

## THE ELASTIC BOUNDARIES OF FREE SPEECH: A CONSTITUTIONAL STUDY OF ARTICLE 19(1)(A) AND ITS LIMITATIONS

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### Abstract

Freedom of speech and expression, as enshrined in Article 19(1)(a) of the Indian Constitution, serve as a fundamental pillar of democratic governance and active citizenship. However, this right is not without limits; it is subject to the constraints outlined in Article 19(2), which permits the imposition of reasonable restrictions on the interests of India's sovereignty and integrity, state security, public order, decency or morality, contempt of court, defamation, and incitement to an offense. This study aims to examine the constitutional framework of Article 19(1)(a), with a particular focus on its flexibility—its ability to adapt to new realities, technologies, and societal values. By delving into the judicial evolution through landmark judgments such as *Romesh Thappar*, *Maneka Gandhi*, *Shreya Singhal*, and *Kedar Nath Singh*, the paper assesses how the judiciary has defined the doctrinal boundaries of free speech. It also explores the interaction between Article 19(1)(a) and contemporary challenges, such as hate speech, sedition laws, and the regulation of digital platforms. The rise of social media has blurred the lines between private and public speech, necessitating the redefinition of rights and responsibilities in cyberspace. A comparative constitutional analysis with jurisdictions such as the United States, the United Kingdom, and Germany is conducted to situate India's free-speech regime within a global context. The paper concludes by emphasizing the need to balance liberty with order, while upholding constitutional morality and democratic integrity. It advocates for nuanced jurisprudence capable of withstanding populist pressures and state overreach, ensuring that the right to free speech remains a strong safeguard of democratic discourse. Through doctrinal, historical, and comparative perspectives, this study reaffirms the critical importance of Article 19(1)(a) of contemporary constitutionalism.

**Keywords:** Freedom of Speech, Article 19(1)(a), Reasonable Restrictions, Indian Constitution, Judicial Interpretation, Hate Speech, Sedition, Democracy

### I. Introduction

The right to freedom of speech and expression, as enshrined in Article 19(1)(a) of the Constitution of India, is the cornerstone of a democratic society. It guarantees citizens the freedom to think, communicate, and express themselves through various media—whether spoken words, written texts, images, or digital platforms. This fundamental right fosters a marketplace for ideas and supports an informed citizenry, both of which are vital for a

functioning democracy. However, the Constitution recognizes that this right must be exercised responsibly and within legal boundaries. The reasonable restrictions outlined in Article 19(2) serve as safeguards against misuse and help to maintain public order. This introductory section sets the stage for comprehensive exploration of how Article 19(1)(a) functions in both theoretical and practical contexts. The following sections of this paper will delve into the historical development of free-speech jurisprudence in India,

examining landmark cases that have influenced the interpretation of Article 19(1)(a). We analyze the various forms of expression protected under this provision, including political dissent, artistic freedom, and digital communication. Additionally, we explore the challenges of balancing free speech with other constitutional values and societal interests, especially in the era of social media and instant global communication.

## II. Historical and Constitutional Background

To grasp the importance of Article 19 (1) (a) fully, one must explore its historical origins. Under colonial rule, the British government frequently restricted free expression through harsh laws, such as the Vernacular Press Act of 1878 and the Sedition Act of 1870, aimed at quelling dissent and silencing nationalist movements. After gaining independence, the framers of the Indian Constitution understood the necessity of safeguarding civil liberties, particularly, freedom of speech. Initially, the Constitution did not specify grounds for limiting this freedom, but judicial decisions such as *Romesh Thappar v. The state of Madras* (AIR 1950 SC 124) has exposed gaps in the legal framework. Consequently, the First Amendment to the Constitution in 1951 introduced specific grounds under Article 19(2), offering a clear basis for imposing reasonable restrictions.<sup>457</sup> This historical progression illustrates the delicate balance between liberty and order in post-colonial constitutionalism. The historical context of Article 19(1)(a) of the Indian Constitution reveals a complex interplay among colonial oppression, post-independence aspirations, and the evolving legal framework of a newly democratic nation. The British colonial government's use of repressive legislation, such as the Vernacular Press Act and Sedition Act, served as a stark reminder of the importance of safeguarding free expression in independent India. These laws were strategically employed to stifle nationalist sentiments and maintain colonial control, thus highlighting the intrinsic

