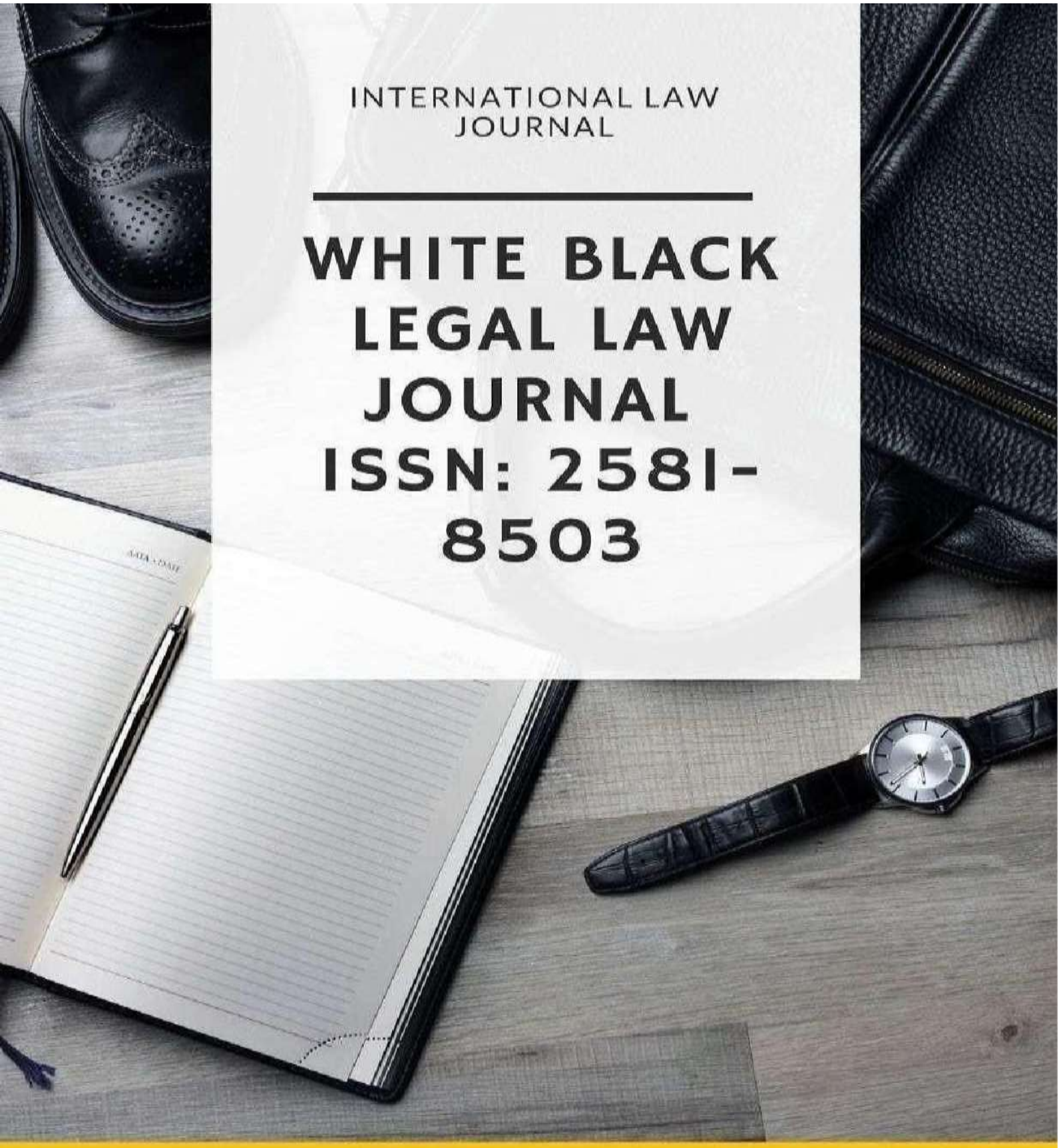

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# RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN PRINT AND ELECTRONICS MEDIA

**Research Dissertation submitted to**

**Amity Institute of Advanced Legal Studies**

**Amity University Uttar Pradesh**

**In Part Fulfilment of Requirement for the**

**Degree of Master of Laws (LLM)**

**Under the guidance and Supervision of**

**Prof.Arun Upadhyay**

**AUTHORED BY**

**VISHWAJEET K. ASHISH**

**LLM(CL) A0342624030**

**Batch: 2024-25**

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Vishwajeet K. Ashish

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# LIST OF ABBREVIATIONS

| | |
|---|---|
| 1. | AIR: All India Reporter |
| 2. | ART.: Article |
| 3. | CrPC: Code of Criminal Procedure |
| 4. | ECHR: European Convention on Human Rights |
| 5. | HC: High Court |
| 6. | ICCPR: International Covenant on Civil and Political Rights |
| 7. | IPC: Indian Penal Code |
| 8. | LTD: Limited |
| 9. | SC: Supreme Court |
| 10. | SCC: Supreme Court Cases |
| 11. | Sec.: Section |
| 12. | TV: Television |
| 13. | UDHR: Universal Declaration of Human Rights |
| 14. | UK: United Kingdom |
| 15. | UOI: Union Of India |
| 16. | US: United State |
| 17. | V.: Versus |

# ABSTRACT

The gift of God to the human race is Speech. An individual transmits thoughts, emotions and feelings to others through expression. Freedom of expression and speech is therefore a fundamental human right that a person has at birth gained. Consequently, it is a human right. "These rights require freedom to keep viewings without interference and explore and learn information and ideas in any media regardless of boundaries,' as declared by the Universal Declaration of Human Rights (1948).” The law requires freedom to express opinions without interference. The people of India declared their commitment to ensure the freedom of thought and expression for all citizens in the Preamble of the Constitution. Article 19 (1)(a), which is one of the Articles of Part III of the Constitution that list the fundamental rights, communicates this determination.

Considering that the Internet is a crucial means of linking people today and enables information to be transmitted at an unprecedented pace, halting Internet services is, of course, an obstacle to the practice of the right to freedom of speech. India currently has one of the most users of Internet worldwide and the several of these users often use social media to interact with each other as well as communicate their ideas and views. There have been several examples of the Internet shutdown in the country in recent times that have jeopardized freedom of speech and freedom of expression.

In this dissertation, an effort has been made to present the captions of various sections of Freedom of Speech in India, with a particular focus on the internet and its legislation. In the first chapter, an introduction is provided on broader freedom of speech and research objectives. Includes Hypothesis and Research Methodology. In Chapter Two, The Historical Background of Free Speech and expression. In Chapter Three, right to self-expression and nature of free speech in National and International Law has been analyzed along with statistics on social media. Difference between social media and social news, the need of protection of freedom of speech in cyberspace is also discussed. In Chapter Four, remedies for infringement of freedom of speech are drawn out. Comparative study between sedition and freedom of speech is also analyzed with cases of the Hon’ble Supreme Court of India and even various High Courts. In Chapter Five, conclusions and recommendations with the help of all previous chapters are drawn out.

# CHAPTER – I

# INTRODUCTIO

# N

## 1.1 Introduction

Free speech and expression grants Indians the right, through written or spoken word, image or other visual or transmissible representation such as signs, to convey their thoughts and views without being apprehended. It requires the freedom to spread one's own views and the ability to publish the opinions of other people. Freedom of speech cannot be linked to or confused with permission to make baseless and baseless claims against judges. As a result, freedom of speech and expression is not an absolute right, and under Article 19 (2) of the Constitution the State may impose reasonable limits. It cannot be applicable any constraint on the exercise of the right referred to in Article 19(1)(a), not in the four sides of Article 19(2).

"Technology enablers the freedom of persons but not their freedom," the Supreme Court has noted and also refrained from stating that "the right to access the Internet" itself is a basic constitutionally guaranteed right. It would be a mistake to assume that the Internet is all-encompassing in our everyday lives. The Internet plays a critical role from being up- to - date, paying bills, getting access to the social media, and ordering food and food. As a result, excluding Internet access can lead to a complete everyday life and limit people's ability to communicate among themselves.

Considering that the Internet is a crucial means of linking people today and enables information to be transmitted at an unprecedented pace, halting Internet services is, of course, an obstacle to the practice of the right to freedom of speech. India currently has one of the most users of Internet worldwide and the several of these users often use social media to interact with each other as well as communicate their ideas and views. There have been several examples of the Internet shutdown in the country in recent times that have jeopardized freedom of speech and freedom of expression.

It is important to note that under the Indian Constitution, the right to free speech and freedom of expression is a "negative," meaning it cannot be rejected unless such restrictions and restrictions are enforced by the Constitution itself. Importantly, the right is not absolute, as there are some

"fair limits" in the Constitution which could curtail this right. Such restrictions are enforced where appropriate for the gain of India's sovereignty and integrity, national defence, public order maintenance, etc. This has contributed to examples where the appearance of certain kinds of content was limited, and even the producers of these content was even placed behind bars in certain cases.

The most basically perceived and unmistakable rights in all popularity based lawful frameworks. The option to give and receive data has for limit time been a foundation of common liberties law, and theory of law-based[1]. The draftsmen of the French Upheaval gave the Revelation of the Privileges of Man, which tied down the freedom of residents to impart thoughts and assessments unreservedly, and which right has been held practically unchanged since the commencement of majority rule government. Just after a month, pronounced free discourse to be major to its beginning structure of politics by changing it's as of late embraced the Constitution to ensure that privilege explicitly. Longer than one and a half after, the Assembled Countries' General Revelation of Basic liberties (UDHR) perceived the option to free speech. So also, Global Pledge on Common and Political Rights (ICCPR) and European Show on Basic liberties have managed the centrality and importance of opportunity of articulation. Apart from this the assurance of opportunity of articulation was not provided unmistakable in several western majority ruling governments about

50 or 30 years before, ongoing enhancements depict that majority are vote-based systems.

