govind vs. State of M.P.⁷⁸, wherein Justice Mathew speaking for himself, Krishna Iyer and Goswami JJ., traced the origins of the right and also pointed out how the said right has been dealt with by the United States Supreme Court in two of its well known decision in Griswold vs. Connecticut⁷⁹ and Roe vs. Wade⁸⁰. The Judges after taking a clue from the Kharak Singh⁸¹ and the aforesaid American decisions stated the law in the following words:

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⁷⁸ AIR 1975, SC. 1378.
⁸¹ AIR, 1963 SC 1295.
".... Privacy – dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to the superior. If the Courts find that a claimed right is entitled to protection as fundamental privacy right, a law infringing it must satisfy the compelling state interest……隐私 primarily concerns the individuals. It therefore, relates to an overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values”.

Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and the child bearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right to privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty.

The European convention of Human Rights, which came into force in the year 1953, represents a valiant attempt to tackle the new problem. Article 8 of the Convention provides that: (1) every one
has the right to respect for his private and family life, his home, and his correspondence. (2) there shall be no interference by a public authority with exercise of that right except such as is in accordance with the law and is necessary in a democratic society in the interest of the national security, public safety or the economic wellbeing of the country, for the prevention of the disorder or crime, for the protection of the health and morals or for the protection of rights and freedom of others.

(j) Broadcasting and Telecasting

Telecasting is a system of communication either audio or visual or both. Organization of an event in India is an aspect of the freedom of speech and expression protected by Article 19(1)(a). It is therefore follows that organization production, and recording of an event cannot be prevented except by a law permitted by Article 19(2). Similarly publication or communication of the recorded event through the cassettes cannot be restricted or prevented except under a law made under Article 19(2). The freedom to receive and communicate information and ideas without interference is an important aspect of the freedom of speech and expression. Freedom of speech includes the right to propagate ones views through print media or through any other communication channel i.e. radio and television. The right to
impart and receive information is a species of freedom of speech. No monopoly of electronic media is permissible as Article 19(2) does not permit state.

Unlike the print media, there are certain built-in limitations on the use of electronic media, viz: (i) the airwaves or frequencies are a public property and they have to be used for the benefit of the society at large; (ii) the frequencies are limited; (iii) the airwaves are owned or controlled by the Government or a central national authority; (iv) they are not available on account of the scarcity, costs and competition.

Broadcasting is a means of communication, and, therefore, a medium of speech and expression. Hence, in a democratic society, neither any private body nor any governmental organization can claim any monopoly over it. The Indian Constitution also forbids monopoly either in the print or electronic media. The Constitution only permits state monopoly in respect of a trade or business. The Government can however claim regulatory powers over broadcasting so as to utilize the public resources in the form of the limited frequencies available for the benefit of the society at large and to prevent concentration of the frequencies in the hands of the rich few

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82 Art. 19(6).
who can then monopolise the dissemination of views and information to suit their interests. In democratic countries, this regulatory function is discharged by an independent autonomous broadcasting authority which is representative of all sections of the society and is free from state control.

The right to freedom of speech and expression includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The right to telecast a sporting event therefore includes the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of five sportsmen interested in the particular game and also to inform and entertain the lovers of the game. The right to information and right to acquire knowledge about the game of cricket through electronic media is a right guaranteed under Article 19(1)(a).

(k) Freedom of Silence – Right not to Speak

In *Bijoe Emmanuel vs. State of Kerala*[^83], the Supreme Court held that no person could be compelled to sing National Anthem “if he has genuine conscientious objections based on his religions belief”. In this case three children belonging to Jehovah’s Witnesses,

[^83]: AIR 1987 SC 748.
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; sing it. The Kerala High Court upheld their expulsion from the school on the ground that it was their fundamental duty to sing the National Anthem and that they committed an offence under the Prevention of Insults to National Honours Act, 1971. The Supreme Court, however, reversed the decision of the High Court and observed that they did not commit any offence. It was held that the expulsion of the children from the school was a violation of their fundamental right under Article 19(1)(a) which also included freedom of silence.

(I) Importance of Freedom of Speech

Freedom of speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties.\(^{84}\)

In a democracy, freedom of speech and expression opens up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters.

In *Maneka Gandhi vs. Union of India*\(^{85}\), Bhagwati, J. has emphasized on the significance of the freedom of speech and expression in these words:

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

In 1927, in *Whitney vs. California*\(^{86}\), Louis Brandeis, J. made a classic statement on the freedom of speech in the context of the U.S. Constitution:

\(^{86}\) 247 US 214.
"Those who won our independence believed that the final end of the state was to make men free to develop their faculties. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth, that without free speech and assembly discussion would be futile... that public discussion is a political duty; and that this should be a fundamental principle of the American government”.

In Maneka Gandhi vs. Union of India\textsuperscript{87}, the Supreme Court laid down that the freedom of speech and expression under Article 19(1)(a) had no geographical limitations. The freedom carried with it, the right to gather information as also to speak and express oneself, at home and abroad and to exchange thoughts and ideas with others, not only in India but also outside. Article 19 only applies to citizens of India. A non-citizen cannot claim fundamental right under Article 19 but he can claim right under Articles 20 to 22. A foreigner has no right to reside and settle in India under Article 19(1)(c). The fundamental right of the foreigner is confined to Article 21 for life and liberty.

\textsuperscript{87} AIR 1978 SC 597.