CHAPTER-3
CONSTITUTIONAL PROVISIONS AND THE RIGHT TO INFORMATION

Today is the age of information. Everybody is striving to have more and more information. Since information is power, everyone is fighting with the other to grab more of it. Those who are information rich dominate and those who are information-starved lag behind. Information has become the buzzword, seeking information; having an access to the source of information and getting information are becoming the aspiration of each and everybody in the society. To ensure the availability and accessibility of information to each and everybody, we need a right. The importance of this right is acknowledged in the entire world over.¹

Indian Constitution & Democracy

India has a democratic Constitution, which is one of the most unique constitutions in the world. The strength of our Constitution is its basic features, which can never be changed. The Fundamental Rights are one such feature that prescribes citizens their natural rights as also the judicial remedy in case of any violation by the State. The Right to Information derives from the democratic framework established by the Constitution and rests on the basic premise that since Government is ‘of the people and for the people’ it should be open and accountable and should have nothing to conceal from the people it purports to represent. The right to impart and receive information is species of the right to freedom of speech and expression guaranteed by article 19(1) of the constitution of India. The state is not only under an obligation to respect the Fundamental Rights of the citizens but also equally under an obligation to ensure conditions under

Democratic society survives by accepting new ideas, experimenting with them, and rejecting them if found unimportant. Therefore it is necessary that whatever ideas the Government or its other members hold must be freely put before the public. The free flow of information is must for a democratic society in particular because it helps the society to grow and flourish. It is now recognized that the right to information is vital to democracy for ensuring transparency and accountability in governance. It therefore ensures that governance is more participatory being a vital component of successful democracy. In our modern world, we just cannot imagine a true democracy where the citizens are deprived of information that is vital for their decision-making in matters relating to themselves and the common good of their societies.

In Secretary, Ministry of Information and Broadcasting, Govt. of India vs Cricket Association of Bengal, the Supreme Court has observed:

“The democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which make democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic..."
organizations. This is particularly so, in a country like ours where about 65 per cent of the population is illiterate and hardly 1 per cent of the population has an access to the print media which is not subject to pre-censorship.6

As our Constitution states we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its creedral faith, it is elementary that the citizens ought to know what their Government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of Government. It is only if people know how Government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy. “Knowledge” said James Madison7,

“Will forever govern ignorance and people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it is but a prologue to a farce or tragedy or perhaps both”.

The citizen’s right to know the facts, the true facts, about the administration of the country is thus one of three pillars of the democratic State. And that is why the demand for openness in the Government is increasingly growing in different parts of the world.8

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6 Vinod Joseph, Right to information on a broad canavas’, Indian law journal of public administration. Vol.11, April-June, 2001,p.47
7 Letter from James Madison to W.T Barry, 4 August, 1822 in 9 writings of James Madison (G. Hurst ed) 1910, p.103
Democracy and Voters Right to Information

The three pillars on which the edifice of democracy stands are fair and free elections, freedom of thought, expression and the press and independence of the Judiciary. Elections laws are called the ‘Ganges’ of our political system because politics and political system have their roots in the election but this requires cleaning of all sorts of evils which have crept into it, otherwise the political system would also be gradually polluted9. In *Indira Nehru Gandhi vs Raj Narain*10, the court has observed that:

“Decisions in election disputes may be made by the legislature itself or may be made by courts or tribunals on behalf of the legislature or may be made by courts and tribunals on their own exercising judicial functions. The concept of free and fair election is worked out by the Representation of the People Act. The Act provides a definition of "corrupt practice" for the guidance of the court. In making the law the legislature acts on the concept of free and fair election. In any legislation relating to the validity of elections the concept of free and fair elections is an important consideration. In the process of election the concept of free and fair election is worked out by formulating the principles of franchise, and the free exercise of franchise. In cases of disputes as to election, the concept of free and fair election means that disputes are fairly and justly decided. Electoral offences are statutory ones. It is not possible to hold that the concept of free and fair election is a basic structure, as contended for by the respondent. Some people may advocate universal franchise. Some people may advocate proportional representation. Some people may advocate educational qualifications for voters. Some people may advocate property qualifications for voters. Instances can be multiplied on divergence of views in regard to qualifications for voters, qualifications of members, forms of corrupt practices. That is why there is law relating to and regulating election”.

9 Mrs. Viba Tripathi, ‘Voter’s Right to Information’ (Lecturer, Faculty of Law, Banaras Hindu University), Varanasi, AIR 2003, Journal Section, p.346.

10 AIR 1975 SC 2299
The Representation of Peoples Act, 1950 declares voter’s right to know the antecedents of a candidate. A candidate contesting an election is required to furnish an affidavit along with his nomination paper, the information relating to accusation of any offence punishable with two or more years of imprisonment including the framing of charges in pending cases, conviction of an offence and sentence of one or more than one year imprisonment, declaration of his financial assets. This information is to be made available to the voters and other members of the public. The impact of the above provision was diluted, when section 33-B added a non-obstinate clause to provide that “notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any instruction issued by the Election Commissioner, no candidate shall be liable to disclose or furnish any such information which is not required to be disclosed under this Act or the rules made there under.

Considering some judgments the Supreme Court observed in Union of India vs. Association for Democratic Reforms that:

“If the right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Art. 19(1)(a) why the right of citizen/vote to know about the antecedent of his candidate cannot be held to be a fundamental right under Art 19(1)(a). Freedom of speech and expression includes right to impart and receive information, which includes freedom to hold opinion. Entertainment is implied in freedom of "speech and expression” and there is no reason

11 Sec 33(B) reads as under: Candidates to furnish information only under the act and the Rules: “Notwithstanding anything contained in any judgment, decree or order of any Court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under”.

12 S. 33-B was added by Representation of Peoples Act (Third Amendment Act) of 2002

13 In Secretary, Ministry of Information and Broadcasting, Govt. of India Vs Cricket Assn. of Bengal (1995) SCC 161, State of U.P. Vs. Raj Narain(1975) 4 SCC 428, AIR 124 already quoted at pages 3,13 and 12 respectively of the present chapter.
to hold that freedom of speech and expression would not cover right to get material information with regard to the candidate who is contesting election for a post which is of utmost importance in the democracy". 

It was further observed that:

"Information is a many splendored virtue. It is the key to power, fortune, science and technology and even steadfast democracy. Its potential when channelized is capable of banishing ignorance, poverty, hunger and want. It plays significant role in every walk and sphere of life, including the field of politics and democracy. It can transform democratic institutions and the governance of the country."

In Mohinder Singh Gill vs. Union of India the Supreme Court observed that “Decision making power of a voter includes his right to know about public functionaries, who are required to be elected by him.”

In Common cause (A Registered Society) v. UOI about the election expenses incurred by political parties it was argued that:

“Elections of India are fought with money people, so the people should know the sources of expenditure incurred by the Political parties and the candidates in the process of election. Supreme Court emphasized that to maintain purity of elections and in particular to bring transparency, there is a need for an affidavit by an election candidate to disclose the assets held by him, at the time of election. The voter has a basic elementary right to know full particulars of a candidate who is to represent him in the Parliament, where laws to bind his liberty and property may be enacted”.

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16 (1978) 1 SCC 405.
17 (1996) 2 SCC 752 at p.802.
However, in *People’s Union for Civil Liberties v. Union of India*\(^\text{18}\), the Supreme Court stated that the right to information should be allowed to grow rather than being frozen and stagnated. It was observed that:

“The width and amplitude of the right to information about the candidates contesting elections to the Parliament or State Legislature in the context of the citizen's right to vote broadly falls for consideration in these writ petitions under Article 32 of the Constitution. While it is respectfully agreed with the conclusion that Section 33(B) of the Representation of the People Act, 1951 does not pass the test of constitutionality, there is a limited area of disagreement on certain aspects, especially pertaining to the extent of disclosures that could be insisted upon by the Court in the light of legislation on the subject”.

Section 33-B\(^\text{19}\) of the Representation of Peoples Act, 1951 was struck down by a 3 judge's bench of the Supreme Court, when it declared that the provision was beyond the legislative competence among other grounds.\(^\text{20}\)

In *Union of India v. Association for Democratic Reforms*,\(^\text{21}\) the Supreme Court considered the issue that how to stop criminalization of politics. The Court affirmed the principle of empowering the common man. The petition challenged the constitutional validity of Amendments to Representation of Peoples Act invalidating the Supreme Court’s May 2, 2002 judgment. It was held that the people of the country have a right to know about every public functionary. Members of Parliaments or Members

\(^{18}\) (2000) 4 SCC 399 at P. 467.

\(^{19}\) See 33(B) reads as under: Candidates to furnish information only under the act and the Rules: “Notwithstanding anything continued in any judgment, decrees or order of any Court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under”.


of Legislative assemblies are undoubtedly public functionaries. Public education is essential for functioning of the process of popular Government and to assist the people in the discovery of truth and strengthen capacity in participating in the decision-making process. It would include under Article 19 (1)(a), their right to know about criminal records, assets, liabilities and educational qualifications of the candidates who are required to be elected by them. The Court ordered the Election Commission to publish information.

In Gadakh Yashwantrao Kankarrao, the Supreme Court held that the best available men should be chosen as people's representatives for proper governance of the country. The court observed that:

"For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates".

**Constitutional provisions relating to Right to Information**

The Indian Constitution guarantees freedom of speech and expression under article 19(1). The core issue of right to freedom of information lies in, People’s participation in governance, Government accountability to the public and transparency in Government. This right is though not directly related to a number of Constitutional provisions, but is related to them in more than one ways.

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(i) **Our Preamble provides**

We, the people of India, having solemnly resolved to constitute India into a sovereign socialist, secular, democratic, republic and to secure to all its citizens: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

A perusal of the Preamble itself shows that the people of India are actually the Governing body of the nation who inter-alia also have the right to ensure the equality of status and of opportunity. This aim can only be achieved if maximum possible information of the Government is readily available for inspection for general public at large.

(ii) **Equality before law**

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. All persons have the right to equal access to education and information to ensure their health and well-being, including access to information, advice and services relating to their sexual and reproductive health and other rights irrespective of race, color, poverty, sex, sexual orientation, marital status, family position, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

(iii) **Protection of life and Personal liberty**

No person shall be deprived of his life or personal liberty except according to procedure established by law. The linkage between the right to life and liberty, guaranteed by Article 21 of the Constitution, and the right to know was clearly affirmed in *Reliance Petrochemicals Ltd. v.*

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23 Article 14 of the Constitution of India.
24 Article 21 of the Constitution of India.
Proprietors of Indian Express Newspapers Bombay Pvt. Ltd, 25 by Justice Mukharji, who stated that:

"We must remember that the people at large have a right to know in order to take part in a participatory development in the industrial life and democracy. Right to know is a basic right to which citizens of a country aspire under Article 21 of our Constitution."

The right to access official information was further developed in \textit{State of U.P v. Raj Narain}, 26 where the respondent sought access to documents pertaining to the security arrangements, and the expenses thereof, of the Prime Minister. The Prime Minister claimed the right to decide whether disclosure of certain privileged documents was in the public interest or not. The Supreme Court noted:

"While there are overwhelming arguments for giving to the executive the power to determine what matters may prejudice public security, those arguments give no sanction to giving the executive exclusive power to determine what matters may prejudice the public interest. Once considerations of national security are left out there are few matters of public interest which cannot be safely discussed in public. The right to know has been reaffirmed in the context of environmental issues which have an impact upon people's very survival."

Several High Court decisions 27 have upheld the right of citizens' groups to access information where an environmental issue was concerned. For example, in different cases the right to inspect copies of applications or building permissions and the accompanying plans, and the right to have

\footnotesize{\begin{itemize}
  \item AIR 1989 SC 190.
  \item AIR 1975 SC 865. See also \textit{S.P. Gupta v. Union of India}, AIR 1982 SC 149, which strengthened this position.
\end{itemize}}
full information about the municipality’s sanitation programme have been affirmed.

