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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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FREEDOM OF SPEECH OR A LICENSE TO CHAOS? EXAMINING THE THIN LINE BETWEEN EXPRESSION AND INCITEMENT TO LAWLESS ACTIVITY

AUTHOR – KHYATI SINGH, STUDENT AT AMITY LAW SCHOOL AMITY UNIVERSITY NOIDA

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✦ Abstract

While not guaranteed, freedom of speech is a key principle in democratic nations. The essay examines the ethical and legal dilemmas associated with speech that may incite unlawful behavior. It examines the challenging equilibrium between safeguarding free expression and preventing harm to individuals and society by analyzing key judicial rulings and scholarly articles. The study examines the criteria employed by courts to determine if speech constitutes incitement, including the *Brandenburg v. Ohio Test* in the United States and analogous standards in other jurisdictions. It examines the challenges social media businesses encounter in regulating potentially harmful discourse, as well as the psychological and sociological factors that influence the impact of speech on behavior. This research seeks to elucidate the intricate concerns pertaining to free speech and its potential to incite criminal behavior via the examination of diverse perspectives and case studies. The paper's conclusion encompasses reflections on the implications for law enforcement, policymaking, and the future of democratic states in the digital era.

✦ Introduction

The Indian Constitution and the Nature of Basic Rights: India attained freedom following a prolonged fight and, in fulfillment of its commitments, established the Constitution that guarantees basic rights to its citizens. The Constitution of India is a culmination of knowledge and experience applied within the realm of feasibility. The figures that played a pivotal role in the Constituent Assembly were all involved in the independence movement and understood the aspirations of the populace. They have acknowledged that life, liberty, private property, and freedom are fundamental requirements of any democracy and have consequently enshrined these in our Constitution, while the socialistic goals of growth are articulated in the non-justiciable directive principles.

Some assert that the intellectual basis of fundamental rights is rooted in natural law and that the history of human rights is intertwined with the history of natural law. This reasoning

renders fundamental rights analogous to inalienable natural rights. They are meant to be moral rights that all humans have because they are rational and ethical, unlike other beings. Natural Law Theory, however, has diminished in its allure to contemporary jurists. The framers of the Indian Constitution incorporated fundamental rights not only due to their rational basis in natural rights but also to establish a robust foundation for the civil and political rights of citizens emerging from foreign domination after a prolonged and arduous struggle.²⁸⁸

The fundamental rights outlined in Part III of the Constitution are concrete interests of individual citizens and other persons acknowledged by the state. These stem from the fundamental liberties that are both essential characteristics and forms of self-expression for human beings, as well as vital prerequisites for their communal existence under a defined legal framework. The

²⁸⁸ Introduction to the Constitution of India

state recognizes them as constitutional legal principles and cannot contest their legitimacy or violate them through a legislative majority. These rights resemble those characterized by Americans as "natural and inalienable."

The associated elements of these fundamental rights encompass several freedoms, privileges, and interests that are deemed inviolable by law and are enforceable by state authority through judicial processes. Numerous restrictions exist on state actions, including regulations and controls over individual behavior, interests, rights, and freedoms. They receive authorization from the superior law and are rendered inviolable. The contemporary practice of ensuring fundamental rights for individuals can be attributed to the Constitution, which concretizes the notion of human rights by incorporating them into the legal framework and rendering them justiciable and enforceable via the judiciary.

The incorporation of a fundamental rights framework in India's Constitution originated from the influences that prevailed nationally during British rule. The British executive's reliance on arbitrary measures such as internments and deportations without trial, along with restrictions on press freedom in the early decades of the century, solidified a belief among advocates of freedom of movement. Fundamental rights such as personal liberty, the safeguarding of life and physical integrity, and the preservation of one's reputation, which are rooted in common law and the tenets of British jurisprudence, were widely acknowledged in relation to the government and the Constitution of India.

❖ Reasons for adding fundamental rights

The articulation of fundamental rights in the Constitution was rendered essential by several compelling factors in our society. The primary political party, the Congress, has long advocated for fundamental rights in opposition to British authority. During British colonial authority in India, there were extensive violations of human rights by the authorities.

Consequently, the architects of the Constitution, several of whom had prolonged imprisonment under British rule, held a highly favorable perspective on these rights. Indian society was divided into numerous religious, cultural, and linguistic factions, necessitating the declaration of fundamental rights to instill a sense of security and trust among the populace. The government deemed it essential for individuals to possess certain rights, which they could enforce against a potentially arbitrary government. Despite the introduction of democracy in India, democratic traditions were absent, posing a risk that majority groups may exploit the rights of the populace; this risk could be mitigated by enshrining rights in the Constitution.²⁸⁹

The fundamental rights arise from the preamble of the Constitution, which states that the people of India have solemnly resolved to establish India as a sovereign democratic republic and to ensure justice—social, economic, and political; liberty of thought, expression, belief, faith, and worship; and equality of status and opportunity for all citizens.²⁹⁰

In India, there were supplementary justifications for incorporating fundamental rights into the

Constitution. The Indian National Congress, during its Madras Session, resolved that the

Constitution of India should be founded on a declaration of fundamental rights. The Sapru Committee recommended the incorporation of fundamental rights into the Constitution of India to establish a benchmark for the behavior of the legislature, the executive, and the judiciary. The committee additionally proposed a categorization of rights into justiciable and non-justiciable, noting, "We recognize the risk of excessive judicial interference with the executive government." Provisions that ensure fundamental rights are crucial for maintaining stability in national affairs and for averting one party tyranny in a nation's political landscape.