link between freedom of speech and political autonomy. Drawing from this historical experience, the framers of the Indian Constitution recognized the critical role of free speech in fostering a vibrant democracy. However, the initial formulation of Article 19(1)(a) lacked specific guidelines for imposing restrictions, leading to legal ambiguities as evidenced in cases like *Romesh Thappar v. State of Madras*. The subsequent introduction of Article 19(2) through the First Amendment in 1951 marked significant development in Indian constitutional law. It provided a more structured approach to balancing individual liberties with societal interests, reflecting the ongoing challenge of reconciling freedom with order in a post-colonial context.<sup>458</sup> This evolution underscores the dynamic nature of constitutional interpretation and continuous effort to refine the legal framework governing fundamental rights in India.

## III. Scope and Content of Article 19(1)(a)

Article 19(1)(a) ensures that every citizen has the right to freedom of speech and expressions. This right's scope has broadened through progressive judicial interpretation, encompassing not only the freedom to express views through words, writing, or gestures, but also the right to information, press freedom, and the right to silence. In the Case of *Maneka Gandhi v. The Union of India* (1978 SCR (2) 621), the Supreme Court, ruled that fundamental rights are interconnected, and any restrictions on freedom of speech must also meet the fairness test under Article 21. The Court stressed that a mere procedural restriction is insufficient; the law must be just, fair, and reasonable in both substance and process.<sup>459</sup> The expansion of this right has kept pace with technological advancements, acknowledging the internet and social media as legitimate platforms for expression. The right to freedom of speech and expression has also been interpreted to include commercial speech, albeit with certain

<sup>457</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>458</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>459</sup> *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

restrictions to protect consumers and ensure fair-trade practices. In recent years, the judiciary has faced the challenge of balancing this fundamental right against the concerns of national security, hate speech, and the spread of misinformation. The ongoing challenge lies in finding a delicate balance between individual liberty and societal interests, especially in the digital age, where information spreads rapidly and globally.

#### IV. Reasonable Restrictions under Article 19(2)

The inclusion of Article 19(2) illustrates that the right to free speech is not without its limits. Restrictions can be imposed to safeguard the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, or the incitement of an offense. The judiciary plays a pivotal role in ensuring that these restrictions are reasonable rather than excessive. In *Express Newspapers v. Union of India* ((1986) 1 SCC 133), the Court expounded on the doctrine of proportionality, which mandates that any restriction must be necessary and the least intrusive means to achieve the intended objective. The standard of reasonableness varies with context but always involves a careful judicial examination of competing interests. These criteria include legality, necessity, and proportionality.<sup>460</sup> The Supreme Court has consistently stressed that any restriction on free speech must be narrowly tailored rather than overly broad. In *Shreya Singhal v. The Union of India* (2015) invalidated Section 66A of the Information Technology Act, deeming it vague and excessively restrictive for online speech. This judgment highlighted the importance of protecting freedom of expression in the digital age, while acknowledging the need for reasonable limitations to prevent abuse.