(iv) Protection against arrest and detention in certain cases

No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

The famous case of *A.K. Gopalan v. State of Madras* was the first case filed challenging the constitutional validity of an act under the provision of Art.21 of the Indian Constitution. The Supreme Court held in this case, that:

The Preventive Detention Act 1950, is intra vires the Constitution with the exception of Section. 14 which is illegal and ultra vires. The invalidity of Section. 14 do not affect that rest of the provisions in the Act. Section 12 of the Act also does not conform to the provisions of the Constitution of India and is therefore ultra vires. Both Kania C. J. and Mahajan J. were of the opinion that:

> the courts were not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited,

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28 Article 21 (1) of the Indian constitution.
29 Article 22 (5) of the Indian Constitution.
30 AIR 1950 27
31 The Preventive Detention Act 1950 ceased to have effect as of 31st December, 1969.
either in terms or by necessary implication, the
general powers conferred upon the Legislature, Courts
cannot declare a limitation under the notion of having
discovered something in the writ of the Constitution
which is not even mentioned in the instrument. It is
difficult upon any general principles to limit the
omnipotence of the sovereign legislative power by
judicial interposition, except so far as the express
words of a written Constitution give that authority. If
the words be positive and without ambiguity, there is
no authority for a Court to vacate or repeal a Statute
on that ground alone. But it is only in express
constitutional provisions limiting legislative power and
controlling the temporary will of a majority by a
permanent and paramount law settled by the
deliberate wisdom of the nation that one can find a
safe and solid ground for the authority of Courts of
justice to declare void any legislative enactment. Any
assumption of authority beyond this would be to place
in the hands of the judiciary powers too great and too
indefinite either for its own security or the protection
of private rights”.

Mukherjee J. made a point on Constitutional interpretation by
observing that:

“the Constitution must be interpreted in a broad and
liberal manner giving effect to all its parts, and the
presumption should be that no conflict or repugnancy
was intended by its framers. In interpreting the words
of a Constitution, the same principles undoubtedly
apply which are applicable in construing a statute, but
the ultimate result must be determined upon the actual
words used not in vacuum but as occurring in a single
complex instrument in which one part may throw light
on the other”.

(v) Directive Principles of State Policy

The Directive principles ensure that the State shall strive to
promote the welfare of the people by promoting a social order in which
social, economic and political justice is informed in all institutions of life.
Also, the State shall work towards reducing economic inequality as well as inequalities in status and opportunities, not only among individuals, but also among groups of people residing in different areas or engaged in different vocations. The Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights.

In *Golak Nath and others v. State of Punjab and Another*, the Supreme Court departed from the rigid rule of subordinating Directive Principles and entered the era of harmonious construction. The need for avoiding a conflict between Fundamental Rights and Directive Principles was emphasized, appealing to the legislature and the courts to strike a balance between the two as far as possible.

In *Kesavananda Bharati Sripadagalvaru and Another v. State of Kerala and Another*, a thirteen-Judge Bench decision of the Supreme Court is a turning point in the history of Directive Principles jurisprudence. This decision clearly mandated the need for bearing in mind the Directive Principles of State Policy while judging the reasonableness of the restriction imposed on Fundamental Rights.

Though the directive principles have no legal sanction behind them as they cannot be enforced like the fundamental rights but it is the duty of the state to implement these directives while forming their policies. These directive principles have link with the right of information in the sense that the citizens have the right to receive information or to conduct enquiries in the implementation of these directives.

32 Constitution of India-Part IV Article 39A Directive Principles of State Policy
34 (R 7621967) 2 SC,
35 (1973) 4 SCC 225,
(vi) **Article 311 of the Constitution**

Another constitutional provision which deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State\(^{36}\), provides that:-

> 'No person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Provided that where, it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed'.

In *Khem Chand vs. Union of India*\(^{37}\), the Supreme Court gave an exhaustive interpretation of the various aspects involved and it provided the administrative authorities authoritative guidelines in dealing with disciplinary cases. It was observed by the Supreme Court that:

> "Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal court or by a Court Martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case He shall be required, within a reasonable

\(^{36}\) Article 311 of the constitution of India.

\(^{37}\) AIR 1958 SC 300 at, p.139
The Freedom of Speech and Expression (Article 19(1)(a))

Article 19(1)(a) guarantees to all citizens “the right to freedom of speech and expression”, Clause(2) of Article 19, at the same time provides ‘nothing in sub clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.” Freedom of speech and expression is a basic natural right, an innate human urge that springs eternal in the human breast to communicate one’s thoughts, feelings and experiences to another. Indeed this freedom is the corner stone of civilization. Its seminal idea is deeply imbedded in the cultural heritage of mankind.

(i) Importance of Freedom of Speech and Expression

Freedom of speech and expression has been held to be basic right for a democratic polity. It is the foundation of a democratic society. It is essential to the rule of law and liberty of citizens. Freedom of information as a part of freedom of speech and expression owes its origin in Article 19 of the Universal Declaration of Human Rights, 1948. Article 19(1) (a) of the Constitution of India adopted the principle at the time of its inception.

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38 Text of the speech delivered by Justice R.S Sarkaria, Chairman Press Council of India at Namodia Seminar at India International Centre on 5th December, 1992.
Thus Right to information is an inherent right under Article 19(1) (a) of the Constitution. The same has been decided in various cases.39

In Romesh Thapper v. State of Madras, Patanjali Sastri, C.J. observed40:-

“Freedom of speech and of the press laid 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.”

The democratic form of Government, itself demands its citizens to have an active and intelligent participation in the affairs of the country. The public discussion with people’s participation is a basic feature and a relational process of democracy which distinguishes it from all other forms of Government.41

In People’s Union for Civil Liberties vs Union of India42, the Supreme court held that:

“Right to Information is a facet of the freedom of speech and expression as contained in Article 19 (1) (a) of the Constitution of India. Right to Information, thus, indisputably is a Fundamental Right. In the Constitution of our democratic Republic, among the fundamental freedoms, freedom of speech and expression shines radiantly. We must take legitimate pride that this cherished freedom has grown from strength to strength in the post independent era. It has been constantly nourished and shaped to new dimensions in tune with the contemporary needs by the constitutional Courts. Barring a few aberrations, the Executive Government and the Political Parties too have not lagged behind in safeguarding this valuable right.

40 AIR 1950 SC 124 at p. 594.
41 Ibid.
which is the insignia of democratic culture of a nation. Nurtured by this right, Press and electronic media have emerged as powerful instruments to mould the public opinion and to educate, entertain and enlighten the public."

Here it is also recognized that a reasonable restriction on the exercise of the right is always permissible for the security of the state.

In *State of U.P. vs Raj Narain* 43, it was observed by Mathew J. that, 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”. It was said very aptly:

“In a Government like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The 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 bearing. 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 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 officers to explain and justify their act is the chief safeguard against oppression and corruption”

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43 (1975) 4 SCC 428
In *Shri Dinesh Trivedi, M.P. & Others v. Union of India & Others*, the scope and ambit of right to freedom of information has been raised to which the Supreme Court responded by saying:

"We may first deal with the assertion based on the petitioner’s right to freedom of information. It has been contended before us that the citizens of India have a right to be informed not only of the contents of the report, but also of the details of the various reports, notes, letters and other forms of written evidence that was placed for the consideration of the Vohra Committee. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute."

In *S. P. Gupta vs Union of India*, Bhagwati, J. has observed that the concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception. ‘Peoples’ right to know about Governmental affairs was emphasized in the following words:

"No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when people know how Government is functioning that they can fulfill the role which democracy assigns to them and makes democracy a really effective participatory democracy."

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44 *(1997)4 SCC 306*

45 *1981 Suppl. SCC Page 87*
In Secretary, Ministry of Information and Broadcasting, Govt. of India vs The Cricket Association of Bengal, the Supreme Court declared:

“Freedom of speech and expression includes right to acquire information and disseminate it. It enables people to contribute to debate on social and moral issues. Right to freedom of speech and expression means right to education, to inform, to entertain and right to be educated, informed and entertained. “The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them.”

In Bennet Coleman and Co. vs Union of India, the Supreme Court looked at the freedom of press which is within the ambit of Article 19 (1) (a) from another angle. The Constitutional guarantees for the freedom of speech is not so much for the benefit of press as it is for the benefit of the public. The freedom of speech includes within its compass the right of all citizens to read and be informed. Apart from these leading cases there are many cases where people’s Right to know and Right to information have been upheld. It indicates that we already have Right to information as guaranteed by Article 19(1)(a) of the Constitution of India. Moreover, as an extended part of the freedom of speech and expression, the right to know and to be known is our Fundamental right as ensured by Chapter III of the Constitution. As per the Constitution if there is violation of Fundamental Right by the state, the aggrieved person may go to the Supreme Court under Article 32 or to the High Court under Article 226 directly.

46 (1975) 4 SCC 428.  
47 AIR 1973 SC 60.
(ii) **Meaning of Freedom of Speech and Expression**

The freedom of speech and expression, guaranteed under Article 19(1) (a), means the right to speak and to express one’s opinions by word of mouth, writing, printing, and pictures or in any other manner. It is to express one’s convictions and opinions or ideas freely, through any communicable medium or visible representation, such as gesture, signs and the like. It means to freely propagate, communicate or circulate one’s opinion or views. It also means to lay what sentiments; a free citizen pleases, before the public.\(^{48}\) Freedom of speech and expression furthers informed decision making. Therefore, the requirement under the various cinematography legislations is that in each cinema thereafter, the exhibitor of films must show a film which may be educational or scientific, a documentary film, or a film carrying news or current events, along with the other films, has been held not violative of Article 19(1)(a). It has been ruled that when a substantially significant population body is illiterate or means of communication, particularly audio-visual communication, are utilized not just for entertainment, but also for education, information, propagation of scientific ideas and the like. In *Union of India vs Motion Pictures Associations*\(^{49}\) the Delhi court observed that:

>“Free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing viewpoints, debating and forming one’s own views and expressing them, are the basic indicia of a free society. This freedom alone makes it possible for people to formulate their own views and opinions on a proper basis and to exercise their social, economic and political rights in a free society in an informed manner. Restraints on this


\(^{49}\) AIR 1999 SC 2334.
right, therefore, have been jealously watched by the courts”.

In Life Insurance Corporation Ltd (LIC) vs Manubhai, the court expressed the views that: 50

“Speech is God’s gift to mankind. Through Speech a human being conveys his thoughts, sentiments and feeling to others. Freedom of speech and expression is thus a natural right which a human being acquires on birth. It is, therefore, a basic human right. Thus freedom to air one’s views is the life line of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. Efforts by intolerant authorities to curb or suffocate this freedom have always been firmly repelled”.

Freedom of the Press

The phrase “speech and expression” carries a very wide meaning. “Expression” naturally presupposes a second party to whom the ideas are expressed or communicated. The freedom of expression, thus, includes the freedom of the propagation of ideas, their publication and circulation. Which means freedom of speech and expression includes the liberty of the press. 51 However, it applies to citizens only and consequently a non-citizen owning a newspaper is not entitled to the benefit of the freedom of press. 52

Unlike the American Constitution, Article 19(1) does not specifically or separately provide for liberty of the press. Dr. B.R. Ambedkar had explained this omission while observing that :53

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50 AIR (1992) 3 SCC 637 at p. 614
52 Ibid, p.22.
"The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and, therefore, no special mention is necessary of the freedom of the press."

a. No Pre-Censorship on Press

Liberty of the Press consists in printing without previous license, subject to the consequences of law. The freedom of the press, thus, means the right to print and publish what one pleases, without any previous permission. Imposition of pre-censorship on publication is, therefore, violative of the freedom of the press, unless justified under Clause (2) of Article 19.

