INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor
School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

FREE SPEECH AND THE INDIAN JUDICIARY: A DOCTRINAL EVOLUTION

AUTHORED BY - RUDRALI DESHPANDE

ABSTRACT

This paper analyzes judicial interpretations of Articles 19 (1)(a) and 19(2) of the Constitution of India to chart the doctrinal trajectory of free speech in India. It considers how the Supreme Court has attempted to balance individual liberty with the powers it has given the state to impose reasonable restrictions on free speech on the grounds of "public order," "morality," and "national security." Landmark cases like Romesh Thappar v. State of Madras, Kedar Nath Singh v. State of Bihar, and Shreya Singhal v. Union of India provided important insights into the Court's gradual movement from a more deferential stance toward a more speech-protective stance. This paper also considers more recent issues related to free speech in India such as speech in cyberspace, shutdowns of the internet, and regulations online, and their implications to the constitutional promise of free expression. Ultimately, this paper argues that while courts have begun to change the trajectory toward expansion of speech protections, recurrent reliance on prohibitive law and executive discretion will ultimately continue to test the viability of India's commitment to a constitutional democracy with free expression.

Keywords: Free Speech; Article 19(1)(a); Reasonable Restrictions; Indian Judiciary; Constitutional Law; Digital Expression.

INTRODUCTION

Freedom of speech and expression is an essential fundamental right under Article 19(1)(a)[1] of the Indian Constitution. Tracing the evolution of this fundamental right, we observe that the Supreme Court of India has played an eminent role in defining the contours of this right against various state interests. Article 19(2)[2] permits “reasonable restrictions” on speech. The First Constitutional Amendment of 1951 clarified this explicitly, adding grounds such as security, public order, morality, and defamation under Article 19(2). Since then, the Indian judiciary has

[1] India Const. art. 19(1)(a).
[2] India Const. art. 19(2).

ISSN: 2582-6433

had an evolving jurisprudence of free speech, sometimes solidly protecting individual speech, sometimes weighing state interests more. This paper investigates the trajectory by analysing important cases, constitutional changes, and recent developments and reflects on how Articles 19(1)(a) and 19(2) create an ever-changing balance that delineates the contours of free speech in India.

HISTORICAL EVOLUTION OF FREE SPEECH JURISPRUDENCE

Following independence, the Supreme Court interpreted Article 19(1)(a) as expansive. In Romesh Thappar v State of Madras, 1950[3] The Supreme Court struck down a Madras law that prohibited the circulation of a leftist journal. Though the Court frequently invokes the "fundamental right to freedom of speech and expression," its interpretations at times end up curbing the very flow of ideas the right is meant to protect. The Court invalidated the ban on an RSS weekly. These early examples engaged Article 19(1)(a) almost absolutely, at least in the absence of clear legislative intent. The executive arms of government reacted quickly: on 18 March 1951, Parliament passed the Constitution (First Amendment) Act, 1951. The First Amendment introduced Article 19(2), which allowed for laws placing "reasonable restrictions" on speech, regarding state security, public order, decency or morality, contempt of court, defamation, incitement to offence, and friendly relations to foreign states. Contemporary commentary suggests that the First Amendment was aimed at rolling back the constitutional doctrine established by the Romesh Thappar line of cases.

The new Article 19(2) framed a dialectic that would energize decades of case-law: how to balance free expression against "reasonable" grounds of restriction. During the 1950s and 1960s, the Court contended with tensions like sedition and public order. In Kedar Nath Singh v State of Bihar, 1962[4]A five-judge bench upheld Section 124A IPC, which is sedition, but read it narrowly. The Court made it clear that sedition charges are valid only when speech or actions are meant to provoke violence or disrupt public order. Simply criticising the government or its policies, so long as it's done peacefully and without incitement, does not count as sedition[5].

[3] Romesh Thappar v. State of Madras, AIR 1950 SC 124.
[4] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955, Supp. 2 S.C.R. 769.
[5] 'Kedar Nath Singh v. State of Bihar, Global Freedom of Expression (Colum. Univ.), https://globalfreedomofexpression.columbia.edu/cases/nath-singh-v-bihar/,

ISSN: 2582-6433

Similarly, in Ram Manohar Lohia v Union of India, 1957[6], the Court upheld a preventive detention law because it needed to maintain public order, and implicitly accepted that restrictions could be imposed to prevent serious danger if those restrictions did not amount to an actual breach of public order. Over time, the public-order exception became more purposive: restrictions would have to target proximate threats. Similarly, cases from the 1960s and 70s began to more categorically elaborate on obscenity and decency as constitutional limitations under Article 19(2).

