

**2023**

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### **Recommended Citation**

D. Nandana, 'Freedom of Speech and Expression: A Critical Study with Relevant Case Laws' (2023) 2 JJLR 01-12.

Available at [www.jurynesia.com/vol-2-issue-2/](http://www.jurynesia.com/vol-2-issue-2/).

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## **FREEDOM OF SPEECH AND EXPRESSION: A CRITICAL STUDY WITH RELEVANT CASE LAWS**

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### **ABSTRACT**

*The Indian Constitution ensures that all citizens have the right to freedom of expression, regardless of gender, caste, creed, or religion. This is an inalienable fundamental right that characterizes a nation's democratic principles. The right to express one's opinions without censorship or fear is a cornerstone of Freedom of speech and expression. While local interference is a necessary condition for press freedom, its maintenance through the constitution or other safeguards is essential for the nation as preservation of democracy. The Freedom of the Press is ensured under Art. 19 (1)(a). This research paper aims to recognize the importance of the freedom of speech and expression in our nation and highlight the areas in which they operate and where regulatory laws are vital. This paper will also focus on a critical study of the legal provisions and limitations of the law. The current study seeks to examine the significance of preserving free speech and expression. The current study would be focusing on rights of them and will also be covering the aspects related to the laws that govern their freedom. The researcher will also be enhancing the data about the existing court verdicts and will cover few related cases.*

**KEYWORDS:** *Art. 19(1)(a), freedom, constitution, press, media.*

### **INTRODUCTION**

“*Liberty of Thought, Expression*” is a phrase in the Preamble that speaks about Art. 19(1)<sup>2</sup>, giving the Fundamental Rights to every citizen of the Freedom of thought and expression. A cornerstone of the country's

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<sup>2</sup> INDIA CONST. art. 19, cl.1.

democracy is freedom of speech and expression. Fundamental human rights are assured to every Indian resident.

The Indian Constitution's framers discussed whether to establish separate legislation similar to the United States' first amendment or to adopt the English system, which incorporated freedom of the press as a part of freedom of speech and expression. Drafters in India decided to establish specific legislation for media freedom since newspaper editors and managers are all individuals. The newspapers are exercising their right to Freedom of Expression and Speech by publishing in the newspaper; therefore, a separate law is not necessary. As a result, Art. 19(1) (a)<sup>3</sup> of the Indian Constitution safeguard it.

Under Art. 14 of the Constitution, everyone is entitled to equal treatment under the law and equal protection of the law. In the eyes of the law, every citizen is equal, and there is no room for discrimination on any basis. As a result, every person will have equal access to the freedoms guaranteed by Art. 19(1) (a).

## **ANALYSIS**

The right to freedom of speech and expression is enshrined in the Indian Constitution's preamble, notably in Art. 19(1) (a). It asserts that citizens have the Right to think, speak, believe, and worship. The right to a free press is inextricably tied, as part of freedom of expression and thought. Freedom of speech and expression relates to the capability to proclaim oneself through writing, speech, photography, printing, press, media, others.

## **WHAT IS FREEDOM OF PRESS AND MEDIA?**

As stated in the Constitution, freedom of media and Freedom of the Press are not mentioned in Art.19(1)(a) but in Freedom of expression. As chair

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<sup>3</sup> INDIA CONST. art. 19, cl.1, sub cl (a).

of the Legislative Select Committee of the Legislature, Dr. Ambedkar asserted that no direct communication of media freedom is required as citizens and the media share the same right to express themselves. Art. 19 (1) (a) provides freedom of speech and speech. Art. 19 (1) (a) protects Freedom of the media and electronic media, subject to reasonable constraints under Art. 19(2)<sup>4</sup>. This remark refers to freedom of speech, the production of books, newspapers, films, and videos, among other things. Over time, freedom of speech and expression has broadened to comprise the press and electronic media. A democratic media is pivotal in exposing the mistakes of the ruling party. If there is no freedom of oppression, there will be no democracy.

After 2000, the media obtained new technology. With the advent of electronic media, people can get information and entertainment, raise awareness, develop their ideas and thoughts, and stay updated on what is happening in society. The thirst for startling news is a natural human desire. Due to modern technology, it spreads to the entire world within seconds. Through its audio-visual form of communication, electronic media is increasingly reaching even illiterate people; news debates are now accessible to those who cannot read newspapers and many more such things. The general public's socio-political and economic understanding has been enhanced dramatically. Public opinion is fairly expressed through the free press, and minorities are able to voice their opinions on the state. Digital media are valuable resources in India that promote the democratic concept of free expression.