In LIC vs Manubhai the court expressed the views that:

"The words 'freedom of speech and expression' must be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. Therefore, it includes the right of propagating one's views through the print media or through any other communication channels e.g. the radio and the television. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The right extends to the citizen being permitted to use the media to answer the criticism levelled against the view propagated by him."

Mass Communication Publication Division Ministry of Information and Broadcasting Government of India, 2010 (Saka 1932) at p. 3
54 Defined by Lord Mansfield, 'Crushing the liberty of press, Liberty of Press, has it any or but existence', Publishers, Ephingham Wilsen, 1821, p. 72
55 Ibid.
56 AIR (1992) 3 SCC 637. at p. 599.
In Brij Bhushan v. State of Delhi\textsuperscript{57}, in pursuance of Section 7(1)(c)\textsuperscript{58} of the East Punjab Public Safety Act, 1949 as extended to the Province of Delhi, the Chief Commissioner of Delhi issued an order against the petitioner, the printer, publisher and editor of an English weekly ‘the Organiser’ published from Delhi, directing them to submit, for scrutiny in duplicate, before publication till further orders, all communal matters and news and views about Pakistan including photographs and cartoons other than those derived from official sources or supplied by the news agencies. The Supreme Court struck down the order as violative of Article 19(1)(a) and held that the provision was violative of Article 19 (1) (a) since it was not a law relating to a matter which undermined the security of the State under Article 19(2) of the Constitution. It was further held unanimously that the imposition of pre-censorship of a journal was a restriction on the liberty of the press which was an essential part of the right to freedom of speech and expression declared by article 19 (1) (a).

b. No Pre-Stoppage of Publication in Newspaper of Articles or matter of Public Importance:

In Virendra v. State of Punjab\textsuperscript{59}, the Supreme Court held that banning of publication in the newspapers of its own views or the views of correspondents about the burning topic of the day was “a serious encroachment on the valuable and cherished right to freedom of speech and expression”. It was observed by the Supreme Court that social interest ordinarily demands the free propagation and interchange of views but

\textsuperscript{57} AIR 1950 SC 129.

\textsuperscript{58} Section 7 (1) (c) of the East Punjab Public Safety Act, 1949, as extended to the Province of Delhi provided that “the Provincial Government or any authority authorised by it in this behalf, if satisfied that such action is necessary for preventing or combating any activity prejudicial to the public safety or the maintenance of public order may, by order in writing addressed to a a printer, publisher or editor require that any matter relating to a particular subject or class of subjects shall before publication be submitted for scrutiny.”

\textsuperscript{59} AIR 1957 SC 896.
circumstances may arise when the social interest in public order may require a reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. Our Constitution recognizes this necessity and has attempted to strike a balance between the two social interests. It permits the imposition of reasonable restrictions on the freedom of speech and expression in the interest of public order and on the freedom of carrying on trade or business in the interest of the general public. Therefore, the crucial question must always be, Are the restrictions imposed on the exercise of the rights under Articles 19(1)(a) and 19(1)(g) reasonable in view of all the surrounding circumstances?

In *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspaper, Bombay Pvt. Ltd.* 60, the Supreme Court ruled that pre-publication ban even under a court injunction, could be justified in the interest of justice only when there was a clear and imminent danger to the administration of fair justice and not otherwise. It was contended that:

> “Pre-stoppage of newspaper article or publication on matters of public importance was uncalled for and contrary to freedom of press enshrined in the Constitution and the laws; that public had a right to know about this issue of debentures which was a matter of public concern, and the newspapers had an obligation to inform; and that there was no jury trial involved here and no likelihood of the trial being prejudiced because trial was by professionally trained Judges”.

Likewise, in *R. Rajagopal v. State of Tamil Nadu* 61(*Autoshanker case*), the Supreme Court held that neither the Government nor the officials had any authority to impose a prior restraint upon publication of a material

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60 AIR 1989 SC 19, at p. 214.
61 AIR 1995 SC 264.
on the ground that such material was likely to be defamatory of them. The Supreme Court has declared that:

“A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education, among other matters, and none can publish anything in reference to the above matters without his/her consent whether laudatory or critical. Therefore, if an article is purely relating to the personal life of a public official, it would be necessary for the member of the press or media to publish such article only after a reasonable verification of the facts. The position may, however, be different if a person voluntarily thrust himself or herself into a controversy or voluntarily invites or raises a controversy”.

The right to publish the life story of a condemned prisoner, insofar as it appears from the public records, even without his consent or authorization, has been held to be included in the freedom of the press guaranteed under Article 19(1)(a). No prior restraint upon such publication can be imposed.

c. Right to Access to the Source of Information

In Sheela Barse vs State of Maharashtra 62, the Court held that:

“The term 'life' in Article 21 covers the living conditions of the prisoners, prevailing in the jails. The prisoners are also entitled to the benefit of the guarantees provided in the Article. The subject to reasonable restrictions. It is necessary that public gaze should be permitted on the prisoners, and the pressmen as friends of the society and public spirited citizens should have access to information about, and interviews with, the prisoners.”

62 AIR 1988 at p. 211.
In *M. Hasan vs. Government of Andhra Pradesh*[^63], the Andhra Pradesh High Court held that refusal to journalist and videographer seeking interview with condemned prisoners amounted to deprivation of citizen’s fundamental right to freedom of speech and expression under Article 19(1) (a). In exercising the fundamental rights position of a condemned prisoner was on par with a free citizen. He had a right, to give his ideas and was entitled to be interviewed or to be televised. The press while interviewing a person must first obtain his willingness. It is further held that the right to interview the prisoners is not absolute. In certain matters such as the commission of the offence of rape, unnecessary publicity, may lead to miscarriage of justice and a trial by press, electronic media or public agitation, was the very antithesis of rule of law.[^64]

d. Freedom of Circulation

The Freedom of speech and expression includes the freedom of propagation of one’s ideas or views and this freedom is ensured by the "freedom of circulation". In *Romesh Thapar v. State of Madras*[^65], the court referred to two decisions of the U.S. Supreme Court[^66], and quoted that:

> "Liberty of circulation is an essential to that freedom as the liberty of publication. Indeed, without circulation, the publication would be of little value."

[^63]: AIR 1998 AP 35.
[^64]: AIR 1997 SC 3986. The Provincial Government in exercise of its powers under Section 9(1-A) of the Madras maintenance of Public Order Act, 1949, by an order, imposed a ban upon the entry and circulation of the petitioner’s weekly journal “Cross Roads” printed and published in Bombay. The majority of the Supreme Court held the order invalid as violative of freedom contained in article 19(1)(a).
[^65]: AIR 1950 SC 124. The Provincial Government in exercise of its powers under Section 9(1-A) of the Madras maintenance of Public Order Act, 1949, by an order, imposed a ban upon the entry and circulation of the petitioner’s weekly journal “Cross Roads” printed and published in Bombay. The majority of the Supreme Court held the order invalid as violative of freedom contained in article 19(1)(a).
[^66]: (i) Exparte Jackson (1878) 96 US 727 and (ii) Lowell vs City of Guffin,(1938) 303 US444.
A ban on the circulation of a publication either direct or due to some action on the part of the Government as was in the case of Romesh Thappar, adversely affects the circulation of the publication\textsuperscript{67}.

e. Freedom in the Volume of News or Views

In \textit{Sakal papers(P) Ltd. V. Union of India}\textsuperscript{68}, the Supreme Court held that the right to propagate ideas guaranteed in Article 19(1)(a) extended not merely to the matter which a person is entitled to circulate but also to the volume of circulation. The Supreme Court struck down the order and held it to be inoperative since the impugned Act and the order placed restraints on the volume of circulation, because for propagating the ideas a person had the right to publish them, to disseminate them and to circulate them, either by word of mouth or by writing. The right extended not merely to the matter which the citizen was entitled to circulate but also to the volume of circulation.

Again in \textit{Bennett Coleman and Co. V. Union of India}\textsuperscript{69} The Supreme Court struck down the Newsprint Policy as being violative of Article 19(1)(a) and held that freedom of speech and expression was not only in the volume of circulation but also in the volume of news and views. The newspapers should be left free to determine their pages, their circulation and their new edition within their quota which had been fairly fixed. The Court has observed that:

\begin{quote}
“The provisions of the newsprint policy indicate how the petitioner’s fundamental rights had been infringed by the restrictions on page limit, prohibition against new newspapers and new editions. The effect and consequence of the impugned policy upon the newspapers is directly controlling the growth and circulation of newspapers. The direct effect is the
\end{quote}

\textsuperscript{67} \textit{Express newspaper (p) Ltd vs. Union of India}, AIR 1958 SC 578.

\textsuperscript{68} AIR 1962 SC 305 , at p. 843.

\textsuperscript{69} AIR 1973 SC 106 at p. 782.
restriction upon circulation of newspapers, upon growth of newspapers through pages, newspapers are deprived of their area of advertisement, they are exposed to financial loss and that freedom of speech and expression is infringed. The fixation of page limit will not only deprive the petitioners of their economic vitality but also restrict the freedom of expression by reason of the compulsive reduction of page level entailing reduction of circulation and demanding the area of coverage for news and views”.\(^{70}\)

f. No Excessive taxes on Press

In *Indian Express Newspapers (Bombay) Pvt. Ltd. V. Union of India*\(^{71}\), the Supreme Court emphasized that the freedom of speech and expression should receive a generous support from all those who believed in the participation of people in the administration. On account of this special import which society had in this freedom, the approach of the Government should be more cautious while levying taxes on matters concerning newspaper industry than while levying taxes on other matters.

g. Commercial Advertisements-Included

In *Hamdard Dawakhana (Wakf) Lal Kuan v. Union of India*\(^{72}\), it was held that “commercial advertisements” were not covered within the concept of freedom of speech and expression. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 the Act is valid and the scope and object of the impugned Act, its true nature and character, was not in interference with the right of freedom of speech but it dealt with the trade and business. It is in the interests of the general public and placed reasonable restrictions in the trade and business of the petitioner and were saved by Article 19(6).

\(^{70}\) Ibid at p. 790.
\(^{71}\) AIR 1958 SC 578 at p 599.
\(^{72}\) AIR 1960 SC 554.
Right to Know and Right to information

Right to know is basic right which citizens of a free country aspire in the broad horizon of the right to live. Under Article 21, the right is natural and related to free press, and freedom of Speech and Expression. Right to information is inherent in right to live as enshrined in Art, 21 and freedom to speech and expression as guaranteed under Article 19(1) (a) of our Constitution. Right to information thus emanates from the fundamental right to life and fundamental Right to freedom of speech and expression. These freedoms guaranteed by the Constitution have to be enjoyed subject to some reasonable restrictions but these restrictions can never outweigh and dominate the freedoms. In L.K. Koolwal, v. State of Rajasthan\textsuperscript{73}, the Supreme Court held:

“A Citizen has a right to know about the activities of the state, the instrumentalities, the department and the agencies of the state. The privilege of secrecy which existed in olden times and the principle that the state is not bound to disclose the facts to the citizens is now dead to a great extent. Freedom of speech is based on the foundation of the freedom of Right to know. The state can impose and should impose the reasonable restrictions in matters where it affects the national security or any other matter affecting the nation’s integrity. Every citizen has a right to know how the State is functioning and the way the State is withholding such matters.”

In, Reliance Petrochemicals Ltd. V. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.\textsuperscript{74}, for the first time the Supreme Court recognized the Right to information as part of the right to live under Article 21. It was contended that: “pre-stoppage of newspaper article or publication on matters of public importance was contrary to freedom of press enshrined in the Constitution. The public had a right to know about

\textsuperscript{73} AIR 1988 Raj.2.