### 1.1.1 Freedom of Speech and Expression-Justifications

Self openly is significant for various reasons, which assist to shape improvement and law utilization on opportunity of expression[2]. The principle free discourse defenses are broadly alluded as the old-style model. This model offers clarifications with respect to the center of free discourse, the discourse genuinely esteemed by society108. In this particular exploration work we have thought 5 avocations for the insurance of free discourse viz., opportunity of still, small voice, individual personality and self- satisfaction, commercial center of thoughts, vote based system and self-administration, and right for self-articulation which incorporates creative and academic undertaking.

[1] Eric Berendt, Freedom of speech, 18(Oxford Journal of Legal Studies, 2009).
[2] Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that: Everyone has the right to

freedom of opinion and expression

## 1.1 Scope of the Study

The legitimate boss has been extending the zone ensured about by the key right aside t o talk wholeheartedly of talk and clarification. The choice to talk wholeheartedly of talk and verbalization is a crucial part that a vote-based system runs with. For any vote-based structure to thrive, individuals must be allowed the chance to bestow their propensity without imperative. This vital Section of the ability to talk transparently and articulate is wanted by the Indian occupants by Article 19(1)(a) of the Indian Constitution. It gives that all occupants self-ruling of hiding, conviction framework and even religion hold the decision to talk even more tumultuously in significance issues or notwithstanding with not any obstacle inside or even without. This open entryway comes in for the uncertainty that ampleness of men comes above everything, as well as each person, by his/her own watchfulness and even comprehension sees what is sufficient or awful. A guaranteed blueprint is only here and there static; it is ever making and ever progressing and, thus, doesn't give up to a slight, careful or syllogistic framework. The constitution creators utilized a wide while drafting the basic rights so hello may have the choice to think about the necessities of a propelling society. In like way, developed approaches taking everything into account and essential rights expressly should be widely seen beside if the setting notwithstanding requires. The degree and ambit of such courses of action, expressly the central rights, ought not to be sliced some spot around pointlessly crafty or too confined a procedure. While examining the level of the choice to talk uninhibitedly of talk and verbalization the High Court at traditionally has said that the words the alternative to communicate straightforwardly of talk and articulation must be forcefully attempted to join the opportunity to course one's views by enunciations of mouth or by recorded as a printed duplicate or with help of expansive media instrumentality.[3]

## 1.2 Impact of the Study

The legitimate chief has been widening the zone made sure about by the key right to one side. The option to talk openly of talk and enunciation is a vital component that a vote-based framework runs with. For any vote-based framework to prosper, people must be given the opportunity to convey their tendency without restriction. This critical component of the capacity to talk uninhibitedly and explanation is treasured too the

[3] David Coulson, Collaborative Tasks for Cross-Cultural Communication, 127-138 (Teachers Exploring Tasks in English Language Teaching, 2005).

Indian occupants' occupants autonomous of concealing, belief system and religion hold the choice to talk all the more uproariously in issues of centrality or regardless with no impediment. This open door comes in for the doubt that sufficiency of men comes above everything else, and every individual, by his/her own caution and understanding perceives what is worthy or terrible. An ensured plan is seldom static; it is ever creating and ever developing and, along these lines, doesn't yield to a slight, exacting or syllogistic procedure. The makers of constitution used a sweeping diction while putting on the basic rights with the purpose that welcome may have the choice to consider the necessities of an advancing society. In like manner, built up courses of action with everything taken into account and fundamental rights explicitly ought to be extensively perceived aside from if the setting regardless requires. The extent and ambit of these particular plans, explicitly the essential rights, should not be cleaved some place around unnecessarily sharp or too restricted a methodology. While discussing the degree of the option to talk uninhibitedly of talk and explanation the High Court at usually has said that the words the option to express openly of talk and enunciation must be widely worked to join the chance to course one's points of view by articulations of mouth or recorded as a printed version or through broad media instrumentality.

## 1.3 Objectives

The start, it must be noticed that this privilege is in the idea of a subordinate right for example those rights which are not referenced unequivocally in the sacred content yet are in any case critical to understand the targets of the Constitution. They are named as 'penumbral rights' or 'unremunerated rights' inside the American jurisdiction.

1. Noticeable instances of the equivalent incorporate the privilege to abortion[xiii] and the privilege to privacy.

2. The Indian statute to trusts in the equivalent. Crucial Rights in this sense have been held to be unfilled vessels to be filled in by every age as per their experience.

3. This suggestion was additionally extended by the court by committing protected courts to grow the ambit and reach of Essential Rights,

4. As Part III rights give just the skeleton intended to be filled in by the courts.

The mind-boggling nature of the privilege to the web makes it hard for it to be restricted to one single Part III right. This implies in the event that this privilege is abused (accepting it has been allowed) at that point something beyond one Principal Right would stand disregarded. For example, Article 19(1)(a) would be abused due to the previously mentioned marvel of 'assembly'. Likewise, if just certain areas of the general public approach this privilege inferable from an advanced divide; at that point it welcomes the anger of Article 14[4]. Along these lines, the privilege to the web is a multifaceted, penumbral right.

## 1.4 Hypothesis

Accordingly, the study is set to test the hypothesis that

- Are the existing laws adequate to tackle the impact of internet on freedom of speech and expression?
- Have the provisions of I.T. Act been misused by State machinery to curb, control and silence the political criticism?
- Due to role of media, involvement of people is increasing day by day in making of public policy which is ultimately resulting in establishment of a real and workable democracy in India.

## 1.5 Research Methodology

The present work is based upon Doctrinal Research Methodology; the researcher has made an intensive as well as extensive study of concept of freedom of speech and expression, and Internet. The present study endeavors to see the role of in internet the light of right to freedom of speech and expression which is guaranteed under Indian Constitution under the provision of Art. 19(1) (a)

Literature for this study has been collected from various primary as well as secondary sources. Primary sources include Indian Statutes, Rules, Regulations, Constituent Assembly Debates, Reports of the Working Committees, Standing Committees and Cabinet Committees, judgments of the various High Courts and the Supreme Court, bare provisions of the Constitution and recommendations of the reports. Secondary sources include books of

[4] Hemant Singh, Equality before law The State shall not deny to any person equality before the law or equal

protection

## STUDENT LEARNING OUTCOME

1. Understand the constitutional basis for the right to freedom of speech and expression in India.
2. Analyse the role of print and electronic media in a democratic society.
3. Identify the legal limitations and reasonable restrictions placed on media under Article 19(2) of the Constitution.
4. Distinguish between freedom of the press and freedom of expression in digital media platforms.
5. Examine landmark judgments and case laws that have shaped media freedom in India.
6. Evaluate the impact of censorship, sedition laws, and fake news on journalistic freedom.
7. Develop critical thinking towards the balance between national interest and media autonomy.
8. Reflect on the ethical responsibilities of journalists and media houses in preserving public trust.
9. Apply knowledge to assess real-life media scenarios, debates, or controversies involving free speech.

## 1.6 Review of Literature

### 1.7.1 Overview

K.K. Mathew in book "Majority rule government balance and opportunity"[5] Set down, exercising communication may in specified conditions clash with those excitement of other individuals' right to protection for example the privilege of an individual to be free earlier or even later from interruption by society into his private and also individual undertakings. There ought to be apt peace and harmony between the individual life as an individual and his life as a citizen, David M.O. Brein' in the book "Security law and public strategy"[6] "Cases and materials on common freedoms" concurred that the idea of protection typifies esteem which are fundamental to the functioning of a free society. Any broad common cure would require barely less broad capability so as to empower the court to accomplish a satisfactory parity between values verifiable in regard for protection and different estimations of at any rate equivalent significance in a free society of the unobstructed flow of genuine data.

D.D. Basu" in his book, "Law of the press"[7], explained that security is a continuing advancement in the law domain and the surge of its improvisation is as yet streaming. It is extremely tough to understand what security means in law. Openly it has depicted the privilege of an individual to be 'not to mention' or his privilege of rest in his personal life and home. R.K Suri, Parag Diwan, Shami Kapoor" in his book, "Data innovation laws, law identifying with digital and internet business"[8], set out the exemplary of the protection idea that it includes of the option to be left be as far as disengagement from the investigation of others. "Global Basic liberties and Islamic law", set out the privilege to Security in Islam, the privilege to protection is likewise commonly all around worried under Islamic law. The shariah disallows any interruption which is against law into the personal life. Explicit part of security tended to by the HRC incorporates

[5] K.K. Mathew, Majority rule government balance and opportunity 364(Eastern Book Co., Lucknow, 1978).
[6] David M.O. Brein, Security law and public strategy (Berkman Klein Center, 2020).
[7] D.D. Basu, Law of the Press in India, 252(Practice Hall of India, 2003).
[8] R.K Suri, Parag Diwan, Shammi Kapoor, Data innovation laws, law identifying with digital and internet business (Laws relating to cyber & e-commerce,2001).

M.P. Jain in his book "Protected law"[9]. A legal proclamation portion is noteworthy as well as a salient moment in the established law. The High Court has been showing an innovative and dissident streak. Article 2, has convert edit into a new direction. The court has suggested a heap of rights for the individuals firm Workmanship, for example, right to protection and so forth.

S.V. Joga Rao in the book, "Law of digital wrongdoings and Data Innovation law"[10], set out that significant common liberties worry in the internet is the threat to a individual's security rights, the tremendous amount of private data about the person is most probably tending to grow rather than diminishing.