²⁸⁹ D.D. Basu, Introduction to the Constitution of India, LexisNexis, (Latest Edition)

²⁹⁰ Introduction to the Constitution of India

They significantly assist in addressing the issues faced by minorities. Certain fundamental rights constitute the foundation of democracy. Democracy cannot operate effectively without fundamental freedoms of speech and expression. For the idea of "consent of the governed" to be valid, individuals must possess the dual freedoms of speech and expression.²⁹¹

❖ Historical Background

The necessity of fundamental rights was universally acknowledged by all members of the Constituent Assembly, rendering the question of their incorporation into the Constitution moot. The struggle has consistently been against the imposed constraints, with the objective of securing the fundamental right on the broadest and most compelling grounds conceivable.

While standard remedies are available for safeguarding rights, prerogative writs have strengthened the enforcement of basic rights legislation. The writs have gained popularity as they are often regarded as the foundation of independence and liberty.

However, although the rights are enforceable by the courts, the Assembly members recognized that they could not be absolute. The inquiry pertained to the degree and manner in which the right should be constrained. The rights could be optimally constrained by appending conditions to a specific right and by allowing for the suspension of rights under specified circumstances.

The Karachi resolution declared that free speech must not violate legal or moral standards.

Furthermore, the rights have further qualified the Assembly members' perspectives regarding the necessity of constraining individual liberty through governmental intervention for specific social objectives with minimal contention. The necessity to limit fundamental freedoms of speech, expression, assembly, organization, and

mobility, however, presented a complex case. The dilemma consistently revolved around the sensitive and contentious topic of freedom versus state security and, to a lesser degree, liberty versus license in personal conduct. The two most prominent proponents on the subcommittee regarding the constraints of rights were A.K. Ayyar and K.M. Munshi, and, with a few exceptions, their colleagues endorsed them. During their meeting on March 25, 1948, the subcommittee formulated the rights to freedom inside the Constitution and resolved to condition each right with the stipulation that its exercise be subject to public order and morality.

A week later, the Assembly exhibited a varied response to the provisos. Their advocates asserted that they aimed to avert the exploitation of rights by subversive factions and were merely the manifestation of established legal precedent. The prevailing perspective was that the proviso significantly limited the rights, rendering them devoid of substance. One member articulated that the rights had been constructed 'from the perspective of a police policeman.'²⁹²

This illustrates the founding fathers' desire to safeguard citizens' freedom, as they were all advocates of a free democracy. India was evolving as a nation in the aftermath of World War II, when liberty and freedom were esteemed ideals. Despite the internal strife and anguish of partition, they aspired for India to emerge as a nation embodying the ideals of liberty, equality, and freedom. They recognized that they would not merely assure fundamental rights. These would serve as safeguards for future governments to ensure a transparent, vigilant, and operational democracy. Eternal vigilance is deemed essential for liberty; hence, freedom of speech and expression are vital for the preservation, protection, and rectification of liberty and its violations.

During India's war for independence, there was a continual call for a formal bill of rights for the

²⁹¹ A. Cox, *Freedom of Expression*, Harvard University Press, 1981.

²⁹² S.Singh, "Freedom of the Press – A Study Concept".

Indian populace, encompassing the assurance of free speech. The framers of the Indian

Constitution placed significant emphasis on the freedoms of speech, expression, and the press. Their experience with successive repressive measures during British rule instilled in them a profound appreciation for this right in the sovereign democratic republic that India was destined to become under its Constitution. They assert that freedom of expression and freedom of the press are essential to the functioning of a democratic system. The government recognizes the avenues of speech as closed, and if the governed consent, it will soon foreclose them. The message of the nation's founder, Mahatma Gandhi, was indelibly etched in their hearts and minds: the progress of democracy is unattainable without a willingness to listen to opposing viewpoints. They align with the perspective of Jawaharlal Nehru, who stated, "I would prefer a wholly free press, despite the risks associated with the misuse of that freedom, to a censored and controlled press." It is unsurprising that members of the Constituent Assembly saw the assurance of free expression as the 'most significant,' 'the charter of liberties,' and 'the essence of fundamental rights.'

The founding fathers, during the drafting of the Constitution, asserted that freedom of expression is not only a right conferred upon the citizens of India but also serves as a constraint on the government, ensuring that it conducts governance in accordance with the law and the Constitution. The Constitution was formulated during an era characterized by the principles of liberalism and democracy. The post-World War era was fostering the development of welfare state conceptions and maturing democratic institutions. In this context, when the leaders of our freedom struggle aimed to transition the nation into a period of social upheaval, they intended to discreetly initiate an era of growth and wealth. The founding fathers envisioned India as a liberal democracy and recognized that the realization of democracy necessitated the establishment of fundamental rights. The founding fathers recognized that the absence

of freedom of speech and expression precludes the existence of a genuine democracy.

The draft authored by Mr. K.M. Munshi stipulates that every citizen shall possess, within the confines of and in accordance with Union law, various personal rights, including freedom of expression, free association and combination, peaceful assembly without arms, confidentiality of correspondence, and unrestricted movement and trade. Only legal limits deemed necessary for the preservation of public order or morality will limit the freedom of the press. Ambedkar's draft stipulated that 'no law shall be enacted that restricts the freedom of speech, press, association, and assembly, except for reasons of public order and morality,' and also established the citizen's right to reside and, with state permission, to settle in any part of India.