\textsuperscript{74} AIR 1989 SC 19, 1988 4 SCC 592.
matter of public concern, and its the obligation of newspapers to inform them”. There was no jury trial involved there and no likelihood of the trial being prejudiced because trial was by professionally trained Judges. It was further contended that there was an inherent jurisdiction to restrain by injunction any publication that interfered with a fair trial of a pending case or with the administration of justice in general, that publication was permissible provided it did not amount to prejudgment or prejudice of a matter in Court. The liberty or freedom of Press must sub serve the due administration of justice. There was need to continue the injunction because contribution to the debentures could be withdrawn as the final allotment had not yet been made. While disposing of the application for the continuance of the injunction, it was held, Per Sabyasachi Mukharji, J. that:

A free Press is vital to a democratic society for its freedom given it power. The law of contempt must be judged in a particular situation. The process of due course of administration of justice must remain. Public interest demands that there should be no interference with judicial process. The court also observed that:

*“The people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broaden horizon of the right to live in this age on our land under Article 21 of the Constitution”.*

In *Whitney v. California* Justice Brandies of the American Supreme Court has observed:

*“Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech*
to free men from the bondage of irrational fears. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it”.

Concurring with Justice Brandies, it was observed in Reliance case, “If a newspaper is prevented from publishing its own view or the views of its correspondents, prepublication ban by a court injunction can be justified in the interests of justice only when there is a clear and imminent danger to the administration of fair justice and not otherwise.

The Right to Exhibit Films on Doordarshan

In Ramesh v. Union of India and Others an Appeal was preferred before the Supreme Court from the judgment of Bombay High Court to restrain the screening of the serial Tamas which depicted the Hindu-Muslim and Sikh-Muslim tension before the partition of India, as it was violative of Articles 21 and 25 of the Constitution. But the Supreme Court affirmed the High Court decision to dismiss the petition. It was held that, the average person would learn from the mistakes of the past and perhaps not commit those mistakes again. That illiterates are not devoid of common sense and awareness in proper light is a first step towards that realization.


79 It was based on a book written by Sree Bhisham Sahni.
In *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana*, an appeal was filed before the Supreme Court from an interim injunction issued by the Bombay High Court to stop the telecast of a serial Honi Anhoni on the Doordarshan which was not in public interest as it was likely to spread false or blind beliefs amongst the members of the public. The Supreme Court struck down the injunction because in its opinion the petitioners, apart from their own statements, there is no prima-facie evidence to show that grave prejudice was being done to the public.

The exhibition of the film ‘Bombay’ in its Telugu version was suspended in exercise of the powers under section 8(1) of the A.P. Cinemas Regulation Act, 1955, despite been certified by the Censor Board for unrestricted exhibition. The suspension was imposed citing the cause that it may hurt sentiments of certain communities. However, it was found that the authorities who passed the impugned order did not even watch the movie. The Court quashed the order as being arbitrary and not based on proper material.

In *Life Insurance Corporation of India v. Prof. Manubhai D. Shah, Doordrashann*, the Doordarshan refused to telecast a documentary film on the Bhopal Gas Disaster titled “Beyond Genocide” in spite of the fact that the film won Golden Lotus award, being the best non-feature film of 1987 and was granted ‘U’ certificate by the Censor Board. The reasons cited by Doordarshan were that, the political parties had been raising various issues concerning the tragedy, and the claims for compensation by victims were sub judice. Upholding the freedom of speech it was observed by the Court that merely because it is critical of the State Government is no reason to deny selection and publication of the film. So also pendency of claims for

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80 AIR 1988, 1642.
81 See Raghavendra Films v Government of Andhra Pradesh and others, 1995 (2) ALT 43.
82 AIR 1993 SC 171.
compensation does not render the matter sub judice so as to shut out the entire film from the community. The Court made it clear that subject to Article 19(2), a citizen has a right to publish, circulate and disseminate his views to mould public opinion on vital issues of national importance. Hence, any attempt to thwart or deny the same would offend Art. 19(1)(a). Under such circumstances, the burden would, therefore, heavily lie on the authorities that seek to impose them to show that the restrictions are reasonable and permissible in law.

Again an award winning documentary film, in Memory of Friends about the violence and terrorism in Punjab was rejected by Doordarshan even after been granted ‘U’ certificate by the Censor Board reasoning if such documentary is shown to people, it would create communal hatred and may even lead to a further violence. The court quashed the order emphasizing that the State cannot prevent open discussion and open expression, however, hateful to its policies. Everyone has a fundamental right to form his own opinion on any issue or general concern. He can form and inform by any legitimate means. It was observed by Sawant, J that:

"Right to receive and the right to impart information has been held to be a part of the freedom of speech and expression guaranteed by sub-clause (a) of clause (1) of the Article 19 of the constitution subject of course to the reasonable restrictions, if any, that may be pieced on such right in terms of and to the extent permitted by clause (2) of the said article."

The Supreme Court upheld that, all freedom carry with themselves duties, responsibilities, formalities, conditions, restrictions and penalties. These are necessary in the interest of national security, territorial integrity,

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83 Anand Patwardhan v. The Union of India and others, AIR 1997 Bom 25.
public safety, prevention of disorder, crime, protection of health, morals, protection of reputation or rights of others, preventing confidential information, maintaining authority and impartiality of the judiciary. The associated right, totally integrated with the basic right, must also enjoy the same freedom. The right to receive and disseminate information through any media including air waves & electronic media, freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of free speech and expression. The Court in this connection also referred to relevant provisions of the European Convention of Human Rights.\(^{84}\)

**Constitutional Restrictions on the Right to Information**

“Prevention is better than cure” is a time honoured maxim, which was perhaps the idea behind inserting the term “reasonable restrictions” in clause(2) to clause (6) of Article 19 and consequently to prevent citizens from arbitrary, fanciful and unconstitutional exercise of the freedoms.\(^{85}\) If the individuals are allowed to have absolute freedom of anything the outcome cannot be anything else than chaos, disorder and rule-of-the-rod. Freedom does not mean tinkering with the very rights. Therefore, it should be tempered with responsibility. The success or failure of any democratic system depends largely on the extent to which the civil liberties are enjoyed by the citizens. A democracy aims at the maximum development of an individual by guaranteeing significant rights and freedoms. It secures fundamental rights for its citizens to the maximum extent without jeopardizing the safety of the State, friendly relations with foreign States,


\(^{85}\) Ibid 183
Public order, decency and morality and above all the sovereignty and integrity.\textsuperscript{86}

It postulates absence of barriers to access to information and availability of material on the basis of which one can formulate one’s views and give expression to them. It is for this reason that one can say that Right to information is implicating freedom of expression and comprehended by that fundamental right.

Individual freedom and social control have been in clash most of the time. There is a very fine dividing line between the freedoms enshrined under Article 19(1) on the one hand and the need to maintain commonly accepted norms by imposing, ‘reasonable restriction’ on the other. Indeed there has to be balance between individual rights guaranteed under Article 19(1) and the exigencies of the State which is the custodian of the general public.”\textsuperscript{87}

(i) **Meaning of ‘Reasonable Restriction’**

The expression ‘reasonable restriction’ is a relative term, which is defined nowhere in the Constitution. The determination by the legislature of what constitutes a ‘reasonable restriction’ is not final or conclusive but is subject to the supervision of the Courts. In *Nawab Khan vs State of Gujarat* \textsuperscript{88}the court has observed that:

“Freedom of movement, of association, of profession and property, are founding commitments and severe restraints thereon must be strictly construed, not in the name of natural justice but in plenary allegiance to the paramount law. The restriction on the fundamental right must be reasonable and the harsher the restriction the heavier the onus to prove reasonableness”.

\textsuperscript{87} Re Hari Khemu V. Dy. Commissioner of Police, AIR 1956 SC 559, at p.565.
\textsuperscript{88} AIR 1974 SC 1471
Thus, the onus of proving reasonableness of the restriction to the objective satisfaction of Court is solely upon the State. The Apex court made it clear in the case of *Mohd. Hanif Queresi v. State of Bihar*\(^9\) that:

"The reasonableness of the restriction has to be determined in an objective manner from the standpoint of the interest of the general public and not from the point of view of the persons upon whom the restrictions are imposed upon abstract considerations."

In the matter of *the Supdt. Central Prisons v. Dr. R.M. Lohia*\(^10\) the Court asserted that:

"The restrictions sought to be imposed under any of the clause (2) to clause (6) of Article 19 must have proximate connection with the public order and not one for-fetched, hypothetical or too remote"

The Constitution of India specifically provides under Article 13 (2) that the State shall not make any law which takes away or abridges the fundamental rights and such laws to the extent of the inconsistency be void. The phrase ‘reasonable restriction’ of Article 19 (2) alludes that the limitation imposed on any person in exercise of the rights should not be of arbitrary or of excessive nature, beyond what is required in the interest of Public. Thus, the legislation which arbitrarily or colorfully invade the very rights of the citizens cannot be said to contain the quality of reasonableness unless there is a proper balance between the freedoms guaranteed in Article 19(1)(a) to 19(1)(g) and the social control permitted by clauses of article 19(2). In re *Chintamanrao v. State of M.P.*\(^11\) the court held that:

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\(^{9}\) AIR 1958 SC 731  
\(^{10}\) AIR 1960 SC 633.  
\(^{11}\) AIR 1951 SC 118.
“The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art. 19 (1) (g) and the social control permitted by cl. (6) of Art. 19, it must be held to be wanting in that quality. It also held that the determination by the Legislature of what constitutes a reasonable restriction is not final and conclusive. The Supreme Court has power to consider whether the restrictions imposed by the Legislature are reasonable within the meaning of Art. 19, cl. (6) and to declare the law void if in its opinion the restrictions are not reasonable".92

The grounds of Restrictions which are imposed on the freedom of information which are provided under constitution of India in the freedom of expression are as under:-

(ii) **Integrity and Sovereignty of India**

There is a restriction on freedom of speech and expression including providing information considering the Integrity and Sovereignty of India. This ground has been added to prevent the freedom of speech and expression being used to assail the territorial integrity and sovereignty of the Union.93 Thus, it will be legitimate for Parliament (under this clause) to restrict the right of free speech if it preaches secession of any part of India from the union. This restriction is with respect to the territorial integrity of India and not on the preservation of the territorial integrity of India and not on the preservation of the territorial integrity of the constituent States. The

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92 Ibid.
93 Constitution (Sixteenth Amendment) Act, 1963.
Constitution itself contemplates changes of the territorial limits of the constituent States.\textsuperscript{94}

(iii) Security of the State

The security of state can be endangered by crimes of violence, waging of war and rebellion against the Government, external aggression or war, etc. Under Article 19 (2), reasonable restrictions on the freedom of speech and expression can be imposed in the interests of the security of the State. All utterances intended or calculated to have the above effects may properly be restrained in the interests of the security of the State. Serious and aggravated forms of public disorder are within the expression ‘security of the State’. Every public disorder cannot be regarded as threatening the security of the State.

In \textit{Romesh Thappar case}\textsuperscript{95} the Supreme Court pointed out that the expression does not refer to ordinary breaches of public order which do not involve any danger to the State itself. Incitement to commit violent crimes like murder would endanger the security of the State. It was observed by the Supreme Court that:

" Unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of article although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that section 9(I-A) which authorizes imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional." The restrictions imposed by section 4(I) (a) of the Indian Press

\textsuperscript{94} Article 3 of the Constitution.