## **RESTRICTIONS**

There can be no absolute or unrestricted freedom. The freedom of speech and expression is constrained to certain restrictions, defined under Art. 19(2). As provided in Art. 19(2), a state can put 'reasonable' restrictions

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<sup>4</sup> INDIA CONST. art. 19, cl.2.

on freedom of speech and expression in order to protect the rights of its citizens. In the interests of protecting the rights to free speech and expression, it places reasonable constraints:

- **The Sovereignty and Integrity of India:** The Constitution (Sixteenth Amendment) Act of 1963 added this ground to the Constitution. Clause (2) does not mention that sedition can be used to assess constraints on freedom of speech and expression. However, this is aimed only at preventing anyone from directly challenging the integrity and sovereignty of the country.
- **The Security of the State:** In *Romesh Thappar v. State of Madras*<sup>5</sup> case, the S C defined the phrase "security of the state". The Court noted that offenses relating to "public order" and "security of the state" have distinct degrees. Threats to the security of a nation can include rebellion and war.
- **Friendly relations with foreign States:** The First Amendment Act of 1951 added it to prohibit unrestricted propaganda against foreign-friendly states. Considering that it could stabilize India-state relations.
- **Public Order:** The Supreme Court has ruled in *In Romesh Thappar v. State of Madras* that state security and law and order are discerned from public order. A state of tranquility, safety, and harmony within society is "public order". Disruptions to public peace or tranquility disturb public order.
- **In relation to contempt of court:** According to the 1971 Contempt of Courts Act, contempt is the offence of scorning the court's reign or its dignity. Defying the court's order is contempt of

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<sup>5</sup> *Romesh Thappar v. The State of Madras* 1950 SCR 594.

the court. If a person is in contempt of the court if their freedom of speech or expression extends beyond reasonable and fair criticism.

- **Defamation or Incitement to an offence:** According to Art. 19 of the Indian Constitution, clause (2) prohibits anyone from making any statement that would harm another's reputation. The freedom of expression does not entail the right to defame anyone. A person's freedom of speech and expression cannot be construed as an authorization for them to incite people to commit crimes.

### **THE PRESS COUNCIL OF INDIA -**

The Press Council Act, 1978 governs the print media in India that has established the Press Council of India (PCI). A self-governing body, the Press Council of India was established in 1979. The Press Council of India's responsibilities include adjudication of complaints against the media. It has the legal authority to take suo motu awareness of conduct that violate journalistic ethics. It has the authority to convene witnesses, oaths of testimony, give warnings, and reprimand a publication, editor, news agency or journalist. On the other hand, the Press Council of India has a severe restriction in that it lacks the authority to sanction anybody for violating its norms.

### **THE INFORMATION TECHNOLOGY ACT, 2000**

The Information Technology Act of 2000 was enacted to control India's cyberspace. With technical improvements and the rising use of the internet, this measure was considered as a need. Albeit the IT Act of 2000 does not directly govern the news industry, it can regulate the material published online through its provisions. This is plainly demonstrated in Sec. 66A and 69A. The Supreme Court found Sec. 66A of the Information and Technology Act, 2000 to be unconstitutional in the case of *Shreya*

*Singhal v. Union of India*<sup>6</sup> for the terms' transparency, ambiguity, and vagueness used in the setting have an “incomprehensible” meaning. Sec. 69A, however, was considered legal in the case of Shreya Singhal. Compared to mainstream media such as print and television, the Technology Act of 2000 imposes stricter limits on online knowledge. Newspapers are an integral part and facet of the freedom to speech and expression in our country. They raise political consciousness and educate the public. In addition to presenting facts, newspapers are instrumental in interpreting and propagating new ideas and ideologies through their editorial Sec.s. They are designed to safeguard the public interest by exposing government and other governing organizations' wrongdoings, failures, and shortcomings.

## **CASE LAWS**

Art. 19(1) (a) of the Indian Constitution are the rights solely to “*citizens*”.