The Constituent Assembly discussed the basic right to freedoms, recognizing that the government can make laws that might override these rights when necessary, while some members expressed concerns about the restrictions on these freedoms. Dr. B.R. Ambedkar, the chairman of the drafting committee, argued that fundamental rights, according to the

Constitution, are not absolute and depend on the public's interest and the security of the state. Dr. B.R. Ambedkar, chairman of the drafting committee, maintained that fundamental rights, in light of the Constitution, are not absolute and are contingent upon public interest and state security.²⁹³

The Indian Constitution, throughout its construction, was shaped by numerous global constitutions, including select elements that became foundational to it, with certain adaptations made to accommodate the unique circumstances of the nation. The concepts from significant revolutions, like the French Revolution, the American War of Independence, and the Bolshevik uprising, motivated the Founding Fathers to establish a democratic and

²⁹³ Constituent Assembly Debates – 1 December 1948

sovereign Indian state through its Constitution. Nonetheless, it was a period of upheaval due to the country's partition, prompting a measured approach that weighed residents' freedoms against the state's security.

The fundamental rights outlined in Part III of the Constitution represent the tangible interests of individuals, various persons, and specific identifiable cultural, linguistic, and denominational groups of citizens. They emerge from the "fundamental freedoms that are both essential characteristics and forms of self-expression for human beings, as well as primary prerequisites for their communal existence within a defined legal framework." They are recognized as constitutional legal principles and are enforceable against the state, which cannot contest their legitimacy or violate them through a legislative majority.

The British parliamentary democracy, incorporating elements of the American presidential system, was accepted, and the state was instructed to formulate essential legislation for the socio-economic advancement of the Indian populace in accordance with the Irish Constitution. The fundamental rights are an adaptation of the American Bill of Rights, influenced by the concepts of natural law and rule of law.

In constitutions where fundamental rights are affirmative, there are also constraints or laws governing them. When examining this facet of fundamental rights, the notions of the essence of the rights, the context, and an external boundary are significant.

The Founding Fathers of our Constitution valued liberal ideals and individual freedom, yet they did not jeopardize state cohesion by instituting 'reasonable restrictions and special powers for the state to supersede individual rights when necessary.' In summary, the state proclaims fundamental rights for the individual's benefit, making them essential to his identity as a human being. Even his own actions bestow them upon him and render them indelible. His exercise of these rights optimally serves the

collective interest. He is unable to relinquish them. Any commitment he makes to relinquish fundamental rights must contravene the national policy of the Constitution and is thus unconstitutional. We cannot hear him declare that he is ready to give up his fundamental rights. Fundamental rights are granted to all citizens to achieve the objectives outlined in the Preamble and to realize the goals of the new social and economic order, which must be established through the implementation of the Directive Principles of State Policy specified in Part IV of the Constitution.

❖ **Critical Analysis of Fundamental Freedom and Reasonable Restriction**

Article 19 guarantees fundamental freedom, subject to lawful, reasonable restrictions. Clauses (2)–(6) of Article 19 of the Indian Constitution acknowledge the authority of state governments to enact laws that impose reasonable restrictions for certain justifications. Consequently, the right enshrined in Article 19 is only accessible to Indian nationals, whereas the rights conferred by Articles 20, 21, and 22 are available to all individuals. Article 19(1) of the Indian Constitution stipulates:²⁹⁴

- **Freedom of Speech and Expression:** The right to freedom of speech and expression, as enshrined in Article 19(1)(a) of the Indian Constitution, permits individuals to articulate and maintain their opinions and views without fear, via oral, writing, radio, electronic mediums, or the press. The freedom of the press is not explicitly defined in the Indian Constitution.

In Romesh Thapper v. State of Madras: – The Madras High Court determined that the freedoms of speech and press are the cornerstone of democratic institutions; without political discourse, public education essential for the effective operation of governance is unattainable.

²⁹⁴

https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf

- The right to assemble peacefully without arms is a fundamental principle of democratic governance. All Indian citizens are guaranteed the right to peaceful assembly without the use of weapons under this article. This liberty encompasses the right to convene a meeting and conduct a procession. The basic right is subject to reasonable constraints; the assembly must be peaceful and not unlawfully armed.
- If an assembly is deemed unlawful, it may be ordered to disperse under Section 129 of the CRPC where there is a reasonable apprehension of disturbance to the peace, and failing to disperse after a legitimate command constitutes an offense.
- An assembly of five or more people is considered unlawful under Section 141 of the IPC if they come together to resist the law, commit mischief or trespass, take property by force, make someone act against their legal duties, or stop them from doing things they have the right to do, as well as to use violence against the government or public officials doing their jobs.

The freedom of assembly is guaranteed by Article 19(1)(b), subject to reasonable restrictions as delineated in Article 19(3).

- Article 19(1)(c) provides all citizens the right to establish associations, unions, or cooperative organizations. The 93rd Amendment Act of the Constitution incorporated this provision in 2011. The right to establish an association is regarded as a fundamental organization or a sustained interaction among its members for a shared purpose, encompassing the freedom to create enterprises, societies, trade unions, partnerships, and political parties. This article grants the right to form and maintain an association. The liberty to establish associations encompasses the right to create, participate in, and choose not to join an association.
- Article 19(1)(d) of the Constitution guarantees all citizens of India the freedom to move freely across the territory of India. This right is,

however, subject to reasonable restrictions outlined in clause 5 of Article 19, which pertain to the interests of the general public and the safeguarding of Scheduled Tribe interests.

