

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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CONSTITUTIONAL RESTRAINTS

UNDER ARTICLE 19

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Introduction

Speech is God's gift to mankind. Through speech and expression 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 right. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred and important position in the hierarchy of the liberty, it is truly said about the freedom of speech that it is the mother of all other liberties. Freedom of speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's ideas through any communicable medium or visible representation, such as, gesture, signs and the like. In modern time it is widely accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all time. The first principle of a free society is an untrammelled flow of words in an open forum.

Importance Of Freedom Of Speech And Expression

Freedom of speech and expression is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties.⁶ In a democracy, freedom of speech and expression open up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Freedom of speech and expression, just as equality clause and the guarantee of life and liberty have been very broadly construed by the Supreme Court right from the 1950s. It has been variously described as a "basic human right", "a natural right" and the like. The freedom of speech and expression includes liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people, otherwise this freedom would not include the freedom of the press.

Freedom of expression has four broad special purposes to serve:

- (i) It helps an individual, to attain self-fulfilment;
- (ii) It assists in the discovery of truth;

(iii) It strengthens the capacity of an individual in participating in decision making; and

(iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

All members of society should be able to form their own belief and communicate them freely to others.⁸ Freedom of speech and expression has been held to be basic and indivisible for a democratic polity. It is said to be the cornerstone of functioning of the democracy. It is the foundation of a democratic society. It is essential to the rule of law and liberty of citizens.

Article-19 Clause 1

Protection of certain rights regarding freedom of speech etc:

1- All citizens shall have the right

- a) To freedom of speech and expression
- b) To assemble peaceably and without arms
- c) To form association or unions
- d) To move freely throughout the territory of India
- e) To reside and settle in any part of the territory of India
- f) Omitted
- g) To practice any profession, or to carry on any occupation, trade or business

In Romesh Thaper v. State of Madras, Patanjali Sastri, C. J. observed:

“Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, what it is better to leave a few of its noxious branches to their luxuriant growth than by pruning them away, to injure the vigour of those yielding proper fruits.”

Constitutional Protection Of “Freedom Of Speech And Expression”

The concept of such freedom is to be able to speak and express one's thoughts and opinion freely without censorship. Speech is considered to be one of the most basic faculties of the human nature as it comes naturally to every person. It is also seen as one of the most fundamental rights essential for a human living. Every person has the right to freedom of expression & speech and this is usually guaranteed by the concerned national Constitutions.

This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The importance of free speech as a basic and valuable characteristic of society cannot be underestimated. Freedom of speech serves a number of functions. One of its most important functions is that decision-making at all levels is preceded by discussion and consideration of a representative range of views. This is very helpful.

Navtej Singh Johar v/s Union of India

The supreme court of India unanimously held that sec. 377 of the Indian penal code, 1860, which criminalized “carnal intercourse against the order of nature” was unconstitutional insofar as it criminalized consensual sexual conduct between adults of the same sex.

It recognizes the Freedom of expression of ideas fundamental Right of an individual.

Bijoe Emmanuel v/s state of kerala, 1986

The supreme court of India found that the expulsion of school children for not singing the national anthem constituted a violation of their right to freedom of expression. Three school children were expelled from school after refusing to sing the Indian national anthem since it was against their religious faith as Jehovah's witnesses.

Supreme court under National Honors Act 1971 found children not guilty. Hence, it proved that Right to remain silent is also included in Freedom of speech and expression.

Brij Bhushan v/s state of Delhi, 1950

Dr. B.R. AMBEDKAR said that there is no need of making any special provision or right for freedom of press.

Because our Article 19 is influenced from the 1st amendment of constitution of USA – whose heading says- “Freedom of Speech or The Press”

Sakal Papers v/s the union of India 1961

It elaborated the judgement of Previous Brij Bhushan case and said that freedom of Press is the Species of freedom of Speech and Expression.

ARTICLE 19 (1) (A)

It is not an Absolute Right

State can limit them by putting 8 Restrictions on them that are given in Article 19(2).

Reasonable Restrictions

- Every freedom comes with restrictions, without which there would be complete chaos in the society. Similarly, Article 19 also provides for ‘reasonable restrictions’ on these freedoms.

- Therefore, these rights are conditional. The State has the authority to reasonably limit or take away these six rights on the following grounds –
 - Freedom of Speech and Expression
1. Sovereignty and Integrity of India.
 2. Security of the State.
 3. Friendly relations with foreign States.
 4. Public order.
 5. Decency.
 6. Morality.
 7. Contempt of court.
 8. Defamation.
 9. Incitement to an offense.