Ajay Dash" in the book, "Sting activity by media"[11] attempts to draw out the shrouded mysteries of the sting he attempted to forestall the complexities related with the skillful strategies in an exceptionally clear way, considered the privilege to protection, he remark that the privilege to security and the public option to know are frequently given a role as inverse however both are fundamental in a modem vote based system, opportunity of media is basic in keeping up on educated, sure and prosperous country. A privilege to protect is basic in safeguarding our nobility. "Sacred law of India", has endeavored to communicate convoluted thoughts with lucidity and precision. His work fuses all the significant decisions of the Summit "Worldwide Security insurance", follows the birth as well as early protection history, and the requirement for its assurance as a issue of public. He centers around contentions over the destiny of individual information held by the government and by the private organizations in ordinary or mechanized documents. He set down what types of security assurance were promptly acknowledged in every nation and also which challenged what diverse government organizations did and didn't characterize parts for themselves in ensuring individuals' enthusiasm for treatment of 'their' information.

Hariom Marath in his book, "Equity deferred equity denied", endeavored to set some hard boundaries identifying with protection he set out that interruption into security might be by authoritative arrangements, regulatory requests and by Legal requests. "Sacred law of

[9] M.P. Jain, Protected law(Indian Constitutional Law,2001).
[10] Dr.S.V Joga Rao, Law relating to right to information, (Freedom of information, 2009).
[11] Ajay Dash, Sting activity by media, (Discovery publication, 2007)

India"[12] Release of the book has been raised to date by joining every single established turn of events and legal choices identifying with the few parts of the security insurance in India.

### 1.7.2 Free Speech on the internet

For some time now, the potential for expressiveness has been regarded as one of the fundamental principles of established majority regimes under which specific liberties are valued and regarded as necessary for the particular sequence of events and gratification.

The Principal Correction in the American Constitution broadly promises US residents the option to free discourse. In England, until a "bill of rights" is set up, as the appropriation of the European Show of Basic liberties one year from now, free discourse is just characterized adversely: we can possibly talk openly if the laws covering classification, hatred of court, information assurance and authority privileged insights aren't violated. Getting the harmony between opportunity to talk and opportunity from dread has grieved popular governments and majority rule scholars for many years. The nineteenth Century savant JS Factory, who's on Freedom (1859) stays an intense work of the worth and cutoff points of freedom, contended that you should recognize opportunity to talk and opportunity to act. Composed or spoken support isn't activity, Factory contended, accepting there could be no obstruction to the outflow of sentiments. Indeed, even hostile untruths should openly be communicated, for it is just in their demeanor that they can be uncovered as deceitful, Factory kept up.

### 1.7.3 End note

**1.7** Opportunity of articulation is a crucial basic liberty that must be controlled in fair social orders. However, there is a stressing pattern of governments in the world outlandishly restricting ability to speak openly, focusing on columnists, dissidents and even various people viewed as disagreeing from government sees. Even in western majority ruling governments, laws are diminishing dissent exercises and even undermining opportunity of press and free discourse through required metadata maintenance plans. It is general that social orders which are common worldwide are cautious in guarding articulation opportunity. This is important for the improvement of one's lives and creation as well as

[12] H.C.P. Tripathi, Equity deferred equity denied (The Constitutional Law of India (in English) book).

## Chapterisation

**Chapter-1 Deals with Introduction**, Scope of The Study**,** Impact of The Study, Objectives**,** Hypothesis**,** Research Methodology, Review of Literature and Chapterisation.

**Chapter-2 Deals with historical background of freedom of speech and expression;** this chapter discusses the development of freedom of speech and expression.

**Chapter-3 The Birth of Free Speech Under the Constitution of India is discussed as in the Introduction**; The Current State of Freedom of Speech in India, Legal Solutions Found in Violations of Freedom of Speech, Cinematographic Freedom Versus State Controlled Censorship, Freedom of Speech in India, Rebellion and Freedom of Speech. and Cases

**Chapter-4 Judicial Perspective of Freedom of Speech**

In this chapter, researchers describe various proceedings related to free speech.

**Chapter-5 Conclusion and Recommendations**

**Bibliography**

# CHAPTER – II

## HISTORICAL BACKGROUND OF FREEDOM OF SPEECH AND EXPRESSION

### 2.1 Introduction

Freedom of speech and expression is considered as the primary condition of freedom. It occupies a privileged, valuable and important place in the hierarchy of liberties, and freedom of the press is actually said to be the mother of all other liberties. Freedom of expression and expression means the right to freely express one's beliefs and opinions, whether verbally, in text, in print, in images or by any other means. In today's world, it is widely accepted that freedom of expression is the essence of a free society and should always be protected. The first principle of a independent society is freedom of speech in public forums. In particular, the freedom to freely express opinions and ideas without fear of punishment plays an important role for the development of this particular society and ultimately for the country. This is one of the most important fundamental freedoms guaranteed against national crackdowns and regulations. When researchers traced the development of free speech as a right, they found that this right was as old as human civilization. Its origin may be trace from the Latin phrase libertatem loquendi et scribendi expression[13]. The history of the struggle for free speech centred about the expression of ideas antagonistic to the existing religious, political or economic order. Greece presents an admixture of encouragement and restraint. Socrates' plea for the supremacy of the individual conscience and the public value of free discussion may be contrasted with Plato's demand for regimentation of thought. The Augustan age of Rome, careless of religious heterodoxy and social satire, was shortly followed by widespread prosecutions of proselytizing Christians. The ascendancy of Christianity under Constantine brought the new religious heterodoxy under even severe penalties. The persecution of heterodoxy, a principle formulated by the high authority of St. Augustine, dominated Europe for centuries and created an atmosphere impossible to the freedom of expression. The Reformation shifted only the point and not the character of control. Calcin, Luther and the new English church were equally

[13] https://www.google.co.in/?gws_rd=ssl#q=latin+phrases+for+freedom+of+speech+and+expression

intolerant of heterodox expression.

What is termed the rise of humanism represents a period of appeal away from mere authority. Contest between philosophic truth and accepted faiths become inevitable and thus brings the issue of freedom of speech such and through the doctrine of the double truth-one philosophical, the other religious-as evolved by Averroes of necessity failed. In Catholic Europe until the eighteenth century the struggle for freedom of expression assumes a religious rather than a political complexion freethinking in philosophy and science being challenged and punished as unorthodoxy. In England the growing participation of a wider public in government makes the issue, aside from the brief upheaval following the establishment of the English church, mainly a political one.

The development of freedom of speech may be traceable by the England. It was the recognized policy of England under the resume of Elizabeth. The strictness of the law of libel and sedition under the Tudor and Stuart monarchies, for a time severely enforced by the Star Chamber, stifled political criticism. It could voice itself only with difficulty through speech in Parliament and petitions addressed to the House for the redress of grievances. The punishment of blasphemy by the ecclesiastical courts, common law courts and the Star Chamber protected the tenets of the existing religion and tended to suppress publications of a freethinking nature. The Licensing Act of 1662 confirmed the principle of censoring the press. Its expiration in 1695 is commonly regarded as the beginning of the free press in England. But apart from ending the regime of censorship, years were to elapse before any significant latitude in the right of expression was acknowledged[14].

The eighteenth century marks the real struggle for freedom of expression. In England it is an era of large political moment, introducing a party system of government with an awake and vocal opposition. In France the era closes with revolution and in America with the achievement of independence and the rise of a demand for liberty. Moreover, in the eighteenth century the newspaper begins to be an active agency in politics. Thus, the century becomes an era of champions of freedom of speech and of the press. Milton anticipates it, but Locke, Voltaire, Rousseau, Wilkes, Paine, Camden,

[14] Historical Development of Freedom of Speech in England Encyclopedia of the Social Sciences

Erskine and Jefferson are of it, while Cobbett, Carlile and Mill carry on its issues.[15] The publication of news was originally regarded as criminal at common law unless done under the king's license. By 1700 this doctrine had disappeared, but publications of parliamentary debates were still punished as contempt of Parliament. Edward Cave's attempt to report them in his Gentlemen's Magazine led in 1738 to his censure and his famous subterfuge of reporting their substance as debates in the empire of Lilliput. The next few decades saw them being reported in a more open manner as Parliament remained quiescent. Wilkes bold attack in his North Briton (no. 45) in 1763 upon the Grenvile government precipitated the issue of the extent to which government could be subjected to political criticism. The issue of free speech thus raised provoked the eloquence of Burke and the savage satire of Junius. The Fox Libel Act altered the law to permit the jury to find both issues, but its importance as a practical remedy was for many years dulled by the deftness of prosecutors to select jurors of the requisite conservative political complexion. The thirty years following the French Revolution are marked in England by ministries fearful of acceding to the popular demands for political and economic reform and resorting to the suppression of criticism by severe and numerous prosecutions. Individual victories together with a change of ministry brought about the end of this era by 1832. Lord Campbell's Libel Act of 1843, which allowed truth as a defense to criminal libel, gave further scope to liberty of expression. With the abolition in 1855 of the "taxes on knowledge" or stamp duties on reading matter together with the repeal in 1869 of laws controlling newspaper publishers and printers through a burdensome and expensive system of registration, publication achieved release from onerous restrictions of long standing. Save for isolated acts of suppression, such as that of the Chartist agitation in 1839, freedom from prosecution for political criticism, even though of a violent nature, has characterized by English polity for the past century. The achievement of freedom of speech and of the press, unlike other principles of English liberty, is hardly the product of legislative action. Perhaps as much a part of the constitution as any of them, its bases are individual victories over government tyranny resulting in a conviction of the inexpediency of setting political bounds to the right of discussion.[16]

In France the dissemination of literature was controlled until the revolution by the

[15] Ibid
[16] Ibid

licensing of printing and by strict censorship. Under such a regime the works of freethinkers, such as Voltaire, Rousseau, Raynal and the encyclopedist were banned. Freedom of expression was erected into one of the natural rights by the Declaration of the Rights of Man and the constitution of 1791. It survived, however, only a scant two years, and the policy of suppression through severe penalties and censorship was continued until 1828.[17]

## 2.2 Historical Background of Fundamental Rights in India

The demand for the fundamental rights during the freedom struggle can be traced with the formation of Indian National Congress itself. First of all, the demand for the fundamental rights appeared in the Constitution of India Bill, 1886. During 1917 and 1919, the Indian National Congress passed a series of resolutions demanding civil rights and equality of status with the Englishmen. The next demand for the fundamental rights was Annie Besant's Commonwealth of India Bill, 1925. The assertion was reiterated firmly by the Nehru committee 1928 which stated that the guarantee of fundamental rights should be in such a manner that it would not permit their withdrawal under any circumstances. The Indian leaders pressed for the inclusion of the Bill of rights at the Round Table Congress in the proposed Constitution[18].