By the end of the 20th century, landmark cases had established basic tests. One famous case, S. Rangarajan v P. Jagjivan Ram, 1989, had confronted censorship of films before a Constitution Bench. The Court found as follows: "Democracy is based essentially on free debate and open discussion; free general discussion of public issues is essential"[7]. Thus, a Tamil film that was critical of caste-based reservation could not be banned simply because some viewers might be offended by it. The Court reiterated Justice Bhagwati's statement that freedom must also include thoughts "that we hate". Film content is allowed to put audience members in a state of anger, so long as that content does not represent an imminent threat to public order. The case established a narrow "clear-and-present danger" test in Indian law: speech can be limited if it would prevent the occurrence of real violence or disorder.

CONSTITUTIONAL AND STATUTORY FRAMEWORKS

The guarantee of free speech under Article 19(1)(a) will always be read with the exceptions of Article 19(2)[8]. The First Amendment, 1951 was enacted under Nehru to explicitly add those exceptions. In practice, those exceptions will serve as the baseline for analysis: only laws limited to the narrow categories in (2) qualify. The Supreme Court has affirmed that Article 19(2) provides a complete and exclusive list of grounds on which speech can be restricted, no limitation is valid beyond what is explicitly stated. For instance, in Express Newspapers Ltd v Union of India, 1958[9], the Court ruled out any possibility of restricting speech outside of Article19(2)[10].

[6] Superintendent, Cent. Prison, Fatehgarh v. Ram Manohar Lohia, AIR 1960 SC 633, (1960) 2 S.C.R. 821.
[7] S. Rangarajan v. P. Jagjivan Ram, AIR 1989 SC 574, (1989) 2 S.C.C. 574.
[8] Tejaswini Kaushal, A Bird's Eye View of the Right to Freedom of Speech and Expression in India, Manupatra (Feb. 16, 2023), https://articles.manupatra.com/article-details/A-Bird-s-Eye-View-of-the-Right-to-Freedom-of-Speech-and-Expression-in-India.
[9] Express Newspapers (P) Ltd. v. Union of India, AIR 1958 SC 578, 1959 S.C.R. 12.
[10] Restrictions on Public Official's Freedom of Speech: Judgment Summary, Supreme Court Observer (Jan. 3, 2023), https://www.scobserver.in/reports/restrictions-on-public-officials-freedom-of-speech-judgement-summary/.

ISSN: 2582-6433

There are important laws that constrict free speech. The Indian Penal Code has a number of crimes related to speech: Indian criminal law contains several provisions that directly impact freedom of expression: Section 124A deals with sedition; Sections 153A and 153B address hate speech and the promotion of enmity between groups; Section 295A targets acts deemed blasphemous towards religion; and Sections 499–500 pertain to criminal defamation. In general, these, and in general restrictions on speech, are justified on the grounds of the restrictions being in the interests of public order, decency and to prevent defamation. Other laws, like labour laws, electoral laws and others impose restrictions, for example, Section 126-127 of the RPA prohibits certain types of campaign speech[11]. The Cinematograph Act, 1952[12] allows for pre-censorship of films, the Court approved this in K.A. Abbas[13], while the Broadcasting Act requires TV to be licensed. The Information Technology Act, 2000 included provisions in Section 66A, which were struck in Shreya Singhal case[14], and still includes provisions related to cyber-defamation and harassment. More recently, Parliament has sought to introduce reforms to speech laws: as of the end of 2023, the new criminal bills which are now approved by the President, Sedition has been repealed and replaced by a vaguely framed offence targeting "acts endangering the sovereignty, unity, and integrity of India. Observers have called attention to this, and noted that it reflects the debate about sedition while complicating it.