\textsuperscript{95} AIR 1950 SC 124 (as per Kania C.J., Patanjali Sastri, Mehar Chand Mahajan, Mukherjea and Das JJ.—(Fazl Ali J. dissenting).
(Emergency Powers) Act on freedom of speech and expression are solely directed against the undermining of the security of the State or the overthrow of it and are within the ambit of article 19(2) of the Constitution.96

The main consideration is, whether the words contained in the impugned publication are of the nature described in section 4 (1) (a) of The Indian Press (Emergency Powers) Act or they incite, encourage or tend to incite or to encourage the commission of any offence of murder or any cognizable offence involving violence. In order to arrive at a decision, the writing is to be looked at as a whole without laying stress on isolated passages or particular expressions used here and there, and that the court should take into consideration what effect the writing is likely to produce on the minds of the readers for whom the publication is intended. An account should also be taken of the place, circumstances and occasion of the publication, as a clear appreciation of the background in which the words are used is of very great assistance in enabling the court to view them in their proper perspective.

It was held by the Supreme Court that words or signs or visible representations which incited or encouraged, or tendered to incite to or encourage any offence of murder or any cognizable offence involving violence fall under Article 19(2). After the amendment of the Constitution in 1951 'public order'97 has been added as a ground for restrictions.

Article 358 of the Constitution

The Constitution of India has provided for imposition of emergency caused by war, external aggression or internal rebellion98. This is described

96 1950 S.C.R. 594, at p. 660
97 The expression 'public order' connotes the sense of public peace, safety and tranquility.  
98 Art.358 of the Constitution.
as the National Emergency. This type of emergency can be declared by the President of India if he is satisfied that the situation is very grave and the security of India or any part thereof is threatened or is likely to be threatened either, by war or external aggression by armed rebellion within the country. The President can issue such a proclamation even on the ground of threat of war or aggression. The Fundamental Rights under Article 19 are automatically suspended and this suspension continues till the end of the emergency. But according to the 44th Amendment, Freedoms listed in Article 19 can be suspended only in case of proclamation on the ground of war or external aggression.

Friendly relations with foreign States

The State can impose reasonable restrictions on the freedom of speech in the interest of friendly relations with foreign States. The justification is obvious, as unrestrained malicious propaganda against a foreign friendly State may jeopardize the maintenance of good relations between India and that State. It is a recognized principle of international law that States in their relation with other States are responsible for acts committed by persons within their jurisdiction.

The English common law punishes such libels on the ground that they imperil the peaceful relations of Her Majesty with foreign States. Accordingly, a law which makes it an offence to publish any libel tending to degrade or revile or expose to hatred or contempt any foreign prince, ambassador or other foreign dignitaries, will fall within this expression and will be held valid provided that the restrictions are not unreasonable. In

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99 Added by 44th Constitutional amendment. The draft amendment without the word 'reasonable' and with the addition of 'public order' was introduced on May 12, 1951.
101 This ground is added by the Constitution (First Amendment) Act of 151.
the Pentagon Papers case (New York Times Co. v. United States)\textsuperscript{103}, the Nixon administration sought to enjoin the New York Times and the Washington Post newspapers from publishing excerpts from a top-secret United States Department of Defence history of the United States involvement in the Vietnam War from 1945 to 1971. It was observed in the case that:

"During any national emergency resulting from a war to which the United States is a party, or from threat of such a war, the President may, by proclamation, declare the existence of such emergency and, by proclamation, prohibit the publishing or communicating of, or the attempting to publish or communicate any information relating to the national defense which, in his judgment, is of such character that it is or might be useful to the enemy." \textsuperscript{104}

(v) Public order

The maintenance of public order is one of the grounds for imposing restrictions on the freedom of speech and expression. This ground is added by an amendment\textsuperscript{105} which become necessary because the Supreme Court, in Romesh Thappar case\textsuperscript{106}, had refused to permit the imposition of restrictions on the right to free speech in the interests of public order, when the Constitution had not included that as a permissible ground of restraint.

The expression ‘public order’ is synonymous with public peace, safety, and tranquility.\textsuperscript{107} It signifies absence of disorder involving breaches of local significance in contradistinction to national upheavals such as revolution, civil strife or war, affecting the security of the State.

\textsuperscript{104} 55 Cong. Rec. 1763. During the debates in the Senate the First Amendment was specifically cited and that provision was defeated. 55 Cong. Rec. 2167
\textsuperscript{105} This ground of the Constitution was framed in 1950. It was added by the Constitution (First Amendment) Act, 1951.
\textsuperscript{106} AIR 1950 SC 124.
The State may, in the interests of public order, prohibit and punish the causing of loud and raucous noise in streets and public places by means of sound amplifying instruments; regulate the hours and place of public discussions and the use of public streets for the purpose of exercising freedom; provide for expulsion of hecklers from meetings and assemblies; punish utterances tending to incite breach of the peace or riot and use of threatening, abusive or insulting words or behavior in any public place or at any public meeting with intent to cause a breach of the peace or whereby breach of the peace is likely to be caused, and all such acts as would endanger public safety.  

Clause (2) has used the words ‘in the interests of public order’ and not ‘for the maintenance of public order’. A law may not have been designed to directly maintain the public order and yet it may have been enacted in ‘the interests of public order’, if it assists or is conducive to the maintenance of public order. In other words, this would bring within the protection of clause (2) not only such utterances as are directly intended to incite disorder, but also those that have the tendency to lead to disorder. Thus a law punishing utterances made with deliberate intention to hurt the religious feelings of any class of persons is valid, because it imposes a restriction on the right to free speech in the interest of public order, since such speech or writing has the tendency to create public disorder even if in some cases those activities may not actually lead to a breach of the peace. But it is necessary that there must be reasonable and proper nexus

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110 Ramji Lal Modi v. State of U.P., AIR 1957 SC 620. The test of clear and present danger laid by the U.S. Supreme Court as the sole consideration for restricting free speech has been rejected in this case, because the framework of the Constitution in India is different from the framework in the United States.
or relationship between the restriction and the achievement of public order, it cannot be said that the restriction is a reasonable restriction within the meaning of clause (2). The restriction must not be far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order.111

In *Superintendent, Central Prison v. Ram Manohar Lohia*112, the Supreme Court invalidated Section 3 of the U.P. Special Powers Act, 1932113 because there was no proximate nexus between the speech and public order. The Supreme Court has observed that:

“That even though in a comprehensive sense all the grounds specified in Art. 19(2) of the Constitution on which any reasonable restrictions on the right to freedom of speech must be based can be brought under the general head "public order", that expression, inserted into the Article by the Constitution (First Amendment) Act, 1951, must be demarcated from the other grounds and ordinarily read in an exclusive sense to mean public peace, safety and tranquility in contradistinction to national upheavals, such as revolution, civil strife and war, affecting the security of the State.”

It was further observed that:

“We cannot accept the argument of the learned Advocate-General that instigation of a single individual not to pay tax or dues are a spark which may in the long run ignite revolutionary movement, destroying public order. We can only say that fundamental right cannot be controlled on such hypothetical and imaginary consideration. Nor is it possible to accept the argument that in a democratic set up there can be no scope for agitational approach or that any instigation to break a bad law must by

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112 Ibid.
113 Section 3 of U.P. Special Powers Act, 1932, punishes a person if he incited a single person not to pay or defer the payment of Government dues.
itself constitute a breach of public order, for to do so without obvious limitations would be to destroy the right to freedom of speech on which democracy is founded. It is not possible to apply the doctrine of severability relating to fundamental rights as enunciated by this Court to the provisions of the impugned section, since it is not possible to precisely determine whether the various categories of instigation mentioned therein fall within or without the constitutionally permissible limits of legislation and separate the valid parts from the invalid.\textsuperscript{114}

In Sodi Shamsher Singh v. State of Pepsu, another\textsuperscript{115}, a vitriolic attack upon the character and integrity of the Chief Justice of a High Court was held to have no rational connection with the maintenance of law and order. Subject to the condition of proximate relationship, the legislature is competent to pass a law permitting an appropriate authority to place anticipatory restriction upon particular kinds of acts in an emergency for the purpose of maintaining public order. The restriction, apart from having a rational nexus with public order, must also be reasonable. It is for the courts to decide whether a restriction is reasonable both substantively and procedurally. In Virendra v. State of Punjab\textsuperscript{116}, which is an important decision of the Supreme Court illustrating the scope of permissible restriction under this clause on the right to freedom of speech and expression the Supreme Court has held:

"That the restrictions imposed by S. 2(1) (a) of the Punjab Special Powers (Press) Act, 1956 were reasonable restrictions within the meaning of Art. 19(2) of the Constitution and the petition directed against the notifications issued there under must fail, but since Section. 3 of the Act did not provide for any time limit for the operation of an order made there under nor for a representation by the aggrieved party"

\textsuperscript{115} AIR 1954 SC 276.
\textsuperscript{116} AIR 1957 SC 896
to the State Government, the restrictions imposed by it were not reasonable restrictions under Art. 19(6) of the Constitution and the petition directed against the notifications made there under must succeed."

It was also observed by the court that, there can be no doubt that the right of freedom of speech and expression carries with it the right to propagate one's views and the several rights of freedom guaranteed by Art. 19(1) of the Constitution are exercisable throughout India but whether or not any restrictions put on those rights amount to a total prohibition of the exercise of such rights must be judged by reference to their ambit. The restrictions imposed with regard to the publications relating to only one topic and the circulation of the papers only in a particular territory could not amount to a total prohibition of the exercise of the fundamental rights.

In Babulal Parate v. State of Maharashtra\textsuperscript{117}, section 144 of the Cr.PC\textsuperscript{118} was impugned on the ground of its placing unreasonable restrictions on the right to freedom of speech and expression. The Supreme Court has observed that:

"Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order. We must, therefore, reject the contention. It is no doubt true that since the duty to maintain law and order is cast upon the Magistrate, he must perform that duty and not shirk it by prohibiting or restricting the normal activities of the citizen. But it is difficult to say that an anticipatory action taken by such an authority in an emergency where danger to public


\textsuperscript{118} Section 144 confers powers to issue an order absolute at once in urgent cases of nuisance or apprehended danger.
order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order. In such circumstances that could be the only mode of discharging the duty. We, therefore, reject the contention that s. 144 substitute’s suppression of lawful activity or right for the duty of public authorities to maintain order."

Under this section, a Magistrate if he is of the opinion that there is sufficient ground for immediate prevention, can by a written order direct a person or persons to abstain from certain acts if such direction is likely to prevent or tends to prevent a disturbance of public tranquility, or a riot or an affray.\textsuperscript{119} However in \textit{State of Bihar v. K.K. Mishra}\textsuperscript{120}, it was observed that the fact that the Legislature is expected to keep a check on Governmental actions does not absolve this Court’s responsibility. The fundamental rights constitute a protective shield to the citizen as against State actions and the Court cannot desert its duty on the assumption that the other organs of the State would safeguard the fundamental right of the citizens. In order to be a reasonable restriction within the meaning of Art. 19 of the constitution the same must not be arbitrary or excessive and the procedure and the manner of its imposition must also be fair and just. Any restriction which is opposed to the fundamental principles of liberty and justice cannot be considered reasonable.\textsuperscript{121} One of the important tests to find out whether a restriction is reasonable is to see whether the aggrieved party has a right of representation against the restriction imposed or proposed to be imposed. No person can be deprived of his liberty without being afforded an opportunity to be heard in defense and that opportunity must be adequate, fair and reasonable. Further the courts have to see

\textsuperscript{119} Radhey Shyam Sharma v. P.M.G., AIR 1965 SC 311.
\textsuperscript{120} SCR 3 1970, 181 at p. 188
\textsuperscript{121} SCR 3 1970, 181 at p. 197
whether the restriction is in excess of the requirement or whether it is imposed in an arbitrary manner\textsuperscript{122}.