In A.K. Gopalan v. State of Madras; – the court decided in 1950 by the Apex Court of India, the focus was on Article 19(1)(d), which emphasized not only the right to movement but also the territorial aspect of that right, allowing for unimpeded movement throughout India, free from barriers both interstate and intrastate. In 1950, in N.B. Khare v. State of Delhi, the person involved challenged a rule from the East Punjab Safety Act of 1949, claiming it unfairly limited his right to move freely because the state told him to leave the Delhi district right away and not come back for three months. The Apex Court of India determined that the order was legitimate, since it was essential at that time to avert actions by the individual that could jeopardize public safety or disrupt public order.²⁹⁵

- **To reside in any Part of the Territory of India:** – Article 19 (1) (e) of the Indian Constitution stipulates that every citizen of India is entitled to stay or settle in any region or territory of India. Clause 5 of Article 19 of the Constitution permits the imposition of reasonable restrictions on this right by law in the interest of the general public and for the protection of the interests of any scheduled tribe. The purpose of this clause is to eliminate internal obstacles within India or any of its regions. The right to reside and the ability to migrate freely within the country are interdependent and coexist. Consequently, when a prostitute was mandated to vacate a bustling city under the provisions of the Immoral Trafficking (Prevention) Act of 1956, the imposed limitations on her mobility and residency were deemed acceptable.
- **Freedom of Profession, Occupation, Trade, and Business:** – The Indian Constitution guarantees, under Article 19(1)(g), that all citizens possess the right to engage in any profession, occupation, business, or trade. Nonetheless, the rights to engage in a

²⁹⁵ A.K. Gopalan v. State of Madras, AIR 1950 SC 27

profession, trade, or business are not absolute; they may be restricted and regulated by legal authority. Consequently, under clause 6 of Article 19, the state may enact laws imposing reasonable limitations on this right in the interest of the public and may also stipulate the professional or technical qualifications required for practicing any profession or conducting any occupation, trade, or business.

Thus, the state to carry on trade or business to exclusion of citizens wholly or partially can also be other reasonable restrictions.

❖ **What are the Reasonable Restrictions Constituting under Article 19 (6): -**

The reasonable constraints outlined in Article 19(6) stipulate that the appropriateness of such restrictions must be evaluated from both substantive and procedural legal perspectives. To assess the reasonableness of the restriction, one must consider the type of firm and the current conditions of the trade. When looking at whether Article 19(1)(g) of the Indian Constitution has been violated, it's important to think about what the violation is and why the restriction was put in place compared to how serious the problem is. Leading case law states that

"Ramjawaya V. SV. S. State of Punjab," it was determined that the government initiative to nationalize school textbooks was deemed unlawful under this article, as the rights of private publishers to print, publish, and sell any book of their choosing were not restricted.²⁹⁶

➤ **In conjunction with the freedom, numerous reasonable restrictions are guaranteed under Article 19(2) to (6) of the Indian Constitution, as follows:**

- The 16th Amendment Act of 1963 introduced a restriction pertaining to the sovereignty and integrity of India, as well as on the basis of public order. Article 19(2) delineates two concepts: 'public order' and 'security of the state.' The term 'public order' includes affrays,

minor riots, breaches of the peace, or actions that disrupt public tranquility. However, 'public order' and 'public tranquility' may not be mutually supportive. For example, if a man playing loud music in his residence at midnight has disrupted public tranquility, however not public order.²⁹⁷

- Restrictions on public freedom of speech and expression may be imposed to safeguard friendly relations with foreign states, particularly to prevent detrimental and malicious propaganda against a foreign power that could embarrass India; thus, participation in such propaganda can be prohibited. This judicious limitation effectively reconciles the objectives of social order with constraints.
- No analogous provision exists in any other constitution worldwide: The Foreign Regulation Act of 1932 delineates penalties for libel against foreign officials. Nevertheless, preserving amicable relations with the foreign nation does not warrant the censure of the government's equitable foreign policy. It is essential to recognize that all countries of the Commonwealth, including Pakistan, cannot impose restrictions on freedom of speech and expression solely based on the subject matter pertaining to Pakistan.
- Decency and Morality: The right to form associations, akin to other individual freedoms, is not without limitations. Article 19(4) of the Indian Constitution authorizes the State to put reasonable restrictions on the right to freedom of association and union in the interest of:
 - Public Order
 - Ethics,
 - Sovereignty and Integrity.

The **Criminal Law Amendment Act of 1908, amended by the Madras Act of 1950**, stipulates that if the state government believes an association disrupts the administration of law or threatens public order, it may declare such an

²⁹⁶ <https://indiankanoon.org/doc/626103/>

²⁹⁷ <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-sixteenth-amendmentact-1963>

association unlawful through a notification in the official gazette.

The legitimacy of the aforementioned act was contested. Leading case law states that "**State of Madras v. V.G. Rao.**" The apex Court determined that the limitation imposed by Section 16(2)(b) of the Act was appropriate. The criterion was the government's subjective satisfaction, and the actual existence of the grounds was not a defensible matter. The Madras Government has deemed the People's Education Society in Madras an unlawful group.

According to applicable laws, the government may act if it believes the association poses a threat to public peace, interferes with the preservation of law and order, or has such an objective.

- **Public Order:** It refers to the limitations established by the Indian Constitution to uphold public order. The 1st Constitutional Amendment Act of 1951 incorporated these principles. The concept of public order encompasses a broad and extensive meaning, referring to the maintenance of public peace and safety through government regulations. The concept of public order transcends the enforcement of law and order. It denotes that any conduct disrupting public tranquility shall be subject to penalties as stipulated by the IPC.

- **Defamation:** A person's reputation is more significant than their riches or any other attribute.

The Constitution of India recognizes defamation as a basis for imposing reasonable restrictions.

Consequently, any disparaging remark that harms an individual's reputation becomes defamation. Defamation entails subjecting an individual to ridicule, hostility, or contempt. The civil law of defamation in India is uncodified and subject to specific exceptions.