#### V. Landmark Judicial Decisions

Jurisprudence surrounding Article 19(1)(a) has been significantly enriched by several landmark judgments. *Bennett Coleman and Co., v. The*

*Union of India* ((1973) 2 SCC 788), the Supreme Court struck down the newsprint policy, ruling that any restriction affecting newspaper circulation infringes on freedom of expression.<sup>461</sup> In *Shreya Singhal v. Union of India* ((2015) 5 SCC 1), the Court invalidated Section 66A of the Information Technology Act, 2000, for being vague and overbroad, thereby chilling free speech on digital platforms. In *S. Rangarajan v. P. Jagjivan Ram* ((1989) 2 SCC 574), the Court held that censorship must be based on proximate danger rather than speculative harm.<sup>462</sup> Finally, *Kedar Nath Singh, v. The State of Bihar* (AIR 1962 SC 955), the Court upheld the constitutionality of sedition law but limited its application to the incitement of violence or public disorder.<sup>463</sup> These cases illustrate the judiciary's commitment to upholding the rights and safeguarding national interests. The jurisprudence surrounding Article 19(1)(a) of the Indian Constitution has been significantly shaped by a series of landmark judgments that have expanded and refined the scope of the freedom of expression. These cases demonstrate the judiciary's nuanced approach to balancing individual rights with societal interests. The *Bennett Coleman* case established that indirect restrictions on speech, such as limiting newspaper circulation through print policies, are unconstitutional. This principle was further extended to digital platforms in the *Shreya Singhal* case, where the Court recognized the importance of protecting online speech from vague and overbroad laws that could have a chilling effect on free expression. The *S. Rangarajan* and *Kedar Nath Singh* cases further illustrate the Court's efforts to define the limits of free speech while protecting it from undue restriction. By requiring censorship to be based on proximate danger rather than speculative harm, and by narrowing the application of sedition laws to cases involving incitement of violence or public disorder, the Court has sought to create a framework that allows for robust public discourse while

<sup>461</sup> *Bennett Coleman & Co. v. Union of India*, (1973) 2 SCC 788

<sup>462</sup> *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

<sup>463</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955

<sup>460</sup> *Express Newspapers v. Union of India*, (1986) 1 SCC 133.

maintaining public order and national security. These judgments collectively reflect a judicial philosophy that prioritizes the protection of free speech as a fundamental right while acknowledging that it is not absolute and must be balanced against other constitutional imperatives.

## VI. Hate Speech, Seditious, and Nationalism

The rise of hate speech and the misuse of sedition laws have threatened the sanctity of Article 19 (1) (a) significantly.<sup>464</sup> While the state is responsible for maintaining public order, the lack of a clear definition of hate speech in Indian law has resulted in its arbitrary enforcement. In *Pravasi Bhalai Sangathan v. Union of India* ((2014) 11 SCC 477), the Supreme Court urged the legislature to enact a comprehensive law to address hate speech.<sup>465</sup> Despite the limited interpretation provided by *Kedar Nath Singh*, the sedition law under section 124A of the Indian Penal Code continues to be invoked against journalists, activists, and dissenters.<sup>466</sup> These developments reflect a growing tendency to equate criticism of the state with anti-national activity, thereby undermining the democratic discourse.

## VII. Social Media and Digital Speech

The digital age has reshaped the boundaries of free speech. Platforms such as Twitter, Facebook, and YouTube have enabled widespread participation in political discourse, yet they have also facilitated the spread of misinformation and hate. In the *Shreya Singhal* case, the Supreme Court emphasized that vague laws regulating online speech could chill expression.<sup>467</sup> However, recent developments such as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have raised concerns about government overreach and surveillance.<sup>468</sup> The absence of a

comprehensive data protection law heightens the risk of privacy and freedom of expression. Finding a balance between regulation and autonomy in the digital realm is crucial. The digital age has transformed the landscape of free speech, presenting both opportunities and challenges. While social media platforms have democratized access to information and enabled widespread participation in public discourse, they have also become breeding grounds for misinformation, hate speech, and polarization. The ease with which content can be shared and amplified online has led to the rapid spread of false narratives and extremist ideologies, potentially undermining the quality of public debates and social cohesion.