Section 123(3) of the Representation of Peoples Act which declares promotion of or attempts to promote feeling of enmity or hatred between different classes of citizens on grounds of religion, race etc. as corrupt practice in elections has also been justified on the ground of public order.\textsuperscript{123}

\textbf{(vi) Decency or Morality}

Decency or morality is another ground on which freedom of speech and expression may be reasonably restricted. It is obvious that the right to freedom of speech cannot be permitted to deprave and corrupt the community, and therefore, writings or other objects, if obscene, may be suppressed and punished because such action would be to promote public decency and morality. In English law, it is a misdemeanor to write and publish obscene criminal books, pictures, etc., which have a tendency to deprave and corrupt those whose minds are open to immoral influences. In India, the scope of indecency or obscenity under the existing law is illustrated in Sections 292 to 296 of the Indian Penal Code. These sections prohibit the sale or distribution or exhibition of obscene matter or the doing of obscene acts or singing of obscene songs or uttering obscene words, etc., in public places. Books, pamphlets, writings or paintings used for bona fide religious purposes or paintings in any temple are exceptions to Section 292. Although the Indian Penal Code prohibits and punishes the sale, etc. of obscene books and articles, it does not lay down the test to determine obscenity.

\textsuperscript{122} Ibid.
\textsuperscript{123} Ramesh Yeshwant Prabhoo(Dr.) v. Prabhakar K. Kunte,(1996)1 SCC 130.
In Ranjit D. Udeshi v. State of Maharashtra, the Supreme Court for the first time laid down the test to determine obscenity and held the novel in question as obscene. To the plea of the accused that the overall affect of the book was to be the test of obscenity and not the effect of stray passages or words here and there. It was observed in this case that:

"Speaking in terms of the Constitution it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it. That cherished right on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality. Section 292, Indian Penal Code, manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality".

A work should be judged as a whole and stress should not be laid upon a word here and a word there, or a passage here and a passage there. The obscene matter must be considered by itself and separately to find out whether it is so gross and obscene that it is likely to deprave and corrupt those, whose minds are open to influences of this sort. The interests of contemporary society and particularly the influence of the impugned book on it must not be overlooked. Where obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. It is necessary that a balance should be maintained between "freedom of

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speech and expression" and "public decency or morality" but when the latter is substantially transgressed the former must give way. In other cases obscenity may be overlooked if it has a preponderating social purpose or profit.\textsuperscript{125}

However, it is submitted that the Supreme Court has erred in not rejecting the Hicklin Test\textsuperscript{126} which has become obsolete. It lays down a vague and arbitrary standard for judging obscenity and has a tendency to curtail the guaranteed right to freedom of speech. As the word "obscene" has been interpreted by English Courts something may be said of that interpretation first. The Common law offence of obscenity was established in England three hundred years ago when Sir Charles Sedley exposed his person to the public gaze on the balcony of a tavern. Obscenity in books, however, was punishable only before the spiritual courts because it was so held down to 1708 in which year \textit{Queen v. Read} was decided.\textsuperscript{127} In 1727 it was ruled for the first time that it was a Common Law offence. In 1857 Lord Campbell enacted the first legislative measure against obscene books etc. and his successor in the office of Chief Justice interpreted his statute in Hicklin's case(2)\textsuperscript{128}. The section of the English Act is long (they were so in those days), but it used the word "obscene" and provided for search, seizure and destruction of obscene books etc. and made their sale, possession for sale, distribution etc. a misdemeanor. The section may thus be regarded as substantially in pari materia with s. 292, Indian Penal Code\textsuperscript{129}, in spite of some differences in language. In Hicklin's case(3) the

\textsuperscript{125} Ibid., p. 94.

\textsuperscript{126} The Hicklin Test is "Whether the tendency of the matter charged as obscene is to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands publication of this sort may fall."

\textsuperscript{127} (20 & 21 Viet. C. 83)

\textsuperscript{128} 292. 1(Sale, etc., of obscene books, etc.) For the purposes of sub- section (2), a book, pamphlet, paper, writing, drawing, painting representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or
Queen's Bench was called upon to consider a pamphlet, the nature of which can be gathered from the title and the colophon which read: "The Confession Unmasked, showing the depravity of Romish priesthood, the iniquity of the confessional, and the questions put to females in confession." It was bilingual with Latin and English texts on opposite pages and the latter half of the pamphlet according to the report was "grossly obscene, as relating to impure and filthy acts, words or ideas".

If the word 'obscenity' is given as wide a meaning as was given in the Hicklin case, there is a danger that many a literary work will not be available to the public. The publishers and booksellers may withhold a publication from being circulated for fear that they might be committing an offence under the Penal Code. Such self-censorship of books and publications would affect the right of public to have access to works of art and literature. It would also curtail the right of its author to produce. When Section 292 was enacted, Indian Citizens enjoyed no fundamental rights. But after the coming into force of the Constitution, if Section 292 is allowed to stand as it is, the meaning of 'obscenity' has to be narrowed down.

Other instances of existing law dealing with obscenity are furnished by the Post Office Act, 1893, which prohibits obscene matters being transmitted through post, the Sea Customs Act, 1878 which prohibits the import of obscene literature, the Dramatic Performances Act, 1876, which prohibits obscene plays, the Cinematograph Act, 1952, which make...
provision for censorship of films, and the Press Act, 1951 which prohibits grossly indecent, scurrilous or obscene publications.

In *A. K Abbas vs Union Of India* 132, the court observed:

“that censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition of cinema films. We need not generalize about other forms of speech and expression here for each such fundamental right has a different content and importance. The censorship imposed on the making and exhibition of films is in the interests of society. If the regulations venture into something which goes beyond this legitimate opening to restrictions, they can be questioned on the ground that a legitimate, power is being abused. We hold, therefore, that censorship of films including prior restraint is justified under our Constitution”.

In *R.Y Prabhu. vs. P.K. Kunte* 133 the Supreme Court has ruled that the words “decency and morality” in Article 19(2) could not be restricted to sexual morality alone. It was contended that:

“The words 'decency or morality' relate to sexual morality alone. In view of the expression "in the interests of" and the context of election campaign for a free and fair poll, the right to contest the election being statutory and subject to the provisions of the statute, the words 'decency or morality' do not require a narrow or pedantic meaning to be given to these words. the dictionary meaning of 'decency' is 'correct and tasteful standards of behaviour as generally accepted; conformity with current standards of behaviour or propriety; avoidance of obscenity; and the requirements of correct behavior'” 134

130 K.A. Abbas v. Union of India (1970)2SC780: AIR 1971SC 481
133 AIR 1996 SC 1113.(Balthackery)
134 The Oxford Encyclopedic English Dictionary
Thus, the ordinary dictionary meaning of 'decency' indicates that the action must be in conformity with the current standards of behaviour or propriety etc. In a secular polity, the requirement of correct behaviour or propriety is that an appeal for votes should not be made on the ground of the candidate's religion which by itself is no index of the suitability of a candidate for membership of the House. The court reiterated with approval the meaning given to this term in *knoller (publishing and Promotion) ltd vs. Director of public prosecutions*, where in the Supreme Court has observed that:

"Indecency is not confined to sexual indecency; indeed it is difficult to find any limit short of saying that it includes anything which an ordinary decent man or woman would find to be shocking and disgusting or revolting."

Thus, seeking votes at an election on the ground of the candidate's religion in a secular State, is against the norms of decency and propriety of the society. The court further observed that, in a secular polity, the requirement is correct behavior, an appeal for votes should not be made on the ground of the candidates religion which by itself has no index of the suitability of the candidate for membership of the legislature. Section 123 of the Representation of People’s Act which declares appeal to voting or refraining from voting on grounds of religion, race, caste, community or language has been upheld as reasonable restrictions on grounds of decency and morality.

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135 Collin’s Encyclopedic English Dictionary
137 Also in *Director-General of D.D. vs Anand*, AIR 2006 SC 3346, where in the test laid down was “whether the average person, applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest."
(vii) Contempt of Court

Contempt of court is a court order which, in the context of a court trial or hearing, declares a person or organization to have disobeyed or been disrespectful of the court's authority. Often referred to simply as "contempt," such as a person "held in contempt," it is the judge's strongest power to impose sanctions for acts which disrupt the court's normal process. A contempt of court may result from a failure to obey a lawful order of a court, showing disrespect for the judge, disruption of the proceedings through poor behavior, or publication of material deemed likely to jeopardize a fair trial.

The constitutional Right to freedom of speech would not allow a person to contempt the courts. The expression Contempt of Court has been defined under Section 2 of the Contempt of Courts Act, 1971. The term contempt of court refers to civil contempt or criminal contempt under the Act. The Judges do not have any general immunity from criticism of their judicial conduct, provided that it is made in good faith and is genuine criticism, and not any attempt to impair the administration of justice. In re Arundhati Roy, the Supreme Court of India followed the view taken in the American Supreme Court (Frankfurter, J.) in Pennekamp v. Florida, in which the United States Supreme Court has observed that:

Sec 2(a) contempt of court means civil contempt or criminal contempt;
(b) civil contempt " means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court
(c) criminal contempt " means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which-
(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

139 (2002) 3 SCC 343
140 (328 US 331 : 90 L Ed 1295 (1946))
"If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise."

In *M.R. Parashar vs Farooq Abdullah*¹⁴¹ contempt proceedings were initiated against the Chief Minister of Jammu and Kashmir but the Court dismissed the petition for want of proof. The constitutional right to freedom of speech would not prevent the courts to punish, as contempt of themselves, spoken or printed words having that effect.¹⁴² Judges have no general immunity from criticism of their judicial conduct, provided that it is made in good faith and does not impute any private motive to those taking part in the administration of justice; it must be genuine criticism and not malicious or attempt to impair the administration of justice.¹⁴³ The right of a member of the public to criticize the functioning of a judicial institution has been beautifully described by the Privy Council in *Andre Paul Terence Ambard v. Attorney General of Trinidad and Tobago*¹⁴⁴ in the following words:

"No wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way. The wrongheaded are permitted to err therein provided that members of the public abstain from imputing improper motives to those taking part in the

¹⁴³ AIR 1936 PC 141.
administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.”

In *Debi Prasad Sharma v. The King Emperor*¹⁴⁴ Lord Atkin speaking on behalf of the Judicial Committee has observed that:

“In 1899 this Board pronounced proceedings for this species of contempt (scandalization) to be obsolete in this country, though surviving in other parts of the Empire, but they added that it is a weapon to be used sparingly and always with reference to the administration of Justice.

In *Regina v. Commissioner of Police of the Metropolis*¹⁴⁵, Lord Denning has observed:

“It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy, still less into political controversy. We must rely on our conduct itself to be its own vindication. Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.”