In *State trading corporation of India v. The Commercial Tax Officer*<sup>7</sup> case, there was an issue raised whether corporation is a citizen or not. It was held that, Part III of the Constitution makes a clear distinction between fundamental rights available to “any person” and those guaranteed to “*all citizens*”, indicating thereby that under the Constitution all citizens are persons but all persons are not citizens.<sup>8</sup> It confers the right of citizenship or recognizes as citizen any person other than a natural person. They do not contemplate a corporation as a citizen.<sup>9</sup>

The expressions “*any person*” and “*any citizen*”, and when the Constitution laid down the freedoms contained in Art. 19(1)(a)-(g), as available to “*all citizens*”, it deliberately kept out all noncitizens. In that context, non-citizens would include aliens and artificial persons.”

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<sup>6</sup> AIR 2015 SC 1523.

<sup>7</sup> 1964 SCR (4) 89.

<sup>8</sup> 1963 AIR 1811.

<sup>9</sup> *Id.*

In the case of *Romesh Thappar v. The State of Madras*<sup>10</sup>, the CJ said that the constitution's founders may have seen the idea of Madison, who was the first to amend the organization's constitution. Rather than pruning the remaining branches and affecting those who produce good fruit, he felt it best to let some dangerous ones grow to their full potential. CJ, in this case, also declared that Media and Press Freedom are the foundations of all democratic institutions.

In the case of *Bennett Coleman Co. v. Union of India*<sup>11</sup> pointed out that the availability of information and perceptions is as important as distribution in assessing free speech and expression. In this case, petitioners' challenges - restrictions and regulations on newspapers were accepted by the Supreme Court of India as violating the right to freedom of expression and speech. Observing that freedom of expression had both quantitative and qualitative facets to freedom of the press, the Court ruled that quantitative controls restrict freedom of expression. It was impossible to consider them reasonable restrictions since there was no justification for their existence based on a shortage of newsprint. The 1972-73 Newsprint Policy was deemed unlawful by the Supreme Court since its quantitative limits were unjustified by the newsprint shortage, violating Art. 14 and 19(1)(a).

According to the decision, both the news volume and circulation constitutes freedom of speech and expression.

Whether publication and circulation are also part of the Freedom of Speech and Expression was held in *Sakal Papers Ltd v. The Union of India*<sup>12</sup>. The Court found it that the contested Act and Order infringed upon the rights of the people, even though the newspapers companies had been entitled to determine their own pricing before the contested Act

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<sup>10</sup> *Supra* note 4.

<sup>11</sup> (1972) 2 SCC 788.

<sup>12</sup> 1962 SCR (3) 842.



and Order was adopted. Even to a modest increase in the price or a reduction in the number of pages, affects its circulation. Therefore, the Court found it violated Art. 19(1)(a) of the Constitution.

In *Brij Bhushan v. State of Delhi*<sup>13</sup> case, the Government of Delhi passed an order directing editors and publishers to submit news relating to communal matters and promoting Pakistani views for scrutiny. It was declared that the Constitution's Art. 19(1)(a) prohibits any pre-censorship or prohibition on the publication of any matter unless it is justified in Art. 19(2).

In *Indian Express Newspapers v. Union of India*<sup>14</sup>, Despite, the press freedom is not clearly mentioned in Art. 19(1)(a) it is within the Art. of freedom of speech and expression. There will be no meddling with the privilege of the public to freedom of expression when an authority interferes with the content or distribution of newspapers in the name of public interest.

In *Prabhu Dutt v. Union of India*<sup>15</sup>, the Supreme Court ruled citizens are entitled to know about their government administration and the freedom of the press also extends to the government.

In the case of *Faheema Shirin v. State of Kerala*<sup>16</sup>, The Indian Constitution's Art. 19(1)(a) ensures the right to expression, including access to the internet. The limits imposed are not reasonable restrictions protected by Art. 19(2) of the Constitution.

In the case of *Maneka Gandhi v. Union of India*<sup>17</sup>, the Indian citizens right to freedom of speech and expression extends beyond national borders, according to the Supreme Court. The Supreme Court declared in this

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<sup>13</sup> AIR 1950 SC 129.

<sup>14</sup> (1985) 1 SCC 641.

<sup>15</sup> AIR, 6 1982 SCR (1)1184.

<sup>16</sup> WP (C) No. 19716 of 2019 (L).

<sup>17</sup> 1978 AIR 597.

important ruling that freedom of speech and expression had no geographical limitations. It encompasses citizens' ability to seek information and communicate ideas with people in India and overseas.