In response to these challenges, governments worldwide have grappled with the task of regulating online speech without infringing fundamental rights. The Supreme Court's decision in *Shreya Singhal* highlighted the importance of clear and precise laws in preventing the stifling of legitimate expressions. However, recent regulatory measures, such as the Information Technology Rules of 2021, have sparked debate regarding the extent of government control over digital platforms and the potential for surveillance. The absence of a robust data protection framework further complicates this issue, leaving users vulnerable to privacy breaches and the potential misuse of their personal information. As the digital landscape continues to evolve, it is crucial to develop a regulatory approach that safeguards free speech and privacy while addressing genuine concerns of misinformation and online harm, ensuring a vibrant and responsible digital public sphere.

## VIII. Comparative Constitutional Perspective

In a comparative analysis, it becomes clear that India charts a middle course between the absolutist model of the United States and the more restrictive frameworks of countries such as Germany and the United Kingdom. The U.S. The first Amendment offers nearly unrestricted free speech, while European nations impose

<sup>464</sup> The Constitution of India, art. 19(1)(a) & 19(2)

<sup>465</sup> *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477

<sup>466</sup> Indian Penal Code, 1860, § 124A.

<sup>467</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>468</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

limitations on protecting human dignity, preventing hate speech, and maintaining public order. India's approach seeks to balance individual liberty with collective harmony, yet this equilibrium is often disrupted by political pressure and inconsistent jurisprudence. By learning from international practices, India can develop a more coherent and rights-based speech framework.

### IX. Emerging Trends and the Way Forward

In recent years, there has been a growing intolerance towards dissent, with the state often citing public order and national security to suppress speech. The chilling effect on academic freedom, journalistic independence, and artistic expression was evident. Civil society must actively defend its free speech. Legal reforms are needed to repeal colonial era laws, such as sedition, define hate speech, and ensure judicial accountability. The judiciary should adopt a strong rights-based approach that prioritizes liberty over state convenience. Only then can Article 19(1)(a) fulfill its constitutional promise.<sup>469</sup>

### X. Conclusion

The right to free speech is crucial for sustaining democracy, yet it remains one of India's most contested rights. Its flexibility allows it to adapt to changing circumstances, but also makes it vulnerable to manipulation. The judiciary plays a vital role in defending this right against encroachment by both legislative and executive branches. As India navigates the complexities of a digital, pluralistic, and increasingly polarized society, a renewed commitment to constitutional values, judicial independence, and civil liberties is essential. Article 19(1)(a) must not only survive but also thrive as the bedrock of Indian democracy. The right to free speech enshrined in Article 19(1)(a) of the Indian Constitution serves as a cornerstone of democratic governance, fostering open dialogue, critical thinking, and public accountability. However, its interpretation and

application in India are subject to ongoing debate and legal scrutiny. The elasticity of this right allows it to evolve with societal change, encompassing new forms of expression in the digital age. However, this flexibility also renders it vulnerable to potential misuse or undue restrictions by various stakeholders including political entities and powerful interest groups.

In this context, the judiciary's role as a guardian of constitutional rights becomes paramount. Courts must strike a delicate balance between protecting free speech and addressing legitimate concerns regarding public order, national security, and individual dignity. As India grapples with the challenges of a diverse, digitally connected, and increasingly polarized society, there is a pressing need to reinforce the foundations of constitutional democracy. This involves not only safeguarding judicial independence but also promoting civic education, media literacy, and a culture of respectful disagreement. By upholding the spirit of Article 19(1)(a) and adapting its application to contemporary reality, India can ensure that free speech remains a vibrant force in shaping public discourse and strengthening democratic institutions.

### XI. References (Bluebook 20th Edition):

1. *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.
2. *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.
3. *Express Newspapers v. Union of India*, (1986) 1 SCC 133.
4. *Bennett Coleman & Co. v. Union of India*, (1973) 2 SCC 788.
5. *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
6. *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.
7. *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

<sup>469</sup> The Constitution of India, art. 19(1)(a) & 19(2).



8. *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477.
9. The Constitution of India, art. 19(1)(a) & 19(2).
10. Indian Penal Code, 1860, § 124A.
11. Information Technology Act, 2000, § 66A (repealed).
12. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