¹⁴⁴ AIR 1943 PC 202.
¹⁴⁵ (1968) 2 All ER 319
In Re S. Mulgaokar\textsuperscript{146} a three-Judge Bench considered the question of contempt by newspaper article, criticising the Judges of this Court\textsuperscript{147}. The article noted that the High Courts had strongly reacted to the proposal of introducing a code of judicial ethics and propriety. In its issue dated December 21, 1977 an article titled “Behaving like a Judge” was published which stated that “the Supreme Court of India was ”packed” by Mrs Indira Gandhi “with pliant and submissive judges except for a few”. It was further stated that the suggestion that a code of ethics should be formulated by judges themselves was “so utterly inimical to the independence of the judiciary, violative of the constitutional safeguards in that respect and offensive to the self-respect of the judges as to make one wonder how it was conceived in the first place”\textsuperscript{148}. A notice had been issued to the Editor-in-Chief of the newspaper to show cause why proceedings for contempt under Article 129 of the Constitution should not be initiated against him in respect of the above two news items. After examining the submissions made at the Bar, the Court dropped the contempt proceedings and held that although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19(l)(a) of the Constitution, yet, it is well-recognised that the Press provides the principal vehicle of expression of their views to citizens. Beg, C.J., expressed his views in the following words

\begin{quote}
“Some people perhaps believe that attempts to hold trials of everything and everybody by publications in newspapers must include those directed against the highest Court of Justice in this country and its pronouncements. If this is done in a reasonable manner, which pre-supposes accuracy of information about a matter on which any criticism is offered, and
\end{quote}

\textsuperscript{146} 1978 3 SCR 162
\textsuperscript{147} Published in Indian Express dated 13.12.1977
\textsuperscript{148} 1978 3 SCR 162 para 10
arguments are directed fairly against any reasoning adopted, I would, speaking for myself, be the last person to consider it objectionable even if some criticism offered is erroneous.149

Krishna Iyer, J. agreed with C.J. Beg and observed that:

“Poise and peace and inner harmony are so quintessential to the judicial temper that huff, “hAYWIRE” or even humiliation shall not besiege; nor, unveracious provocation, frivolous persiflage nor terminological inexactitude throws into palpitating tantrums the balanced cerebration of the judicial mind. The integral yoga of shanti and neeti is so much the cornerstone of the judicial process that criticism, wild or valid, authentic or anathematic, shall have little purchase over the mutation of the Court. I quite realize how hard it is to resist, with sage silence, the shafts of acid speech; and, how alluring it is to succumb to the temptation of argumentation where the thorn, not the rose, triumphs. Truth’s taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens. In contempt jurisdiction, silence is a sign of strength since our power is wide and we are prosecutor and judge150.

While initiating contempt proceedings against Shri P. Shiv Shanker who, in his capacity as Minister for Law, Justice and Company Affairs, delivered a speech in the meeting of Bar Council of Hyderabad on November 28, 1987 the Supreme court held the any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of judges and brings administration of justice into ridicule must be prevented151.

149 1978 3 SCR 162
150 Ibid in para 24.
151 P.N. Duda v. P. Shiv Shanker, 1988 AIR 1208, 1988 SCR (3) 547

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In *C.K Daparthy & others vs O. P Gupta*\(^{152}\), the Supreme Court held:

> "That under Art. 129 of the Constitution this Court has the power to punish for contempt of itself, and under Art. 143(2) it can investigate any such contempt. The Constitution makes this Court the guardian of fundamental rights and hence it would not enforce any law which imposes unreasonable restrictions on the precious right of freedom of speech. Under the existing law of contempt of court any publication which is calculated to interfere with the due course of justice or proper administration of law by this Court would amount to contempt of court. Scurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary; and if confidence in Judiciary goes administration of justice definitely suffers".

In *Kalyan Singh vs State of U.P*\(^{153}\)The Supreme Court held that:

> "There is no immunity for any authority of Government, if a personal element is shown in the act of disobedience of the order of the Court, from the consequence of an order of the Court. Even in England where the maxim "Crown can do no wrong" has had its influence, a distinction is made between the Crown as such and the Executive"

In *E.M.S. Namboodripad v. T.N. Nambiar*\(^{154}\), Mr. Namboodripad had made certain remarks about the judiciary at a press conference and sought to justify his remarks as it was no more than giving expression to the Marxist Philosophy. The Supreme Court confirmed the decision of the High Court holding him guilty of contempt of court. While the right to expression of free opinions is essential to a free society, the constitutional

\(^{152}\) AIR 1971, 1132, 1971 SCR 76 at p. 79

\(^{153}\) AIR 1961 446 at 457

law itself imposes restrictions in relation to contempt of court, and it cannot be said that the right abolishes the law of contempt, or that attack on Judges and courts will be condoned. The freedom of speech shall always prevail except where contempt of court is manifested, mischievous or substantial. The Court confirmed the decision of the High Court, holding Mr. Namboodripad guilty of contempt of court. The Supreme Court observed that:

“The law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. Judged from the angle of courts and administration of justice, there is not a semblance of doubt in our minds that the appellant was guilty on contempt of court. Whether he misunderstood the teachings to Marx and Engels or deliberately distorted them is not too much purpose. The likely effect of his words must be seen and they have clearly the effect of lowering the prestige of judges and courts in the eyes of the people”.

Since Namboodripad case, the court has liberalised the law of contempt. The Court dropped the contempt proceeding which were initiated against the comments published in ‘The Indian Express’ with reference to a letter written by Beg. C.J. to the Chief Justice of High Courts suggesting a code of conduct for the judges\(^\text{155}\). The comment, in short, was:

“So adverse has been the criticism, that the Supreme Court Judges, some of whom had prepared the draft code, have disowned it.”

After the proceedings were dropped Beg, C.J. wrote a sort of dissent in support of contempt law while Krishna Iyer, J., wrote a long essay to keep the contempt law within very narrow limits. A notice against the

editor of ‘The Times of India’ for contempt proceedings was issued for publication of a criticism of the Supreme Court’s decision in the Habeas Corpus case.\textsuperscript{156} But after hearing, the Court dropped the proceedings without giving any reasons.\textsuperscript{157}

In \textit{M.R. Parashar v. Farooq Abdullah}\textsuperscript{158} contempt proceedings were initiated against the respondent Chief Minister of Jammu and Kashmir for alleged speeches that justice in the courts can be bought, courts give unfounded stay orders which need not be obeyed, etc. In view of clear denial by the Chief Minister that he made such a speech the Court dismissed the petition for want of proof. In the course of judgment, however, Chandrachud, C.J., observed that since in contempt proceedings the judge also acts as prosecutor, the courts must be reluctant to resort to such proceedings and punish persons for contempt so that the rule of law is upheld and people do not have any impression that the judges are acting in their own defense. Moreover, it involves the fundamental right to freedom of speech and expression which allows people to express themselves about any institution, including judiciary. It was observed that:

"In matters involving allegations of criminal contempt, the Court has to act both as a prosecutor and as a Judge. It does so to uphold the authority of law and not in defense of a particular Judge. Secondly, the right of free speech is an important right of the citizen and bona fide criticism of any system or institution is aimed at inducing the administrators of that system or institution to look inwards and improve its public image. Courts do not like to assume the posture that they are above criticism. At the same time though law does not restrain the expression of disapprobation against what is done in or by Courts of law, the liberty of free\textsuperscript{156} A.D.M., Jabalpur v. S. Shukla (1976)2SCC 521; AIR 1976SC1207)
\textsuperscript{157} Sham Lal, Re (1978)2 SCC 479 , AIR 1978 SC 489.
\textsuperscript{158} (1984)2 SCC 343 , AIR 1984 SC 615.
expression is not to be confounded with a license to make unfounded allegations of corruption against the judiciary. The abuse of the liberty of free speech and expression carries the case nearer the law of contempt. Those who criticize the judiciary must remember that they are attacking an institution which is indispensable for the survival of the rule of law but which has no means of defending itself. Therefore, Judges must receive the protection of law from unfounded attacks on their character".  

Entertaining a petition against certain remarks of the leaders of the Narmada Bachao Andolan the Supreme Court has noted that the freedom of speech and expression does not include the freedom to distort orders of the Court and present incomplete and one-sided picture deliberately which has the tendency to scandalise the Court. After expressing its anguish on these remarks the Court dropped the proceedings.  

In Baradakanta Misra v. Registrar of Orissa High Court Krishna Iyer, J. observed:

“In this country, all courts derive their authority from the people, and hold it in trust for their security and benefit. In this state, all judges are elected by the people, and hold their authority, in a double sense, directly from them; the power they exercise is but the authority of the people themselves, exercised through courts as their agents. It is the authority and laws emanating from the people, which the judges sit to exercise and enforce. Contempt against these courts, the administration of their laws, is insults offered to the authority of the people themselves, and not to the humble agents of the law, whom they employ in the conduct of their Government.”

159 Ibid at page 765 & 766
161 (1974) 1 SCC 374,
This shift in legal philosophy will broaden the base of the citizen’s right to criticize and render the judicial power more socially valid. Holding that somewhere the line has to be drawn between the exercise of the freedom of speech and expression and the law relating to contempt of court, the Supreme Court in a recent decision\(^{162}\) dismissed the contempt petition against a publisher of a law journal for alleged contempt of a tax tribunal committed by him in terms of the articles/editorials published in the law journal. Justice G.S. Singhvi, defined the dividing line the following terms:

> “Before adverting to the second and more important issue, we deem it necessary to remind ourselves that freedom of speech and expression has always been considered as the most cherished right of every human being. Justice Brennan of U.S. Supreme Court, while dealing with a case of libel — New York Times Company v. L.B. Sullivan observed that “it is a prized privilege to speak one’s mind, although not always with perfect good taste, on all public institutions and this opportunity should be afforded for vigorous advocacy no less than abstract discussion.” In all civilized societies, the Courts have exhibited high degree of tolerance and accepted adverse comments and criticism of their orders/judgments even though, at times, such criticism is totally off the mark and the language used is inappropriate.

(viii) Defamation

It is also called calumny, vilification, traducement, slander (for transitory statements), and libel (for written, broadcast, or otherwise published words) is the communication of a statement that makes a claim, expressly stated or implied to be factual, that may give an individual, business, product, group, Government, or nation a negative image. It is

\(^{162}\) *Indirect Tax Practitioners Association v. R.K. Jain* AIT-2010-340-SC
usually a requirement that this claim be false and that the publication is communicated to someone other than the person defamed (the claimant).\textsuperscript{163}

In common law jurisdictions, slander refers to a malicious, false,\textsuperscript{164} and defamatory spoken statement or report, while libel refers to any other form of communication such as written words or images.\textsuperscript{165} Most jurisdictions allow legal actions, civil and/or criminal, to deter various kinds of defamation and retaliate against groundless criticism. Related to defamation is public disclosure of private facts, which arises where one person reveals information that is not of public concern and the release of which would offend a reasonable person. "Unlike in libel, truth is not a defense for invasion of privacy."\textsuperscript{166}

A man’s reputation is his property and is more valuable than any other tangible asset. Every man has the right to have his reputation preserved. It is acknowledged as an inherent personal right of every person. It is a jus in rem, a right good against all the people in the world. The

\textsuperscript{163} Ron Hankin, ‘Navigating the Legal Minefield of Private Investigations: A Career-Saving Guide for Private Investigators, Detectives, And Security Police’, Loose leaf Law Publications, 2008, p. 59. “There are five essential elements to defamation: (1) The accusation is false; and (2) it impeaches the subject's character; and (3) it is published to a third person; and (4) it damages the reputation of the subject; and (5) that the accusation is done intentionally or with fault such as wanton disregard of facts.”

\textsuperscript{164} Roger Leroy Miller, Gaylord A. Jentz, ‘Business Law Today: The Essentials’, Cengage Learning, 2007, p. 115. “In other words, making a negative statement about another person is not defamation unless the statement is false and represents something as a fact. Michael G. Parkinson, L. Marie Parkinson, ‘Law for advertising, broadcasting, journalism, and public relations’, Routledge, 2006, p. 273. “Simplifying a very complicated decision, the court said that because the plaintiff must prove a statement is false in order to win an action in defamation, it is impossible to win an action in defamation if the statement, by its very nature, cannot be proven false.”


\textsuperscript{166} Linda L. Edwards, J. Stanley Edwards, Patricia Kirtley Wells, ‘Tort Law for Legal Assistants’, Cengage Learning, 2008, p. 390. “Under the common law plaintiffs could essentially prove defamation if they could show the defendants statements were false”
degree of suffering caused by loss of reputation far exceeds that caused by
loss of any material wealth.\textsuperscript{167}

The Law of Defamation protects reputation. Defamation is defined as follows:

"Defamation is the publication of a statement which reflects on a person’s reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him."