- **Contempt of Court:** The judiciary serves a crucial function. In such circumstances, it is imperative to respect the institution and its authority. Consequently, a justifiable limitation may be placed on freedom of speech and

expression if it surpasses acceptable boundaries and results in contempt of court. Section 2 delineates "Contempt of Court" as comprising "Criminal Contempt" and "Civil Contempt." Nonetheless, this contempt of court was revised in 2006.

Incitement to commit an offense: Freedom of speech does not grant permission to provoke individuals to engage in unlawful acts. Incitement to severe or extreme offenses, such as murder, sedition, affray, and riot, may be subject to punishment for threatening state security. The incitement of offenses is punishable due to its impact on public order. However, there may be other offenses such as forgery, bribery, and fraud. This reasonable restriction also forbids incitement for all offenses that do not disturb public order and has been contested as unreasonable; the phrase 'offense' is broad, encompassing any punishable act under the Indian Penal Code. The Apex Court ruled in "State of Bihar V. Shailabai Devi" that encouragement to murder or other violent crimes poses a threat to state security; hence, restrictions on such incitement are considered reasonable under ARTICLE 19(2).

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❖ Freedom of Speech and Expression in The Constitution of India

The concept of 'freedom of speech' is essential for the operation of a democracy. Without this, the polity cannot engage in the decision-making process of the state, nor can it critique, propose, or cultivate appropriate public opinion for the effective operation of a sound government and coordinated social development.

Freedom of speech and expression is considered the fundamental prerequisite of liberty. It holds a paramount position in the hierarchy of liberties, providing support and safeguarding to all other liberties. In a democratic society founded on the rule of law, freedom of expression is an essential

²⁹⁸ <https://www.indiacode.nic.in/bitstream/123456789/1514/1/197170.pdf>

requirement rather than a mere luxury. It serves as a fundamental pillar of that civilization. Cardozo eloquently stated, 'Freedom of speech is the foundation, the essential prerequisite of practically every other form of freedom.'

Consequently, it has been accurately stated that it is the foundation of all freedoms. In a democracy, freedom of speech and expression facilitates open discourse about topics. Freedom of speech is essential in shaping public opinion regarding political, social, and economic issues.

The public's entitlement to be informed about governmental acts and activities is an aspect of the principle of freedom of speech and expression within a democracy. Freedom of expression encompasses the populace's freedom to be informed and to get information from a variety of conflicting sources.

Accountability is essential for every democratic society. To ensure governmental accountability, it is imperative that individuals have access to information regarding the operations of the government and all public actions undertaken by public officials. Informed public opinion serves as the most powerful check against maladministration.

The term 'freedom of speech and expression' denotes the ability of a person or group to articulate thoughts through written, visual, or verbal methods without restriction. Therefore, it signifies the expression or conveyance of thoughts and viewpoints through any medium. This freedom encompasses the liberty of publication and distribution. The inherent right to disseminate ideas and opinions is not limited to one's own views but also encompasses the propagation of others' perspectives.

Halsbury's Laws of England elucidate that the term 'freedom of expression' encompasses both the right to receive and convey ideas and information, as well as the confidentiality of private contacts. Nevertheless, legal restrictions exist on this freedom concerning issues that broadly encompass blasphemy, obscenity,

sedition, treason, official secrets, insulting language or conduct, incitement to racial hatred, contempt of court and Parliament, and defamation. Freedom of expression encompasses the freedom of the press.

The fundamental concept of 'freedom of speech and expression' is ancient and is not solely a Western notion. It represents a universal virtue that transcends geographical boundaries and national borders. The pursuit of freedom of expression has been a fundamental aspiration of humanity throughout both ancient and contemporary eras. Prior to independence, India lacked constitutional or legislative assurances of individual and media freedom. The press might assert independence under English common law, as noted by the Privy Council, the former apex court of India. It was noted in the Constituent Assembly:

The right to freedom, as a fundamental principle of democracy, is prioritized in the Indian Constitution's preamble and Chapter 3, which addresses the fundamental rights of citizens. The primary reason for emphasizing this right was the safeguarding of life and personal liberty. However, the basic rights listed in the Indian Constitution are not based on natural rights, and there are reasonable limits placed on some rights to benefit the community. Pandit Nehru aptly stated, "No individual can ultimately supersede the rights of the community, and no community²⁹⁹ should harm or encroach upon the rights of the individual except for the most pressing and significant reasons."

Freedom of expression serves four primary social purposes: i) it facilitates individual self-sufficiency; ii) it aids in the pursuit of truth; iii) it enhances individual capacity for participation in decision-making; and iv) it offers a means to establish a reasonable equilibrium between stability and social change.

²⁹⁹ Extract from the Speech of Pt. Jawaharlal Nehru at all India Newspapers Editors Conference, Dec. 3 1950.

Article 19 of the Constitution of India provides many freedoms to all citizens. These liberties are subject to restrictions under the article's clause 2. Clause 1(a) addresses the liberty of speech and expression. It states, "All citizens shall possess the right to freedom of speech and expression."

Clause 2 stipulates that "sub-clause (a) of Clause (1) shall not influence the enforcement of any existing law, nor inhibit the state from enacting any law that imposes reasonable restrictions on the exercise of the right granted by the aforementioned sub-clause, in the interest of India's sovereignty and integrity, state security, amicable relations with foreign nations, public order, decency, morality, or in connection with contempt of court, defamation, or incitement to an offense."

Consequently, although the article guarantees freedom of speech and expression for all citizens, it also imposes constraints in the interest of state security. The state is authorized to enact appropriate legal limits to safeguard the sovereignty and integrity of the nation. Moreover, the state must safeguard decency, morality, and public order within society. The organizations responsible for administering justice should possess a degree of authority to operate without criticism; hence, the laws concerning contempt of court are confined within specific limitations of power.