The Sub-Committee on Minorities held detailed discussions on the subject and at the first meeting of the Sub-Committee held on December 23, 1930, Raja Narendra Nath pointed out the need to make the question of declaration of rights unassailable by the majority in the Constitution of India. A.T. Paul also emphasized the need for inclusion of Fundamental Rights and to provide for some machinery to ensure that they were not violated.

B. Shiva Rao, a representative of the Labor Organization of India to the Round Table Conference, placed before the Minorities Subcommittee meeting on December 23, 1930, a comprehensive enunciation of a draft declaration of Fundamental Rights. During the discussion at the Sub-Committee meeting Dr. B.R. Ambedkar also stated that the need for the inclusion of sanctions in the Constitution for the enforcement (7th Fundamental Rights, including a right of redress in case of their violation.[19]

[17] Ibid
[18] V.R. Krishna Iyer on Fundamental Rights and Directive Principles, 53-56, ( Shaitja Shonder, 2003).
[19] Ibid

After the concluding session of the Indian Round Table Conference, a Report was presented by the Secretary of State for India to Parliament. The Report observed that the Government recognized the importance attached by the Indian leaders to the idea of making a chapter on Fundamental Rights, a feature in the Indian Constitution. It also pointed out that some of their propositions discussed at the Conference could find their place in the Constitution. The idea of enumerating such of those fundamental rights which could not be embodied in the Constitution Act itself in the Instrument of Instructions also found support in a memorandum submitted by Khan Bahadur Hafiz, Hidayat Hussain and Dr. Shafayat Ahmad Khan on December 27, 1932 and also in the one submitted by Sir Tej Bahadur Sapru on December 27,1932. As a result of the discussions and memoranda for a declaration of Fundamental Rights, certain concessions were made thereafter Article 12(1)(C) 52(i)(b), 275, 298 were embodied in the Government of India Act, 1935 providing for a few Fundamental Rights.

When researcher studies the Sapru Report, researcher finds that it was published in 1945. The Sapru Committee also recommended that the declaration of Fundamental Rights was absolutely necessary, for not only giving assurances and guarantees to the minorities, but also for prescribing a standard of conduct for the legislatures, Government and the Courts. The Sapru Committee envisaged two kinds of rights, namely, justifiable rights and non-justiciable rights. However, the Committee did not suggest a list of Fundamental Rights to be included in the future Constitution. The issue was left to be decided by the Constitution-making body[20].

Thus, it is clear that even before to Independence, there was a combined effort and awareness for the acknowledgement of the important Fundamental Rights.

[20] Ibid

## 2.3. Meaning of Freedom of Expression

Freedom of speech and expression means the right to freely express one's beliefs and opinions, verbally, in text, in print, image or other means. Freedom of the press is a political right to express one's opinions and thoughts. The term "freedom of expression" is sometimes used interchangeably with the term "freedom of expression" and includes the action of an uncensored person to seek, receive, and communicate information or ideas. Freedom of speech and belief includes the right to receive and communicate information. Self-actualization requires freedom of expression and freedom of expression. It allows people to engage in discussions on social and moral issues. This is the best way to find a true model of everything, as it allows you to spread the widest range of ideas. It's just a way to spread ideas among people[21]. It is the only means of political discourse and the fourth pillar of democracy. The fundamental right to freedom of speech includes the public's right to know what governments are doing in a democracy. A democratic government takes this freedom very seriously because without it there can be no good governance in a democratic country. Freedom of the press cannot demand reason, the basis of democracy[22].

The concept of freedom of speech and expression does not take away from any kind of good or compulsory right. It is the wrong kind of freedom to communicate with others or to be distracted by others. This means that a person can write or say what he or she likes as long as he or she does not violate any law or the right of others. Freedom that is not the same as a violated right is subject to legal restrictions and may be limited by legal developments. The right to fly the flag of the country with freedom and dignity is a reflection of his or her honesty and feelings and national pride. Similarly voting can be officially considered as a means of communication. The term freedom of speech and expression under Article 19 (1) (a) of the Indian Constitution encompasses the right to express one's opinion and opinion on any matter in any way e.g. by word of mouth, writing, printing, photography, film, film etc. It therefore includes the freedom of communication and the right to disseminate or publish an opinion. But this right is subject to the applicable restrictions imposed by Art. 19 (2) of the Constitution of India. The word ‘speech’ used in Article 19 (1) (a) in addition to ‘speech’ is sufficiently comprehensive to cover the media. In fact, the lack of direct media coverage in the Constitution did not create difficulties when the Supreme Court was called upon to defend the freedom of the press in a number

of cases, which came before it. Our Hon'ble Supreme Court clears it that freedom of press includes right to information also in various cases. The result of various cases is that our Parliament enacted a law in 2005 called Right to Information Act, 2005, which provides every citizen of India right to information without any discrimination. Further modern, science and technology have invented and are still inventing and bringing into use many forms of expression that facilitate communication of ideas. The radios, cinema, mobile, telephone, television, internet etc. are a few important examples of these new forms. Some of these may become even more powerful and important media of expression than the press itself. The Freedom of speech and expression has four broad special purposes to serve:

1. It helps an individual, to attain self- fulfillment:
2. Its assist in the discovery of truth:
3. Its strengths the capacity of an individual in participating in decision making:
4. 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 beliefs and communicate them freely.[21]

In ***Jaiveer Prasad Gautam and Another v. State of Uttar Pradesh, Through The Principal Secy. Medical and Health***,[22] the court observed that "The appreciated rights of freedom of speech or expression on which our own democracy holds is described for the expression of free opinions to alter political or social conditions or for the advancement of knowledge. This independence is subject to reasonable limitations which may be thought crucial in the interest of the public and one such is the interest of public decency and morality. Section 292 Penal Code manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality. The word obscenity is really not vague because it is a word which is well understood even if persons differ in their attitude to what is obscene and what is not".

[21] J.N.Pandey, Constitutional Law of India,
172 (Central law Agency 44th Ed., 2012).
[22] 2011 INDLAW ALL 203

In ***Express newspapers Pvt. Ltd v. Union of India***[23] Justice A.P. Sen observed, "The freedom of thought and expression and the freedom of the press are not only important freedoms in themselves, but are base to a democratic government which proceeds on the theory of those problems of the government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. Democracy relies on the freedom of the press. It is the inalienable right of everyone to comment freely upon any matter of the public importance. This is one of the pillars of individual liberty- freedom of speech which our court has always unfailingly guarded.

## 2.4 Dictionary Meaning of Freedom of Speech and Expression

Freedom of speech and expression defined by various Jurists, Judges and the law dictionaries. It generally means to impart information and disseminate information without any limitations. It requires the negative actions towards the Government side without any discrimination. A fundamental constitutional right guaranteed to every person to express his/her convictions and opinion freely by word of mouth, printing, writing, picture or any visible representation involves the right to publish the views of others freedom to such information and ideas and freedom of discussion.

Black's Law dictionary defines the Freedom of Expression as "the freedom of speech, press, assembly, or religion as guaranteed by the First Amendment: the prohibition of government interference with those freedom".[24] Black's law Dictionary defines it only for the American point of view.

Oxford Advanced Learner's Dictionary defines freedom as follows: "freedom means the right to do or say what you want without anyone stopping you".[25]

Justice Hidayatullah defines freedom of speech and expression as follows: "freedom of speech and expression is that cherished right on which our democracy rests and is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge".[26]

[23] AIR 1986 SC 872
[24] Bryan A. Garner(Ed), Black's Law Dictionary, (7th Ed., West Group).
[25] Sally Wehmeier (Ed),Oxford Advanced learner's Dictionary, 618 (Oxford University Press, 7th ed 2005).
[26] Mamta Rao, Constitutional Law, 170 (Eastern Book Company, 1st Ed. 2013).

## 2.5 Freedom of Speech and Expression as Debated in the Constituent Assembly

There was a huge discussion on occurred on the point of freedom of speech and expression during constitutional debate. Article 13 of the Draft Constitution was related with the right to freedom of speech and expression. Art. 13(1) provides:

"Subject to the other provisions of this article, all citizens shall have the right to Freedom of Speech and Expression".

Art. 13(2) of the Draft Constitution lay down:

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the state from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the state".

In the Constituent Assembly 34 amendments are moved which sought to modify Art.

13. The amendments were moved on 1st December and the general discussion took place on 2nd Dec. 1959. The main criticism was against the restrictions imposed on the seven freedoms contained in the Article. It was alleged that the rights given in one part of the articles were taken away in another part. It was suggested that clause

(2) to (6) of Article 13, which sought to impose restrictions on the freedoms should be deleted from that article and there should be only one provision, merely that no citizen in the exercise of such right, "shall danger the security of the state, promote ill will between the communities or do anything to imbalance peace and tranquility in the country". It was also suggested that Art. 13(1) (a), in addition to freedom of speech and expression, freedom of speech and the press must be explicitly mentioned.