JUDICIAL CLARITY ON FREE SPEECH RESTRICTIONS UNDER ARTICLE 19(2)

Article 19(2) permits restrictions on speech, but only if they are both reasonable and confined to the expressly listed grounds. Judicial doctrine has gradually elaborated on the meaning of these terms. Reasonableness has been interpreted to mean restrictions must be neither arbitrary nor disproportionate; there must be a substantial link between the restriction and the objective. In K.A. Abbas, the Court remade censorship as permissible only if it conforms to intelligible criteria. In Rangarajan, the Court adopted the "clear and present danger" test, holding that speech may be restricted only when it poses a clear and imminent threat to public order. Similarly, Maneka Gandhi v Union of India, 1978[15], on personal liberty, set out that constitutional rights to restrict fundamental rights must fulfil a threefold test of legality,

[11] The Constitution (First Amendment) Act, 1951.
[12] The Cinematograph Act, 1952 (Act 37 of 1952).
[13] K.A. Abbas v. Union of India, AIR 1971 SC 481, 1971 S.C.R. (2) 446.
[14] Shreya Singhal v. Union of India, AIR 2015 SC 1523, (2015) 5 S.C.C. 1.
[15] Maneka Gandhi v. Union of India, AIR 1978 SC 597, (1978) 1 S.C.C. 248, 2 S.C.R. 621.

ISSN: 2582-6433

necessity and proportionality, factors later borrowed by analogy in extent and application to speech cases.

Out of the seven grounds for restriction to free speech under Article 19(2), public order is by far the most contested ground. In early cases, such as Lohia, broadly preventive action was allowed. Following this, in Brij Bhushan v State of Delhi, 1950 and Atma Ram v Union of India, 1954, the Supreme Court stressed that speech could only be restricted in the presence of a real and immediate threat, effectively invoking Holmes's "clear and present danger" test. Similar assertions were made by Rangarajan and the more recent judgment in Azam Khan v State of U.P., 2023, where a Constitution Bench reiterated that neither Article 19(2) nor conflict with the rights of others, can excuse free speech. As such, "public order" has been interpreted narrowly as peacefulness or tranquillity and not mere general annoyance. Likewise, hate speech laws (IPC 153A, etc.,) are upheld and only enforceable were, based on the facts in evidence, speech can be proven to incite enmity or violence. The Court has reasoned that hate speech has "no redeeming or legitimate purpose," and hence takes place outside the scope of Article 19(1)(a); and can only be imposed as an exception.

Another doctrinal adjustment is acknowledging the mediums of speech. In Anuradha Bhasin v Union of India, 2020[16], the Court said that internet shutdowns in Jammu & Kashmir violate the freedom of expression of journalists, essentially viewing the internet as a medium for protected speech. The Court said that any orders to interrupt internet services must satisfy the criteria of Article 19(2) and must be published for public review. In Foundation for Media Professionals v UOI, 2022[17], the Court called upon the government to develop guidelines regarding the search and seizure of journalists' digital devices, highlighting that any seizure poses a serious chilling effect on the media. These rulings showed the Court's willingness to apply principles developed for old media, such as prior restraint and proportionality to the speech on digital media.

CONCLUSION

The Indian judiciary has had a long and doctrinal path on free speech, one that has moved from the early absolutism of Romesh Thappar v State of Madras to the more balanced readings in Shreya Singhal v Union of India, and the recent decisions of the digital age. While Article

[16] Anuradha Bhasin v. Union of India, AIR 2020 SC 1308, (2020) 3 S.C.C. 637.
[17] Foundation for Media Professionals v. Union of India, Writ Petition (Criminal) No. 395 of 2022 (India Sup. Ct.).

ISSN: 2582-6433

19(1)(a) provides a strong fundamental right to free speech, the ever-increasing universe of "reasonable restrictions" under Article 19(2) has often led to state control during moments of political or moral panic. Judicial readings have moved from being able to passively accept state reasoning to constructively review it, especially in relation to national security, public order, or morality as they implicate rights. Still, the movement is uneven. The repeated use of outdated colonial laws like sedition, selective censorship of online expression, and procedural opacity in bans, give rise to grave questions about how devoted these institutions are to democratic dissent. In the end, the Indian judiciary exists in a doctrinal moment of choice. It can choose to cement a speech-protective jurisprudence, governed by constitutional morality and obligations, or it can begin to lean towards executive deference and moral conservatism. The future of India's free speech regime depends not only on the development of legal doctrine, but also on the constitutional imagination of its judiciary, the vigilance of its civil society, and resiliency of its democratic traditions.