Freedom of expression and speech does not protect commercial speech under Art.19(1) (a). According to the Supreme Court, in *Hamdard Dawakhana v. Union of India*, advertising is manifestly a kind of expression of ideas and speech. In this example, the advertisement was judged to be more concerned with economics or commerce than with propagating ideas. As a result, promoting illicit medications would fall outside the purview of Art.19(1)(a).

In the case of *Navtej Singh v Union of India*<sup>18</sup> In this case, it was held that Sec. 377 is disproportional and unreasonable. It violates freedom of expression including right to choose a partner.

## **LITERATURE REVIEW**

*"How newspapers reported on, or skipped, India's rank in press freedom index": News Laundry*<sup>19</sup>

This article, published in the News Laundry on 4<sup>th</sup> May 2022, talks about how the ruling government managed not to let the Indian newspapers print the index of the freedom of media and how few manipulated to change the rankings of India.

*"V. Govindu, Contradictions In Freedom Of Speech And Expression"*<sup>20</sup>

This study illustrates the parameters, objectives, and freedom of speech and expression restrictions. As stated in the title, the Art. analyses and

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<sup>18</sup> AIR 2018 SC 4321

<sup>19</sup> *'Has The Time Come To Review Press Freedom'*, Legal Service India (2017).

<sup>20</sup> [2011] 72 IJPS 641, 650.

investigates the inconsistencies and restrictions in the right to free speech and expression in the media, public, and other contexts.

*Pujarani Behera, "An Analysis of Right to Freedom of Speech and Expression"<sup>21</sup>*

The researcher concisely discussed the right to free speech and expression in this article. Additionally, it emphasizes the importance of free speech protection and other facets of that freedom. As stated in Art. 19(2) of the Constitution also addresses the basis for restrictions.

*"Limits to Freedom of Speech and Expression in India: A Socio-Legal Analysis, Legal Service India"<sup>22</sup>*

This article written by Chinmay, talks about norms limiting freedom of speech. The study concludes the delicacy underlying issues of governments, religion, and culture worldwide that restrict free speech.

## **CONCLUSION**

The right to freedom of speech and expression is fundamental that belongs to all. Nothing can violate the citizen's right to know and Freedom of expression. It should not manipulate or conceal information. It must protect citizens from pressures, violations, restrictions, and discrimination that try to harm their rights. It should remain independent from internal and external influencers such as politics, economics, and society and must not intervene in anything that might harm its impartially. A democracy's vigour and vibrancy are rights that guarantee freedom of speech and expression. It establishes equilibrium in the socio-political discourse by enabling for the expression and

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<sup>21</sup> Pujarani Behera, 'An Analysis of Right to Freedom of Speech and Expression'

<sup>22</sup> 'Limits to Freedom of Speech and Expression in India: A Socio-Legal Analysis', Legalserviceindia.com (2019).

discussion of various points of views. As a result, it is a fundamental right that should not be denied to Citizens.

## REFERENCES

1. V.N. Shukla's Constitution of India, 13<sup>th</sup> Edition.
2. Pujarani Behera, '*An Analysis of Right to Freedom of Speech and Expression*' <http://www.penacclaims.com/wp-content/uploads/2020/07/Pujarini-Behera.pdf>.
3. *Limits to Freedom of Speech and Expression in India: A Socio-Legal Analysis*, Legalserviceindia.com (2019), <https://www.legalserviceindia.com/legal/Art.-5782-limits-to-freedom-of-speech-and-expression-in-india-a-socio-legal-analysis.html>.
4. Oishika Banerji, *Sakal Papers v. Union of India- Freedom of Speech and Expression & restrictions on the business activities of citizens* - iPleaders, iPleaders (2021), <https://blog.ipleaders.in/sakal-papers-vs-union-india-freedom-speech-expression-restrictions-business-activities-citizens/>.
5. Admin, *Freedom of Speech and Expression [Art. 19(1)(a)] - Indian Polity Notes*, BYJUS (2016).
6. *Freedom of Speech and Expression*, Legalserviceindia.com (2021), <https://www.legalserviceindia.com/legal/Art.-77-freedom-of-speech-and-expression.html>.
7. *Case Analysis: Bennett Coleman v. Union of India*, Legalserviceindia.com (2021), <https://www.legalserviceindia.com/legal/Art.-9436-case-analysis-bennett-coleman-v-s-union-of-india.html>.