Pandit Thakur Das Bhargava moved an amendment proposing the insertion of the word "reasonable" before the word "restrictions" occurring in clause (2) to (6) of Article 13. This he claimed would make it a matter for the court to decide whether an act was in the interest of the public and whether the restrictions imposed by the

legislature was reasonable.[27] M.V. Kamath had suggested that the restrictions clause Art. 13(2) to (6) should be deleted.

However, T.T. Krishnamacharya took the contrary view and he observed that here could be no absolute right and that every right had to be abridged in some manner or other under certain circumstances. In this opinion the drafting committee had chosen the 'golden mean' of providing a propose enumeration of those rights which were essential for the individual and at the same time putting such checks on them as would ensure that the "state … which are trying to bring into being will continue and flourish".[28]

In this reply Dr. Ambedkar clarified that freedom of speech and expression and publication was included in the guarantee of freedom of speech and expression. During his reply, he did not refer to the criticism about the restrictions on fundamental freedoms contained in Art. 13. But he had depended to that criticism while introducing the draft constitution in the Constituent Assembly on 4th Nov. 1948.[29] He had then said that the critics had relied on the Constitution of the United States of America and the Bill of Rights embodied in the first ten amendments to that constitution in support of their and had held the view that the guarantee of fundamental rights in America was real because they had not been riddled with limitations and exceptions. Dr Ambedkar stated that the fundamental rights guaranteed by the US Constitution are not absolute. In support of his claim, he quoted Goltow vs. New York. There, the US Supreme Court upheld the Criminal Freedom of the Press Act, which was enacted to punish speeches aimed at bringing about violent change, "there was something basic, as I said at the end. In addition, the freedom of expression and press secured in court does not give the absolute right to speak and publish without responsibility, but to give an exemption from punishment for language and the punishment of those who abuse it. Freedom that does not grant unlimited or unlimited licenses to avoid. "Dr. Ambedkar has also said that in the United States of America the fundamental right, as enacted by the Constitution had been no doubt absolute. Confess; however, had soon found it absolutely necessary to qualify those fundamental rights by limitations. When the question has arisen as the constitutionality of those limitations before the Supreme Court, it had been no power to

[27] CAD, 1st December 1948 at 727
[28] CAD, 2nd December 1948 at 771
[29] CAD, 4th December 1948 at 40-41

the Congress to impose such limitations, and the Supreme Court had invented the doctrine of "Police Power" and had refuted the advocates of absolute. Fundamental rights by the agreement that every stage had inherent in its police power which was not required to do conferred by the Constitution. Dr. Ambedkar had also quoted the following extract from the judgment of the U.S. Supreme Court in the same case: "That a State in the exercise of its police power may perish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public moral, inciting to crime or disturb the public peace, is not open to question".[30]

Speaking about the provisions of the Draft Constitution he had said instead formulating fundamental rights in absolute terms and depending upon the Supreme Court of India: "To come to the secure of Parliament by investing the doctrine of police power. The Draft Constitution had permitted the state directly to impose limitations upon the Fundamental Rights. 'What one does directly' he had concluded, 'the other does indirectly' In both cases, the Fundamental Rights are not absolute".[31]

The main change made in Art. 13 of the Draft Constitution was the omission the word 'sedition' in clause (2) and the insertion of the word 'reasonable' before the word 'restrictions' in clause (3) to (6). Art. 13 were adopted on 2nd Dec. 1948. The Article was however, reconsidered on 17th Oct. 1949. On that date the words "Contempt of Court' was filled in after the 'defamation' word in the Clause (2).[32] Article 13 of the Draft Constitution, as adopted by the Constituent Assembly, became Article 19 of the Constitution of India.

## 2.6 Nature of Freedom of Speech and Expression

Art. 19(1) (a) secures to every citizen the right to freedom of speech and expression.

"Freedom of speech and expression" is a different term from "speech and expression." It guarantees the rights of the former, not the latter. Freedom of expression and Freedom of Speech means the universally recognized freedom to express one's opinions, opinions and beliefs. It does not imply the right to say anything anytime, anywhere. The difference between clause (a) and other clauses of Article 19(1) is notable in this regard. While

[30] CAD, 4th November 1948 at 40-41
[31] CAD, 4th November 1948 at 40-41
[32] CAD, 17th October 1948 at 402

other clauses grant the right to do something clause (a) grants the "right to freedom" to do something. It does not mean that the right under clause (a) is a lesser right than the rights under other clauses. Contrary to that it is the most important amongst them all and also precedes them all. It is the bulwark of a healthy, progressive and democratic society. While other clauses grant the right to do something. Clause (a) grants the "right to freedom" to do something This leads to the creation of new ideals and knowledge, the pursuit of truth, and the cultivation of tolerance and acceptance, which is important for self-rule.

The Indian Constitution differs from the United States Constitution in the nature of expression and freedom of expression. The US Constitution explicitly mentions "freedom of the press" in the Constitution, whereas in India freedom of the press is based on judicial decisions. On the other hand, the Indian Constitution refers to restrictions on freedom of speech and expression according to Art. 19(2), equivalent to the United States Constitution. In the United States, courts must clarify restrictions on a case-by-case basis. Rights in Article 19(1) are available only to citizens. Determination of citizenship which is dealt with in Part II above is therefore, a condition precedent for the availability of rights in this Article. An alien or a foreigner has no rights under this article because he is not a citizen of India[33] Juristic persons such as companies are not citizens within the meaning of article 19. Citizens under this article mean only natural persons who have the status of citizenship under the law. Registered Companies and Societies are, therefore, not treated as citizens for the purpose of this Article.

In ***Rustom Cavasjee Cooper v. Union of India,***[34] where the petitioner was a shareholder, a director and holder of deposit of current accounts in the bank, questions arose as he could challenge the nationalization of the bank, which was a company.

The court said that the measures taken by the state "affect only the rights of the company, not the rights of shareholders. They may affect the rights of shareholders, not the company. "Where a government action infringes the rights of individual shareholders, the

[33] Anwar v. State of J&K, (1971) 3 SCC 104 : AIR 1971 SC 337
[34] (1970) 1 SCC 248 : AIR 170 SC 564

jurisdiction of a court to provide relief if the action infringes upon the rights of a company cannot be denied, and in maintaining this position the Superior Court of Benett Coleman and Co cannot deny this. v. The Union of India states that citizens do not lose their fundamental rights when they join to form a company. "The fact that the company is a plaintiff does not prevent the courts from relieving shareholders who have sought protection of their fundamental rights due to the operation of the law and litigation regarding its rights. From these cases it is clear that citizens do not lose their rights under Article 19(1) (a) merely because they have formed a company and the state action affecting their rights refers to the company and not to citizens as individuals. In the applications of the rights, however, the nature of the right should be relevant. Right to trade or business cannot claim the same consideration as the right to freedom of speech and expression. In the age of liberalization and globalization at some point in future the question may arise whether Indian citizens by becoming stake holders in multinational corporations may claim Article 19(1) rights on behalf of such corporations. In that the case, the courts may have to remove the corporate veil to find out if the real persons behind the corporation are Indian citizens and if their interests are substantial enough to invoke the relevant right in Article 19(1).

# CHAPTER - III

# BIRTH OF FREEDOM OF SPEECH UNDER THE CONSTITUTION OF INDIA

## 3.1 Introduction

Under colonial times, the independence of the Indians was at stake. The brutality of the British Empire completely blocked the freedom of speech and speech of the Indian masses. From the revolt laws imposed by the British in 1870 to Section 295A of the hate speech law, the British took every single step to limit the formation of ideas among the Indians in order to suppress the feelings of revolt that prevailed in the independent struggle. The Prohibition of Revolutionary Convention Act, 1907 which prohibited open negotiations and the formation of unions also resulted in the guaranteed basic freedom of speech and expression for citizens who had previously been deprived of their rights. The editors and builders of the Indian Constitution have also borrowed the idea of free speech in the democratic ideas enshrined in the United States Constitution. Freedom of speech and expression is an essential element of the American Constitution.

## 3.2 Status of Freedom of Speech in India

1. First, freedom of speech and expression in India can only be guaranteed by citizens. Therefore, non-citizens visiting or in India cannot enjoy freedom of expression and opinion.

2. Second, this basic right under section 19(1)(a) is not enforceable by the company specified in Shree sidhbali steels ltd V state of Uttar Pradesh which makes it clear that non-citizen companies have no fundamental rights.

3. Third, the Supreme Court overturned Section 66A of the Information Technology Act, which regulates police action against social media posts that are construed as “aggressive” or “threatening” in Shreya Singhal vs. UOI, thereby strengthening Article 19(1)(a).

4. Fourthly, the right to expression under Article 19 also includes the right not to express. The Supreme Court in *Excel Wear v UOI*[35] held that the fundamental right under Article 19 has reciprocal rights i.e. the "*right to freedom of speech includes the right not to speak and the right not to form an association is inherent in the right to form associations*".

### 3.3 Legal Remedies Available on Infringement of Freedom of Speech

The ability to speak freely of theirs or some other gatherings are ignored, subsequently acting in genuine intrigue. From now on, anyone can apply to these courts, which are the gatekeepers of the Constitution. The freedom of others, consequently the activity and ability to speak freely and articulation of a person, on the accompanying grounds and interests.