Reasonable Restriction (Landmarks Case)

Supreme Court has given lots of guidelines time to time via case judgement like-

A.K . Gopalan v/s state Madras 1950

- AK Gopalan was a Communist leader who was imprisoned in Madras under the Preventive Detention Law in 1950.
- He challenged his detention through a writ of **Habeas Corpus** under **Article 32** of the Indian Constitution,
- He argued that Sections 7, 8, 10, 11, 12, 13, and 14 of the Act violate Articles 13, 19, and 21 of the Indian Constitution, and thus the Act is **ultra vires** of the basic fundamental provisions as enshrined in the Indian Constitution.
- The petitioner also raised the issue of the '**procedure defined by statute**' clause in the Indian Constitution.

Judgment

While rejecting the petitioner's arguments, the Supreme Court of India contended that **Article 22** of the Indian Constitution is a self-contained Code and that he was detained in accordance with the **procedure established by law**.

- The court also held that if the state takes away a person's liberty in accordance with the procedure established by law, i.e., if the detention was done in accordance with the procedure of law, it cannot be said that it violates the provisions contained in Articles 14, 19, and 21 of the Indian Constitution.
- In this case, the Supreme Court took a narrow interpretation of **Article 21** of the Indian

Constitution.

- Using the **doctrine of severability**, the Supreme Court declared Section 14 void because it is unconstitutional and violates fundamental rights.
- The court upheld the legal procedure principle and declared that the due process clause and international human rights charters apply in Indian courts.
- Furthermore, the court declared sections 7, 8, 10, 11, 12, and 13 of the constitution to be intra-virus and thus valid.
- Finally, the Court determined that the detention was legal, and thus the writ was dismissed.

19(1)(b)- Freedom of Assembly

- Every citizen has a Fundamental Right to assemble peaceably and without arms;
- It is regulated under Article 19(3)
- State has a power to curtail Article (1) (B) through reasonable restrictions of Article 19 (3) –on basic of sovereignty , Integrity of India and Public Order .

Assembly will be unlawful if-

- If you interfere in any legal process
- If you trespass criminally
- To use criminal force on any public office
- To use force on a citizen and forcefully make him do any work
- Forcefully taking possession of some one's property

Article 19(1)(c)- To form associations or unions

- Freedom of Association 19 (1)(c) is regulated by 19(4).
- State can curtail Fundamental right in 19(1)(c) by putting Reasonable restriction in the interests of the sovereignty and integrity of India or Public order or morality.

All India bank Employee's Association v/s National Industry Tribunal, 1962 case

Right to strike and right to lockdown are not covered under article 19(1)(c)

Article 19 (1)(d)- to move freely throughout the territory of India

- Freedom of movement Objective of this Article was to inject the Feeling of Nationalism in all citizens.
 - Under this Article 19(1)(d) citizens of Indian can move freely wherever you want within Indian's Territory and without any restrictions.

Article 19(1)(e)- to reside and settle in any part of the territory of India

Freedom of residence objective Aimed to remove internal Barriers

Article 19 (1)(d) freedom of movement and article 19 (1)(e) always go hand in hand that's why they have same restrictions given in article 19(5)

In the interests of the general public or for the protection of the interest of any scheduled tribe this right can be restriction.

Article 19(1)(g)- To practice any profession, or to carry on any occupation, trade or business

- Any citizen can practice any of the above there is no necessity of being from any particular class or caste
- The Freedom provide under this article is regulated by reasonable restrictions given under article 19(6).

1. Restrictions

In the interests of the general public, reasonable restriction are-

- The professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or
- The state can access complete or partial monopoly over any business or Trade.

BENEFITS OF ARTICLE 19

The right to information (RTI) emerges as a fundamental right under this article as the prerequisite for enjoying the freedom of speech and expression is access to knowledge and information therefore, RTI becomes a constitutional right and an important aspect of the right to free speech and expression. Access to information also help the citizens perform their fundamental duties mentioned in Article 51(A).

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Conclusion

The Right to Freedom is one of the most important Fundamental Rights under the Constitution of India. Without freedom, there can't be any democratic setup. People will not be able to grow and develop if they do not have the freedom to do anything. At the same time, providing people with absolute freedom could be very dangerous. It is important to put restrictions on freedom so that people don't misuse their rights and co-exist with others peacefully. The State thus acts as a source of limiting the freedom of individuals. Our Constitution has very nicely mentioned the freedoms and the grounds on which they can be limited. This balance of power is necessary.