❖ Judicial Interpretation

The article, as stipulated in the Constitution, establishes the foundation for all democratic institutions within the state. The objective of legislation controlling advertising space is to prevent unfair competition, specifically targeting the circulation of newspapers. When a law aims to achieve this outcome, it would directly infringe upon the right to freedom of speech and expression as granted by Article 19(1)(a). The citizens of India possess the rights to freedom of speech, peaceful assembly, and the formation of associations or unions; however, their status does not imply that they can exercise these freedoms in any location of

their choosing. The practice of these freedoms will cease when another's right to possess property intervenes.

This constraint is intrinsic to the exercise of those rights. Freedom of speech and expression, as guaranteed under Article 19(1)(a), is devoid of geographical constraints and is applicable both within India and abroad. Should state actions impose restrictions on a citizen's freedom of expression in any country, it would constitute a violation of Article 19(1)(a), equivalent to inhibiting such expression domestically.

The Apex Court, in its examination of this provision in *Romesh Thapar*, stated that "Freedom of speech and the press underpins all democratic institutions, as free political discourse is indispensable for public education, which is crucial for the effective operation of popular governance." The court noted in *Virendra vs. State of Punjab* that it constitutes a significant infringement if a newspaper is obstructed from disseminating its perspective and that of others. Moreover, the court opined that the government cannot revoke a newspaper's registration without affording the party a sufficient opportunity to be heard.

The Apex Court in *Life Insurance Corporation of India vs. Manubhai D. Saha* dismissed the petitioner's argument that their newsletter is an in-house magazine with a directive to deny publishing to the respondent. The respondent in that instance served as the executive trustee of the Consumer Education Research Centre in Ahmedabad. He wrote a research paper on the operations of the Life Insurance Corporation, to which a counter was published in the LIC newsletter by an LICCC member. The respondent sought to publish a rebuttal in the same newsletter, "Yogakhyama," but LIC denied the request. The court ordered LIC to publish the response in the forthcoming edition.

The court determined that LIC qualifies as a 'state' under Article 12 of the Constitution, so it is obligated to operate in the best interest of the community. The community is entitled to

ascertain whether the LIC adheres to the statutory requirements in its operations. The internal magazine is funded by public resources; hence, the decision to deny publication of the respondent's answer was 'unjust,' 'irrational,' and 'capricious,' infringing upon the respondent's fundamental rights under Article 19(1). The court, however, opined that the ruling is pertinent to the specific circumstances and does not confer a universal right for individuals to publish their articles in the LIC in-house magazine. The Court emphasized that the term "freedom of speech and expression" should be interpreted expansively to encompass the right to disseminate one's opinions verbally, in writing, or by audio-visual media. In **Maneka Gandhi v. Union of India**, Justice Bhagwati underscored the importance of speech and expression with the following words:³⁰⁰

"Democracy fundamentally relies on unrestricted debate and transparent discourse, as these are the sole remedies for governmental actions within a democratic framework." If democracy signifies governance by the populace, it is evident that every citizen must have the right to engage in the democratic process. To facilitate informed decision-making, open and comprehensive discourse on public issues is imperative.

In the seminal **National Anthem Case**, the Indian Apex Court determined that no individual can be coerced into singing the national anthem. This is especially true if the individual has genuine conscientious objections that stem from their religious beliefs. In this instance, three pupils were dismissed from a school for refusing to sing the National Anthem, contravening a directive issued by the Director of Public Instructions, Kerala. The students contested their expulsion decision in the High Court and were unsuccessful. Consequently, they lodged an appeal with the Apex Court. The Apex Court determined that no legislation existed that

might restrict their basic freedom under Article 19(1)(a). The article encompasses the right to silence. They did not violate the Prevention of Insults to National Honors Act, 1971, since they stood politely throughout the rendition of the national anthem. Consequently, in India, both the Constitution and the judiciary have consistently served as advocates for the principle of freedom of expression. The courts, in their interpretation, have broadly construed the article to encompass freedom of the press and other kinds of visual communication. The court, while examining the Newsprint Order that governs the distribution of newsprint, determined that the control order does not pertain to newsprint regulation; rather, it is a disguised strategy by the executive to exert control over newspapers, as this policy infringes upon the petitioners' rights to free speech and expression.

The court, however, declined to intervene in a case concerning the request to revoke the conditions of service for working journalists, deeming it a violation of the provision. In **P.T.I. vs. Union of India**, it was determined that the state cannot establish a wage structure without considering the financial capacity of the press and whether it is able to meet such obligations. Consequently, every executive action concerning the press or newspapers does not constitute an infringement on the freedom of speech or expression, nor does it contravene the constitutional guarantee.

Justice Mathew stated, "While freedom of expression is vital to a democratic society, it is not the exclusive objective of a commendable society." Freedom of expression, as an individual right, may serve as an intrinsic objective. However, it is not the sole conclusion of man as an individual. In social and political contexts, freedom of expression serves largely to achieve other objectives. It is a fundamental component of democratic life and a crucial process that forms and defines the objectives of a democratic society. However, this procedure alone will not enable a democracy to achieve

³⁰⁰ Life Insurance Corporation of India v. Prof. Manubhai D. Shah, AIR 1992 SC 396

its ultimate objective³⁰¹. Any theory of freedom of expression must consequently consider other objectives, including public order, justice, equality, societal advancement, and the necessity for practical measures aimed at promoting those goals. Thus, the challenge of harmonizing freedom of expression with other values and objectives pursued by a virtuous society emerges. Article 19(1) does not unequivocally guarantee absolute freedom of speech. Article 19(2) authorizes the State to impose reasonable restrictions on rights for the purposes of safeguarding the sovereignty and integrity of India, ensuring State security, maintaining amicable relations with foreign nations, preserving public order, upholding decency or morality, and addressing issues related to contempt of court, defamation, or incitement to an offense.