In English Common Law, reputation is the most clearly protected and is remedied almost exclusively in civil law by an award of damages after trial by a jury. However reputation can rarely be assessed in financial terms but the damages awarded in most defamation cases are substantial because these awards reflect the juries’ ideas of the value of dignity and honour as well as reputation. At the same time, there is some tension between this wrong and the freedom of speech, particularly the freedom of the press and broadcast media and the common law which has felt the influence of the European Convention on Human Rights.\textsuperscript{168}

However, the Law of Defamation like many other branches of tort law aims at balancing the interests of the parties concerned. These are the rights that a person has to his reputation vis-à-vis the right to freedom of speech. The Law of Defamation provides defences to the wrong such as truth and privilege thus also protecting right of freedom of speech but at the same time marking the boundaries within which it may be limited. In India law of Torts is obtained from British Common Law and is yet uncodified. Therefore the existing law relating to defamation places


reasonable restrictions on the fundamental right of freedom of speech and expression conferred by Article 19(1) (a) of the Constitution and is saved by clause (2) of Article 19.

The wrong of defamation may be committed by making defamatory statements which are calculated to expose a person to hatred, contempt or ridicule, or to injure him in his trade, business, profession, calling or office, or to cause him to be shunned or avoided in society. This is known as “publication” of the statement, which in its true legal sense means the communication of defamatory matter to some person other than the person of whom it is written.

The case of Raj Gopal vs. State of Tamil Nadu 169 dealt with the right of privacy of citizens of this country and the parameters of the right of the press to criticize and comment on acts and conduct of public officials. The case related to the alleged autobiography of Auto Shankar who was convicted and sentenced to death for committing six murders. In the autobiography, he had commented on his contact and relations with various police officials. It was the stand of the police that the autobiography was not authored by Auto Shankar. It was stated that neither Auto Shankar nor his wife were made parties before the Supreme Court in the writ petition filed under Article 32 of the Constitution. The right of privacy of citizens was dealt with by the Supreme Court in the following terms:

“The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects 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 governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person’s name or likeness is used, without his consent, for advertising or non-advertising purposes or for that matter, his life story is written whether laudatory or otherwise and published without his consent as explained hereinafter. In recent times, however, this right has acquired a constitutional status. We shall proceed to explain how? Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21”.

There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such harm is not constitutionally protectable by the State. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures. The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute. 170

170 Ibid at page 644.
In *Suresh Chandra vs Panbit Goala*\(^{171}\), it has been held that, in view of the express saving in Article 19(2), section 499 of I.P.C has been held to be not violative of article 19(1)(a).

In *M.H. Devendrappa vs Karnataka State Small Industries Development Corporation*\(^{172}\), The Supreme Court upheld the dismissal from service of an employee on the ground of making allegations about mismanagement against the head of his organizations and issuing press statements of political nature. His conduct was held to be detrimental to interests and prestige of the organization. The court observed that:

“There can be no doubt that Government servants can be subjected to Rules which are intended to maintain discipline amongst their ranks and to lead to an efficient discharge of their duties. Discipline amongst Government employees and their efficiency may, in a sense, be said to be related to public order. But in considering the scope of clause (4), it has to be borne in mind that the Rule must be in the interests of public order and must amount to a reasonable restriction\(^{173}\).”

It was further observed that:

“Proper exercise of rights may have, implicit in them, certain restrictions. The rights must be harmoniously construed so that they are properly promoted with the minimum of such implied and necessary restrictions. In the present case, joining Government service has, implicit in it, if not explicitly so laid down, the observance of a certain code of conduct necessary for the proper discharge of functions as a Government servant. That code cannot be flouted in the name of other freedoms. Of course, the courts will be vigilant to see that the code is not so widely framed as to unreasonably restrict fundamental freedom. But a

\(^{171}\) AIR 1958 Cal 176.

\(^{172}\) AIR 1998 SC 1064.

\(^{173}\) 1978 SCC 794.
reasonable code designed to promote discipline and efficiency can be enforced by the Government organisation in the sense that those who flout it can be subjected to disciplinary action”. 174

(ix) Incitement to an offence

This is a new ground added under article 19(2) of the Constitution in 1951. The freedom of speech cannot confer a license to incite people to commit offence. During the debate on this clause in the Parliament, it was suggested that the phrase should be ‘incitement to violence’ as the word ‘offence’ is a very wide expression and could include any act which is punishable under the Indian Penal code or any other law but the suggestions were rejected. In State of Bihar V. Shailabala Devi,175 the Supreme Court held that incitement to murder or other violent crimes would generally endanger the security of the State; hence a restriction against such incitement would be a valid law under clause (2) of Article 19.

(x) Sedition

The word “sedition” is not found anywhere in the Indian Constitution and is an offence against the State as enumerated in the Indian Penal Code, in which Article 19 of the Indian Constitution holds great relevance. The contemporary discernment of sedition in India encompasses all those practices, whether by word, deed, or writing, that are reckoned to disturb the tranquility of the State and lead ignorant persons to debase the government. Chapter VI of the Indian Penal Code (IPC) deals with “offences” against the State . The Indian Penal Code defines Sedition as follows176:

“Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise,

174 Ibid.
175 AIR 1952 SC 329.
176 Section 124 A
brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine”.

The Australian Concise Oxford Dictionary defines Sedition as:

“Conduct or speech inciting to rebellion or a breach of public order, agitation against the authority of a State”.

In the Federation Edition of the Macquarie Dictionary sedition is defined to mean:

“Incitement of discontent or rebellion against the government; action or language promoting such discontent or rebellion”.

This law was proposed in India in 1870 against increasing Wahabi activities between 1863 and 1870 was modified in 1898. The framework of this section was taken from several sources- the Treason Felony Act (1848, Britain), the Common law of seditious libel (Libel-defamation in permanent form), and English law pertaining to seditious words. British Officials tried to crush the Indian Freedom Struggle with an iron hand and in retaliation to the protest against them some of the activists of Indian freedom struggle were charged with Sedition.

The first in a sequence of sedition cases against editors of national newspapers was the trial of Jogendra Chandra Bose in 1891, followed with the trial of Bal Gangadhar Tilak, who was tried under this law. Another famous and important sedition trial was of Mahatma Gandhi, who was an

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178 Ibid.

179 Section 124A of the Indian Penal Code
advocator of passive resistance, and always abstained himself and his followers from adopting the violent methods, he was tried in 1922 along with Shankerlal Banker, the owner of Young India for the articles published in the magazine.

In Kedar Nath Singh v. State Of Bihar\textsuperscript{180} the main question in controversy was whether sections 124A and 505 of the Indian Penal Code have become void in view of the provisions of Art. 19(1)(a) of the Constitution. After recording a substantial volume of oral evidence, the learned Trial Magistrate convicted the accused person both under S. 124A and 505(b) of the Indian Penal Code, and sentenced him to undergo rigorous imprisonment for one year. The speech was:

"To-day the dogs of the C. I. D are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it. To-day these Congress goondas are sitting on the gaddi due to mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well"

The convicted persons preferred an appeal to the High Court of Judicature at Patna, the Court upheld the convictions and the sentence and dismissed the appeal. Finally it was held that, Section 124A of the Indian Penal Code which makes sedition an offence is constitutionally valid. Though the section imposes restrictions on the fundamental freedom of speech and expression, the restrictions are in the interest of public order and are within the ambit of permissible legislative interference with the fundamental right.

\textsuperscript{180} AIR 1962 SC 955, 1962 Supp. (2) SCR 769.
On December 24, 2010, a court sentenced Dr. Binayak Sen\(^{181}\) a vocal critic of the Chhattisgarh state Government's counter insurgency policies against violent Maoist rebels, to life in prison for sedition. The judge found no evidence that Sen was a member of any outlawed Maoist group or that he was involved in violence against the state. Police had arrested Sen on May 14, 2007, accusing him of carrying messages from the jailed Maoist ideologue Narayan Sanyal. The Supreme Court granted bail to him and observed that the evidence on record proves no sedition case against Sen. He visited Sanyal under the supervision of jail authorities to provide medical and legal aid. At the worst he could be termed as active sympathizer of Naxals. The Court also observed that mere possession of Naxal literature does not make a person guilty of sedition.\(^{182}\)

Later on the activist demanded repeal of sedition laws, saying that they were being used to "suppress" the voice of the people. "Sedition laws are not benefiting free people in free polity and they should be repealed. The law is being used to suppress the voice of the people."\(^{183}\)

There after a campaign was launched by Peoples Union of Civil Liberties against the Sedition Act whose provisions went sharply against the spirit of democracy, leading human rights campaigner Dr. Binayak Sen to say "We plan to collect one million signatures and present them before parliament during the winter session."\(^{184}\)

The Opposition against the Union Government's Operation Green Hunt, launched against Maoist forces, was building up. If the groups resisting the Government measures were earlier spreading their word

\(^{181}\) A Social activist.

\(^{182}\) The Times of India, April 15, 2011, Dhananjay Mahapatra & Supriya Sharma, TNN, New Delhi/Raipur.


\(^{184}\) The Times of India, "PUCL launches campaign against Sedition law: Binayak Sen’ August 29, 2011 PTI He stated this while delivering the D.C Kizhekkemuri memorial lecture.
through posters, they also resorted to booklets to spread the message. The Barnala Police came across a 12-page booklet, titled Sant Kahende Rahe, and registered a sedition case against its publishers.\(^{185}\)

The Additional district and session judge fast track court Rang Nath Pandey convicted one Hari Maheshwari alias Hari Krishna Maheshwari for sedition and sentenced him for life imprisonment on Monday. The presiding officer also imposed a fine to the tune of Rs. 5 lakh and directed the district magistrate to ensure the realisation of the fine amount from the property of the accused and deposit it in the treasury. \(^{186}\)

In Kolkata Five women were arrested for putting up posters demanding the release of top Maoist leader Somen. They were charged with sedition and hatching conspiracy against the state. \(^{187}\)

In Bihar, a local court accepted a complaint seeking to register a case of sedition against Congress leader and former Madhya Pradesh chief minister Digvijay Singh for allegedly describing Yoga guru Ramdev as a 'fraud'. Chief Judicial Magistrate RC Malviya accepted the complaint filed by advocate Sudhir Ojha who sought to book Digvijay Singh under section 154(A) (sedition), section 153 (wantonly giving provocation with intent to cause riot) and section 504. \(^{188}\)

In New Delhi, a magistrate directed the police in November 2010 to investigate sedition charges against the writer and columnist Arundhati Roy even though the Indian Government in late October had decided against filing such charges. The allegations against Roy and five others

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\(^{185}\) The Times of India, 'Publishers of booklet booked for sedition' June 28, 2010.
\(^{186}\) The times of India, 'Accused gets life for sedition' August 27, 2001.
\(^{187}\) The Times of India, 'Five women charged with sedition', March 25, 2008 TNN (Bishnupriya Baidya (17), Puja Mandal (18), Manju Mandal (18), Minu Saha (22) and Kanika Debnath (35), were putting up posters at Baghajatin railway station)
\(^{188}\) The Times of India, 'Sedition charge against Digvijay Singh for calling Ramdev a 'thug' June 6, 2011 PTI Muzaffarpur(Bihar)
stemmed from speeches they made on October 21 in New Delhi supporting Kashmiri secession. The Home Ministry said that pursuingsedition charges was inappropriate because there was no evidence of inciting violence\textsuperscript{189}.

In this manner we conclude that the first step towards achieving the distant goal of Right to Information is declared in the Fundamental Right of Freedom of Speech and expression, Right to Equality, Right to Know along with the Directive Principles of State Policy. The Right to Information is essentially a citizens Fundamental Right. The Constitution of India underscores its importance. It is a necessary prerequisite for a successful Democracy, transparency and accountability. Good governance in a Democracy cannot be ensured without effective Right to Information.

\textsuperscript{189} www.timesindia.com