It involves the confining skill to speak independently which may cause disturbance like uproars, affray, taking up arms against the state, furnished disobedience and so forth which may compromise the security of the state and influence global strategy might be limited by the administration. Anyway, region countries are not treated as unfamiliar states; along these lines any announcement for instance antagonistic to serenity ought to consistently be watched regardless of whether it put limitations on the right to speak freely of discourse and articulation. Tolerability or profound quality Area 292 to 294 of the Indian Correctional code manages limitations is confined on the off chance that it might develop the hatred of the court. Anyway, truth may fill in as a substantial protection. Slander the right to speak freely of discourse and articulation can't be utilized to stigmatize or hurt anybody's notoriety.



[35] 644 of 1977

### 3.4 Freedom of Press in India

Although the possibility of the press was not explicitly mentioned in Express Papers Ltd., V UO, "In today's free world, the possibility of the press is at the heart of social and political communication. The press now assumes the role of public lecturer, enabling formal and informal learning to be imagined at scale, especially in the creative scene where TV and various forms of modern communication are not yet available to all parts of society. The media must stimulate public enthusiasm by disseminating the realities and assumptions that a legitimate voter [government] cannot make informed decisions about."

Control of press is unfortunate for a popular government anyway Area 19 (2) likewise works on opportunity of press in India forcing sensible limitations. In *Romesh thappar v territory of Madras*[36] the High Court stated, "There can be no uncertainty that the right to speak freely of discourse incorporates opportunity of proliferation of thoughts, and that opportunity is guaranteed by the opportunity of course. Freedom of dissemination is as fundamental to that opportunity as the freedom of distribution."

Freedom of Press has not been specifically guaranteed by the Constitution but it is included in the wider 'Freedom of Expression' guaranteed by Article 19 (1) (a).

### Protection in respect of conviction for offences

Article 20 affords protection against arbitrary and excessive punishment to any person who commits an offence. There are four such guaranteed protections:

(a) A person can be convicted of an offence only if he has violated a law in force at the time when he is alleged to have committed the offence;

(b) No person can be subjected to a greater penalty than what might have been given to him under the law that was prevalent when he committed the offence;

(c) No person can be prosecuted and punished for the same offence more than once;

(d) No person accused of an offence can be compelled to be a witness against himself

[36] AIR 1950 SC 124

Prohibition against retrospective criminal law- A sovereign legislature has the power to enact prospective as well as retrospective laws. But this Article sets two limitations upon the law-making power of every legislative authority in India as regards retrospective criminal legislation. (i) It prohibits the making of ex post facto criminal law i.e. making an act a crime for the first time and then making that law retrospective;
(ii) It prohibits the infliction of a penalty greater than that which might have been inflicted under the law which was in force when the act was committed[37]

Thus, the prohibition is not merely against the passing of such a law but also against the conviction under such law. But this prohibition is only against prescribing judicial punishment with retrospective effect. It does not prohibit the enforcement of any other sanction by a civil or revenue authority, e.g. the loss or deprivation of any business or forfeiture of property or cancellation of naturalization certificate by reason of act committed prior to the operation of the penal law in question.

The immunity from double punishment has been guaranteed by the Article but the conditions for the application of that clause include:

(a) There must have previous proceeding before a court of law or a judicial tribunal l5 of competent jurisdiction.[38]

(b) The person must have been prosecuted in the previous proceeding.

(c) The conviction or acquittal in the previous proceeding must be in force at the time of the second trial.

(d) The 'offence' which is the subject matter of the second proceeding must be the same as that of the first proceeding, for which he was prosecuted and punished.[39]

(e) The offence must be an offence as defined in S.3 (38) of the General Clauses Act, that is to say, 'an act or omission made punishable by any law for the time being in force'. It follows that the prosecution must be valid and not null and void or abortive.[40]

[37] Kedar Nath vs. State of Punjab, AIR 1953, SC 404
[38] Asst. Collector vs. Malwani, AIR 1970, SC 962
[39] Baijnath vs. the State of Bhopal, AIR 1957,Sc 494
[40] Safi vs the State of WB, AIR 1966, SC 69

(f) The subsequent proceeding must be a fresh proceeding where he is for the second time, sought to be 'prosecuted and punished' for the same offence.

## Protection of Life and Personal Liberty

This protection has been granted by Article 21 of the Constitution which says, "No person shall be deprived of his life and personal liberty except according to procedure established by law".

The purpose of Article 21 is to prevent the executive branch from infringing on individual liberties, except in accordance with the law and its provisions. There is no doctrine of "necessity of the state" in India[41].

Before a person is deprived of life or personal liberty, the procedure prescribed by law must be strictly followed and the victim must not be disadvantaged in favor.

The words 'except according to procedure established by law' suggest that Article 21 does not apply where a person is detained by a private individual and not by or under authority of the state; no Fundamental Right is infringed when the detention complained of is by a private individual. Article 32 also cannot be invoked in such a case.[41]

The protection of Article 21 extends to all 'persons' not merely citizens[42], including persons under imprisonment.

The Supreme Court on July 30, 1992, declared that the Indians have a fundamental right to education 'at all levels. This new right has been held to be a part of the fundamental right to life under Article 21 of the Constitution. Justices Kuldeep Singh and R.M. Sahai gave this new gift to the citizens in the case of Miss Mohini Jain v. the State of Karnataka. They laid down that the right to life and dignity of an individual 'cannot be assured unless it is accompanied by the right to education'.

[41] Vidya Verma vs. Shivnarayan (1955) 2 SCR 983
[42] Anwar vs. State of J&K (1970) 2 SCWR 276 (279).

With this single judgment the judges have converted the non-enforceable right to education in the Directive Principles of the Constitution into an enforceable fundamental right.[43]

By the 86th Constitutional Amendment Act, 2002, the following Article has been inserted after Article 21 of the Constitution:

"21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

The 44th Amendment had declared that the right to life and liberty is inviolate. Emergency or no emergency, the Fundamental Right to life and liberty must continue in all circumstances. Article 21 was thus made an exception to the general rule laid down in Article 359- that the President has the power to suspend the enforcement of any or all of the fundamental rights during emergency.

The Supreme Court of India has in the case of Nilabati Bahera and in D.K. Basu ruled that a person whose fundamental right under Article 21 has been violated has a right to monetary compensation as remedy in public law.

It has also been proposed that an enforceable right to compensation for violation of Article 21 be specifically incorporated in Part III of the Constitution as for example in the following terms:

"Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation."[44]

## Protection against Arrest and Detention

Article 22 guarantees three **rights.**

1. First, it guarantees the right of every person arrested to know the reason for the arrest.
2. Second, the right to be consulted and defended by an attorney of your choice.
3. Third, any person arrested or detained must be brought to the nearest peace judge within 24 hours and be permanently arrested only with his permission.

[43] Indian Express, New Delhi, Aug. 1, 1992, pg. 1
[44] Ibid

However, there are two exceptions to the universal application of the rights guaranteed by the first two paragraphs of Article 22.

These relate to:

(a) Any person who is for the time being an enemy alien; or

(b)Any person who is arrested or detained under any law providing for preventive detention.

## Preventive Detention

Preventive Detention is detention of a person without trial. The object being to prevent a person from doing something and the detention in this case takes place on the apprehension that he is going to do something wrong which comes within any of the grounds specified by the Constitution. In fact, preventive detention is resorted to in such circumstances that the evidence in possession of the authority is not sufficient to make a charge or to secure the conviction of the detenue by legal proofs but may still be sufficient to justify his detention on the suspicion that he would commit a wrongful act unless he is detained.

The Constitution itself authorizes the legislature to make laws providing for 'Preventive Detention' for reasons connected with the security of the state, the maintenance of public order, the maintenance of supplies and services essential to the community or for reasons connected with Defence, Foreign Affairs or the security of India. The Constitution however imposes certain safeguards against the abuse of this power. It is these safeguards which constitute fundamental rights against arbitrary detention. The relevant provisions of Article 22 read as follows:

## When a person has been arrested under a law of Preventive Detention:

(i) The Government is entitled to detain such person in custody only for three months. If it seeks to detain the arrested person for more than three months, it must obtain a report from an Advisory Board who will examine the papers submitted by the Government and by the accused- as to whether the detention is justified.

(ii) The person so detained shall, as soon as may be informed of the grounds

of his detention excepting facts which the detaining authority considers to be against the public interest to disclose.

(iii) The person detained must have the earliest opportunity of making a representation against the order of detention.

Parliament has the power to prescribe by law, the maximum period for which a person may be detained under a law of preventive detention.

The Preventive Detention Act, 1950, was passed by the Parliament which constituted the law of Preventive Detention in India. This Act of 1950 came to an end in the year 1969. But the revival of anarchist forces compelled the Parliament to enact a new Act, called the Maintenance of Internal Security Act (MISA) in 1971, having provisions broadly similar to those of Preventive Detention Act of 1950. In 1974 the Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), as an economic adjunct of the MISA. The MISA was repealed in 1978, but COFEPOSA remains. Further in 1980, the National Security Act (NSA) was enacted. According to NSA the maximum period for which a person may be detained shall be six months from the date of detention.

With the increase in the terrorist activities, the government had to pass in 1985 the Terrorist and Disruptive Activities (Prevention) Act, 1985 commonly called TADA. This Act vested sweeping powers in the State governments and this resulted in widespread complaints of the misuse of the provisions of this Act.

In Kartar Singh vs. the State of Punjab, the Supreme Court has considerably narrowed down the scope and ambit of TADA and held that unless the crime alleged against an accused could be classified as 'terrorist act' in letter and spirit the accused should not be charged under the Act and should be tried under ordinary penal laws by the regular courts.

In October 1993, according to the Union Home Ministry, the total number of detentions under TADA was 52,268; the conviction rate of those tried by designated courts was 0.81% ever since the law came into force.

The Union Cabinet approved an Ordinance on October 16, 2001 to combat terrorism

in place of Terrorism and Anti-Disruptive Activities Act (TADA). This was called the Prevention of Terrorism Ordinance (POTO). Later on this was passed as the Act called Prevention of Terrorism Act (POTA).