The Indian judiciary has increasingly supported the individual's right to freedom of expression.

The case of *Indira Jaysingh vs. Union of India* examines the intricacies of the right to know.

Doordarshan invited Indira Jaysingh to express her opinions on legislation concerning women.

She voiced her criticism of the Muslim Women Protection of Rights on Divorce Bill 1985, and Doordarshan recorded her comments. Although her speech was broadcast on Doordarshan, her opinions against the law were omitted. She claimed in a plea to the Bombay High Court that her rights under Article 19(1)(a) were violated by the suppression of her speech. The court acknowledged the media's editorial rights, asserting that the deletion constituted censorship by obstructing the dissemination of the petitioner's perspective on the bill, thereby infringing upon her fundamental right to freedom of speech and expression. Censorship or distortion of these views would contravene Article 19.

The Doordarshan officials arbitrarily curtailed the petitioners' rights under Article 19(1)(a)

through executive fiat. Article 19(1)(a) of the Constitution interprets the phrase 'speech and expression' in two instances. In *Usha Uthup v. W.B.*, the singer was prohibited by the state from performing at the theater under its management and control. The Court determined that the State's refusal constituted a violation of a fundamental right under Article 19(1)(a), as the term 'speech and expression' encompasses the right to sing. In *Maneka Gandhi vs. Union of India*, the Apex Court determined that the term encompasses a wide range of activities, including the rights to print, dance, sign, or compose poetry and literature, all of which are protected by Article 19(1)(a).³⁰²

In *Govind v. State of M.P.*, the Apex Court, presided over by Justice Mathew, asserted that the fundamental rights explicitly confer upon a person penumbral zones and that the right to privacy constitutes a fundamental right. Consequently, the right to privacy is encompassed within Article 19(1)(a). Once an issue attains public significance, the right to privacy is relinquished. Freedom of expression encompasses both the right to access and convey ideas and information, as well as the confidentiality of private conversation. Nonetheless, legal limits are enforced.

In *Rameswar vs. State*, the Court deemed the prohibition on convening meetings on election day as a reasonable restriction. Conversely, in *Kameswar Prasad vs. State of Bihar*, the Apex Court opined that demonstrations serve as a visible expression of the sentiments of individuals or groups, thereby constituting a mode of communication of ideas and, effectively, a form of speech and expression. The court in *Kameswar* determined that a state cannot prohibit all forms of manifestation, as certain demonstrations fall outside the scope of Article 19(1)(a).

An individual does not forfeit his fundamental rights, as guaranteed by Part III of the Constitution, by taking a public office. The code of conduct established by the Union

³⁰¹ https://cis-india.org/internet-governance/blog/net-neutrality-free-speech-and-the-indian-constitution-2013-iii-conceptions-of-free-speech-and-democracy?utm_source=chatgpt.com

³⁰² <https://www.manupatracademy.com/legalpost/manu-sc-0133-1978>

Government or the State Government lacks statutory limitations; therefore, it cannot be regarded as law under clauses 2 to 6 of Article 19. The court cannot enforce the prohibitions stated therein.

The writ to prevent the respondent, as chief minister, from engaging in the film 'Brahmarshi Biswamitra' on the basis that such actions constitute corrupt practices related to religious promotion, commercial intolerance, or electoral offenses was dismissed.

In a pivotal ruling in *Bharat Kumar*, a complete bench of the Kerala High Court has deemed "bandhs" orchestrated by political parties as unconstitutional, infringing upon the fundamental rights of citizens. The court declined to recognize it as an exercise of the right of speech and expression by the side advocating for the bands. People anticipate that during a bandh, they will refrain from traveling, conducting business, and attending to their employment. A threat is explicitly or implicitly conveyed that any attempt to oppose the bandh may lead to physical harm.

A call for bandh is distinctly different from a call for a nationwide strike or hartal. During a bandh, people are destroying public property. The High Court has ruled that any call for a bandh by a group, organization, or political party, as well as the enforcement of such a demand, is illegal and unconstitutional. The High Court has instructed the state and all its law enforcement agencies to take all necessary actions to implement the court ruling.

The Apex Court has rejected an appeal over the aforementioned High Court ruling. In the High Court's decision, the Apex Court chose not to get involved. The Court has acknowledged the distinction made by the High Court between a 'bandh' and a strike. A bandh obstructs the exercise of the fundamental freedoms of other people and results in various forms of national detriment. The collective fundamental rights of the populace cannot be deemed subordinate to the fundamental right of an individual or a specific group.

In *Ranchi Bar Association vs. State of Bihar*, subsequent to the aforementioned Apex Court ruling, the Patna High Court determined that no party possesses the power to orchestrate a bandh that coerces individuals to refrain from engaging in their lawful activities. The government is obligated to prevent unlawful activities such as bandhs that infringe upon individuals' life, liberty, and property. The government is obligated to provide compensation to individuals who experience loss of life, liberty, or property due to a bandh, stemming from its failure to fulfill its public duty of protection.

† Freedom of Information

The phrase 'freedom of speech and expression' in Article 19(1)(a) encompasses the right to obtain and impart information. It encompasses the right to disseminate it via any accessible medium, including print, electronic, or audio-visual formats, such as advertisements, films, articles, or speeches, among others. This freedom encompasses the ability to express and disseminate one's opinions without interference to the broadest possible audience within a country and beyond. The Apex Court has expanded the scope of Article 19(1)(2) by establishing that freedom of speech encompasses both the transmission and reception of information. Communication and the acquisition of information are two interconnected facets of the same concept. The right to know is a fundamental entitlement for citizens in a free nation, safeguarded under Article 19(1)(a). The entitlement to obtain information derives from the right to freedom of speech and expression as articulated in the article.

The right to receive and convey information and ideas without hindrance is a crucial component of freedom of speech and expression. Insufficient information precludes an individual from forming an informed opinion.

† Conclusion

The Indian Constitution, in its wisdom, balances individual freedoms with the collective good. Article 19(1)(g) grants every citizen the right to practice any profession, or to carry on any occupation, trade, or business. But this freedom isn't absolute. It operates within the boundaries defined by Article 19(6), which permits the State to impose "reasonable restrictions" in the interest of the general public. While this may seem like a limitation, it's actually a vital part of maintaining order in a democratic society. The provision ensures that one person's liberty does not infringe upon the well-being of the larger community³⁰³.

What stands out about Article 19(6) is its flexible yet principled approach. The framers of the Constitution did not seek to stifle enterprise or professional freedom. Instead, they recognized that in a diverse country like India—with varying economic realities, social structures, and competing interests—some level of regulation would always be necessary. These regulations must not be arbitrary or excessive; they must be justifiable both in content (substantive) and in procedure (how they're implemented). The key is the word "reasonable."

When we speak of reasonableness in this context, we're talking about a balanced evaluation. It's not enough to say a restriction is necessary—the courts examine whether the means adopted are proportionate to the objective being pursued. For example, if the government wants to regulate a particular trade, it must show that the regulation serves a public purpose and that the restriction is not more than what is needed to achieve that purpose.

The landmark case of ***Rai Sahib Ram Jawaya Kapur v. State of Punjab*** is often cited to explain this delicate balance. In this case, the Government of Punjab attempted to nationalize the production and distribution of school textbooks. A group of private publishers challenged this move, arguing that it violated their fundamental right to do business under

Article 19(1)(g). The Supreme Court's judgment was nuanced. It did not rule in favor of unfettered government control, nor did it grant unlimited freedom to private publishers.

Instead, the Court acknowledged that the Constitution allows the government to regulate business when it serves the public interest. However, this regulation cannot cross the line into complete exclusion unless specifically permitted by law. The Court held that while the State can certainly prepare and prescribe textbooks, it cannot create a monopoly unless it enacts legislation to that effect. The act of merely entering the field of textbook publication, without shutting out private players by law, was not seen as a violation of fundamental rights.

This judgment clarified an important point: the State's action must not be arbitrary. It must be backed by a legislative framework and should aim to improve public welfare without completely choking private initiative. This case set the tone for how future restrictions on trade and profession would be assessed. It emphasized procedural transparency, legislative support, and the necessity of proportionality.

Moreover, the case reminds us that "public interest" cannot be a vague term. The government must demonstrate how a restriction helps society as a whole—be it in terms of education, health, economic stability, or social justice. The burden of proof lies with the State to show that the limitation is necessary and not a convenient tool for control.

Another critical aspect of this discourse is the nature of the enterprise being regulated. The Supreme Court has often examined whether the trade or business in question has any inherent dangers to public order, morality, or health. For example, restrictions on the liquor trade or tobacco advertisements have generally been upheld, as the Court has found these activities to be harmful to public health. On the other hand, bans or restrictions that do not align with a clear public purpose are viewed with suspicion and are often struck down.

³⁰³ <https://www.mcrrdi.gov.in/91fc/coursematerial/pcci/Part3.pdf>

Thus, in interpreting Article 19(6), the courts follow a layered approach. First, they ask whether the restriction is based on a legitimate public interest. Then, they assess whether the restriction is proportionate to that interest. Finally, they examine the method of implementation—was the restriction imposed through proper legislative or administrative procedure? Was there room for fair hearing and representation? All these factors come into play.

It's important to understand that "reasonableness" is not a static concept. It evolves with time, societal values, and economic conditions. What was considered reasonable in the 1950s may not hold the same weight today. For instance, in an era of digital commerce, regulating online businesses requires a different framework than regulating street vendors. The courts are conscious of this dynamic and adapt their interpretation accordingly.

Furthermore, Article 19(6) allows the State not only to impose restrictions but also to create laws that set qualifications for practicing certain professions. This is particularly important in fields like medicine, law, and education, where unregulated practice could cause serious harm. These qualifications are not seen as restrictions but as safeguards to protect public interest. However, even these must be rational and should not amount to arbitrary exclusion.

In conclusion, Article 19(6) stands as a guardian of both individual freedom and societal welfare. It acts as a filter that ensures only just and fair limitations are placed on one's right to trade or practice a profession. The Supreme Court, through its consistent jurisprudence, has reiterated that the government cannot restrict rights on a whim. There must be a clear, demonstrable public interest and a legally sound framework backing the restriction.

The case of ***Rai Sahib Ram Jawaya Kapur*** was not merely about textbooks—it was a defining moment in India's constitutional history that drew the lines between permissible regulation and unconstitutional overreach. It emphasized

that the government cannot crowd out private activity without due process. It also underscored the judiciary's role in safeguarding individual liberties while allowing space for necessary governmental action.

As India continues to grow and diversify, the principles laid out in Article 19(6) will remain relevant. Whether it's a startup navigating digital laws, a medical practitioner facing new licensing rules, or a business adapting to environmental regulations, the spirit of this Article—anchored in fairness, necessity, and reasonableness—will guide the way forward.³⁰⁴

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