The UPA government proclaimed that POTA was grossly misused and promised to repeal it. Instead, the Unlawful Activities (Prevention) Amendment Ordinance, 2004 has been passed which is actually a mixed bag.

### 3.5 Cinematographic Freedom V State Controlled Censorship

In K.A Abbas v UOI[45], the High Court maintained the lawfulness of control and told that it comes surprisingly close to article 19 (2) and treated movies independently from different types of craftsmanship since these films can work up "feelings more profoundly than any type of workmanship". A few pictures till date are restricted on the grounds that they aren't beneficial for society of people. On one hand we claim the right to data as a type of the right to speak freely of discourse and on other hand we strangulate the right to speak freely of discourse by blue penciling films. Blue pencil board at numerous.

### 3.6 Sedition and Freedom of Speech

The right to speak freely of discourse is generally talked about. Anyway, reasonable grounds should be analyzed with regards to whether the right to speak freely of discourse of an individual really causes subversion and is maintained just when it comes quite close to "public request". It is imperative to separate among support and induction where prompting is needed to comprise offense under Section 295A. In instance of scorn discourse, it is essential to lay the weight of confirmation on those whose suppositions have been harmed. solitary trademarks, two or multiple times by two people, without much else, didn't comprise any danger to the Legislature of India as by law built up, nor could a similar offer ascend to sentiments of hostility or disdain among various networks or strict or different gatherings".

In Kanhaiya Kumar v Nct of Delhi[46], claims were made against understudies of JNU who yelled enemy of public mottos under area 124A.

[45] 1971 AIR 481 1971 SCR (2) 446 1970 SCC (2) 780
[46] 2016 DHC 1175

leader Kanhaiya Kumar was delivered on bail as enough proof to demonstrate dissidence was not created by the police.

## 3.7 The Constitutional Scheme of the Right to Freedom: Categories and Dimensions

Indian Constitution grants the basic freedoms through Chapter III, Article 19-22. In reality, as M.V. Pyle said, "Personal liberty is the most basic of Basic Rights." The charter of personal liberty is found in Articles 19-22 of the Constitution. "Taken together these four clauses constitute the Charter on personal liberty, and provide the foundation to the Chapter on Fundamental Rights."[47] The Indian Constitution grants civil liberty so that as Indians, all Indians will lead their lives in peace and harmony. These include human rights common to most western democracy, such as equality before law, freedom of speech and expression, and peaceful assembly, freedom to exercise religion, and the right to constitutional redress for civil rights protection by writs such as habeas corpus. Violation of these rights resulted in imprisonment under the Indian Criminal Code, subject to judicial discretion. Fundamental Rights are characterized as basic human freedoms that every Indian citizen has the right to enjoy for a proper, harmonious personality growth. These rights extend equally to all people, regardless of ethnicity, birthplace, faith, caste, creed, color or gender. The courts impose them, subject to certain limitations. These protections derive from many sources, including England's Bill of Rights, the U.S. Bill of Rights, and France's Declaration of Human Rights.

Including a Chapter on Human Rights in the Constitution is aligned with the pattern in popular thinking. In England, unwritten the Constitution and accepting the theory of legislative sovereignty, there is no structured code of constitutional rights. By the first ten amendments, the United States of America incorporated the Bill of Rights in its Constitution as a shield against legislative and executive tyranny in order to exempt those topics from the vicissitudes of political debate, position them outside the control of majority and politicians, and define them as enforceable legal standards. One's right to life, equality of property, free expression, free press, freedom of worship of assembly, and other constitutional rights are not based on election results.

[47] M.V. Pylee: India's Constitution, 101(Bombay 1967).

In Canada, Parliament enacted a bill respecting and defending civil rights and basic freedoms. The Fourth French Republic placed human rights in the enforceable Constitution Preamble. However, the Indian Constitution includes not only a formal statement of human rights, but also a special clause for compliance.

The Part III insertion also curtails the legislature powers as well as the president, both of the Country and the States, and excludes the authority to impose human rights by direct appeal to the S.C. from congressional jurisdiction. One of their main benefits is that they are not retrospective, but only forward-looking. The Constitution cannot therefore restore the powers that have been extinguished before the legislative opening.[48]

In Article 19, the Constitution conferred certain positive privileges to promote the liberty principle written in the Preamble. Well known as "7 liberties," which have been limited to 6 liberties by the 44$^{th}$Constitutional Amendment Act, 1978, omitting the 'right to possess, keep and dispose of land.' The remaining six independence groups are:

Naturally, both the Fighters for Freedom and also those who later became Constituent Assembly members were well known with these freedoms values and had fought to obtain them, and so they were certainly aware of their total exercise. Thus Article 19 2$^{nd}$ section includes constraints on each of the first part's clauses. Thus, the Constitution allows certain limits on the exercise as well as enjoyment of the aforementioned rights. The constitution's framers also understood that the restrictions made by the state must be "fair." State acts are subject to judicial review. By the Constitution's system , state action shall fulfil the two requirements to satisfy the reasonableness test:

a. Freedom of Speech and Expression

b. Freedom of Assembly

c. Freedom of Association

d. Freedom of Movement

[48] Shiv Bahadur vs. State of UP, AIR 1953, SC 394

e. Freedom of Residence and settlement

f. Freedom of Profession, Occupation, Trade or Business

Naturally, both the Fighters for Freedom and also those who later became Constituent Assembly members were well known with these freedoms values and had fought to obtain them, and so they were certainly aware of their total exercise. Thus Article 19 2nd section includes constraints on each of the first part's clauses. Thus, the Constitution allows certain limits on the exercise as well as enjoyment of the aforementioned rights. The constitution's framers also understood that the restrictions made by the state must be "fair." State acts are subject to judicial review. By the Constitution's system, state action shall fulfill the two requirements to satisfy the reasonableness test:

1. The restriction should be limited to the objective as given in the relevant clause of Article 19.

2. There must be rational link between the restriction and even the defined purpose.

Article 21 has given a structure for determining the State act constitutionality with respect to the violation of fundamental rights generally and the right to personal freedom, particularly in the form of the expression 'Procedure defined by statute.' It is similar to the American Constitution guarantees that no citizen shall be deprived of life, liberty and even the property without the due process of law. However, the difference between these 2 terms was bridged by a series of judicial pronouncements that specified the definition of "Procedure formed by statute" in a way that was similar to the "Due Process of Law." These statements altered the existence of Article 19 and greatly expanded its definition.

## The broad limitations upon the freedoms are:

Although the Constitution guarantees freedom of speech and expression but this freedom is subject to reasonable restrictions imposed by the state relating to:

**(a)** Defamation;

**(b)** Contempt of court;

**(c)** Decency or morality;

**(d)** Security of the state;

**(e)** Friendly relations with foreign states;

**(f)** Incitement to an offence;

**(g)** Public order;

**(h)** Maintenance of sovereignty and integrity of India.

Likewise, freedom of speech is subject to the conditions that the press must be peaceful, free of arms, and subject to appropriate restrictions that the state may impose in the interests of public order.

The Constitution requires people to join associations or unions, but this is subject to fair limitations enforced by the State in India 's interests of good order or morals, and sovereignty and dignity.

Finally, everyone has the right to engage in any profession or trade or service, subject to appropriate restrictions imposed by the State for the benefit of the general public and laws requiring qualifications for any profession or occupation. This may also be limited by the State authorising the State to carry out any commerce or enterprise to the exclusion of civilians.

## 3.8 Nature of Rights guaranteed under Article 19

It should be remembered that Article 19 is limited to so-called 'human rights' as distinct from political rights such as the freedom to vote or hold any political office.

Again, Article 19 applies to what are regarded as normal or common law rights as distinct from those created by a statute that must be exercised under conditions specified by it.

Where a right is established by a law, it may be abolished by the Legislature, but where a right is 'fundamental,' it cannot be abolished by the Legislature and must be

subject to limitations allowed by the Constitution itself, i.e. on the grounds stated in Articles (2) to (6) of Article 19.

These rights also vary from statutory rights. While the freedom to carry on any business and enter into contracts as incidental to those rights is a constitutional right, our Constitution does not grant the rights under a contract, because they can be curtailed or superseded by legislation.

In brief, Article 19(1) grants 'those wonderful and fundamental rights acknowledged and granted as the natural rights inherent in the status of a free country resident.' Therefore, it does not provide a right to burn a copy of the nation's constitution.

It does not contain the right to life provided by Article 21.

### 3.9 Suspension of Article 19 during emergencies

When proclaiming an emergency under Article 352, Article 19 itself remains inactive. While Indian Republic's founding fathers granted such Basic Rights to citizens and rights to non-citizens of India, they recognized that there could be circumstances in the nation's life where the people couldn't enjoy those rights. They hedged the rights in many ways. Clauses 2 to 6 of Article 19 placed "fair" limitations on that right. Articles 358 and 359 of the Constitution could place further limits on fundamental rights. The real Article 358 established that, during a declaration of emergency pursuant to Article 352 was in effect because the India's security or any of its territory was expected to be menaced by rivalry or any external invasion or due to any disturbance within the territory, the State was allowed to make any rule or take any measure to revoke Article 19 for the duration of the eme In 1976, a new clause was put into this Article pursuant to the 42nd Constitutional Amendment Act which established that if a Emergency was declared in effect only in some portion of the Indian jurisdiction, a statute or executive order revoking the provisions of Article 19 could be taken in link to any State or to any territory of the Union where the Declaration of Emergency wasn't in effect. Article 358 was after modified by the 44th Amendment Act of April 1979, with the amendment that the terms of Article 19 should only be revoked if the emergency declaration was rendered pursuant to Article 352 because of a danger to stability or any portion of its territories by external attack

or war. This addition implies that Article 19's provisions couldn't be suspended until the emergency in the Article 352 was declared due to internal disorder.

Sections 20–22 also aim to protect the liberties secured by Article 19. The scope of these documents, especially with regard to due process doctrine, was majorly discussed by the Constituent Assembly. It was later discussed, particularly by Benegal Narsing Rau, that adding such a provision would delay social legislation as well as create difficulties in procedures in preserving order, and should therefore be totally omitted from the Constitution. In 1948, the Constituent Assembly finally omitted the word "due process" for "law-setting procedure." Consequently, until 1978, Article 21, which prohibits the State from invading life or personal liberty only in compliance with the process defined by statute, was strictly understood as limited to executive intervention. However, in 1978, in the case of Maneka Gandhi v. Union of India, the Supreme Court of India applied the security of Article 21 to statutory action, claiming that every statute defining a procedure need to be equitable, fair and equitable and effectively interpreted due process in Article 21. In similar case, the Supreme Court also ruled that Article 21's "life" included more than mere "animal existence;" it would require the freedom to live with dignity of human and also every other thing that make it "meaningful, full and worth living." Subsequent judicial analysis has widened the Article 21 scope to include a extent of livelihood rights, fair health, safe climate, speedy justice and humanitarian care while in prison. The right to primary education was considered as one of the basic rights under Article 21A by the 2002 86th Constitutional Amendment. Article 20 offers in some ways immunity from prosecution for crimes, including protections against ex-post-facto rules, double danger and exemption from self- incrimination. Article 22 includes basic protections for imprisoned and detained individuals, in particular the right to be told of the reasons of detention, to consult a advocate by their own will, to be called before a D.M. within 24 hours of detention, and the freedom wasn't to be given during that time without a judge's warrant. The Constitution authorizes the State to make some precautionary detention laws, with respect to some other protections in Article 22. The Constituent Assembly debated the rules on preventive imprisonment with reluctance and misgivings, and was reluctantly accepted after a few changes in 1949. Article 22 states that if a person is

arrested under any administrative detention law, that person may be imprisoned without prosecution for only 3 months, and any retention for a period that is longer must be authorized by the advisory committee. The person being imprisoned still has rights to be told of the reasons of detention and at the earliest opportunity to render representation against him.

When we go deeply into the legislative scheme of these '7 liberties,' we hear of our founding fathers' efforts and the debate speeches in the Constituent Assembly about Fundamental Rights obviously demonstrate the talent as well as experience of this August Assembly. Obviously, we must understand the amount of commitment and information going down in formulating these rights. Fundamental rights are thoroughly discussed in the Constitution of India and, as such, the thorough review of Article 19 will include the study of the nature of every right granted by this Article as well as the fair limitations enforced thereon.

## Clause (1) (a): Freedom of Speech and Expression

This freedom implies the right to openly express one's beliefs and views, by word of mouth, publishing, publishing, image, or otherwise addressed to eyes or ears. It thus requires press freedom and every visible representation sharing one's thoughts.

Since it presupposes a second person to which the ideas are expressed, it necessarily requires the ability to spread ideas, their publication and distribution, and the ability to receive and obtain ideas and knowledge on matters of common interest.

As most liberties, this would not refer under any legislation established as the right to challenge an election to be practised under the limitations enforced by the statute.[49]

Any restraint imposed on this right is illegal unless justified under the limitation **Clause (2).** As such, the State should legally prosecute utterances that encourage abuse or threaten to cause public disturbance, but it cannot suppress even a very clear critique of government or public officials' acts that have no such propensity.

[49] Ibid

## Clause (1) (b): Freedom of Assembly

This provision guarantees citizens' right to assemble in whatever number, providing the Meeting is peaceful and unarmed. This is still not an inherent right and is subject to fair limitations in the public interest.

The right to public assembly or parade is not expressly guaranteed by the Constitution, but derives from the right to assembly. There is no freedom to hold a meeting anywhere people please, e.g. on private property and even on government premises, in the absence of any statute or use that supports those rights. The right to have meetings in public spaces is subject to the relevant authority's regulation of the meeting's time and place.

Similarly, the freedom to carry out a procession through public streets, religious or non-religious, is subject to directives from municipal bodies governing traffic and public rights to use the street as a passage. But the state cannot ban assembly on any public street or location.[50]

## Clause (1) (c): Freedom of Association

This right protects citizens' freedom to join associations. This provision does not apply to a privilege conferred by a given statute to act as a member of an agency establishing the statute itself.

The term 'form' requires not only the right to create an association, but also to maintain it, or to refuse to join an association if he so wishes.

It also requires the freedom not to change the structure of a society by statute to add members other than those who willingly entered the society without the permission of members of the original organization. Nor may the government enforce a provision that compels representatives to quit. But this privilege is not infringed by a requirement for a college's compulsory association, formed by a society, with a specific institution.

The freedom to join alliances or organizations requires alliances for any legitimate reason, e.g. trade unions are not exempt from their defense.

[50] Ibid

## Clause (1) (d): Freedom of Movement

The terms 'throughout India' describe the definition of 'right of travel' in sub-clause

(d) of Article 19(1). The independence granted by this does not concern general locomotion rights, but the specific right to travel or travel from one part of territory of India to another territory without any sort of arbitrary barriers between any one state and another or between different parts of the same state. If limitations are sought on the movement of a person from State to State or even within a State, those limitations must be measured by the permissive limits laid down in clause (6) of Article 19, such as constraints on the ability to use public roads and highways and the right to drive vehicles over them.

What Article 19(1) sub-clause (d) aims to defend is just a particular and restricted element of the freedom to free movement. The right to free travel in India considered as an independent as well as additional right to movement arising from the rights of the individual referred to in Article 21.

It refers to the right to movement physically and not to emotional restriction. Particularly if it requires a right of moving privacy, a statute allowing for police home visits does not constitute an arbitrary limitation if it is aimed toward a 'normal suspect.'

## Clause (1) (e): Freedom of residence

The object of this clause is the same as that of clause 1(d) i.e. to eliminate internal barriers within India or between any of its sections, and the independence granted by clause 1(e) has to be construed similarly viz. in reference to the terms ‘territory of India.

The privileges under Article 19 have been made applicable only to people, and a person whose citizenship has been revoked by a law made by Parliament under Article 11, cannot complain of the violation of his right under this sub-clause.

Passport laws for entry from abroad can be fairly enforced even upon the citizens of India

## Clause (1) (f): Freedom of profession, trade or business

This freedom means that every person has the right to choose his own job or take up any trade or call, subject only to the limitations that the state can enforce in the interests of public safety and the other grounds specified in clause (6).

Our Constitution does not accept 'franchises' or business privileges that are based on State or public interest-affected grants, meaning those that are especially liable to state regulation. Under our Constitution, every person has the right to participate in any business known as common law and the State has the right to control any business on the grounds stated in clause (6). Thus, any resident has the right to sell vegetables on the public market or to carry on transportation on the public street subject only to restrictions as warranted by Article 19 clause (6).

The right to market means a right not to take it on, if the person so wishes. Thus, nobody can be forced to do business against his will. This privilege cannot be lost by concession or even express state agreement.

This right is the natural right to enter into or carry on any trade, occupation or calling that each person, as a member of a civilized society, has before and independent of any law or State grant.

Around the same time, these practices are so fundamentally pernicious that no one should be treated as possessing a constitutional right to carry them on as a profession or enterprise as gaming, gambling or trading with intoxicants.

Where a statute creates the freedom to take on any occupation, the exercising of that freedom is subject to the terms and conditions enforced by that statute and no substantive right is infringed by terms and conditions such as the right to practice before a court of law or tribunal or to acquire an import license. There is no fundamental right to do anything that may emerge only from a concession or contract like the right to access another's land to capture and bring fish, or to operate a mine on another's land. The situation is different when the arrangement establishes a contractual interest, e.g. soil removal or land construction. Similarly, there is no common law right to be recognized by government as a traveler’s agent for passport applications or as an authorized textbook publisher.

# CHAPTER – IV

## JUDICIAL PERSPECTIVE OF FREEDOM OF SPEECH

### 4.1 Introduction

Since time immemorial, court's position as dispensers of justice has been identified. But this court authority is fundamentally rooted in the principle of royal prerogative; where the monarch was the judiciary for all practical purposes, and the judiciary was the monarch. The judges wielded the King's judicial power, the fountainhead of justice. However, the state's position became more complicated with the rise of democracy and the extension of state operations in numerous fields. In the absence of a unitary command mechanism over a nation's affairs, political theorists saw the need to describe the roles of separate state operations in a more formal way, and Montesquieu's principle of dividing forces gained ground. This philosophy sees mainly the judiciary as translator of legislation in cases of conflicts brought before it, the role of making and applying law primarily in the legislature and executives[51].

In the sense of this theory, it tends to dominate current thinking; the position of courts needs re-exploration. This re-exploration becomes all the more important and necessary because common people want and demand the courts to rectify their various complaints. This poses a ethical challenge for the judges, for if the old notion of justice is applied, imaginative redress also draws condemnation for crossing the unknown Lakshmenrekha and raises the issue of validity[52].

When deciding lawsuits, do the judges even recognize litigants' economic standing, i.e. whether they are wealthy or poor? Will gender be weighed when determining man- woman partnership disputes? Should the judges impose a higher requirement to an accused while prosecuting a custodial abuse lawsuit if he is a law enforcement service member? Should a judge interfere with the issue of improving air or water quality if the argument before him is that the state's other wings neglect these problems?

The fundamental fact is that law courts in virtually the entire democratic world are now gradually interested in such problems, and in their rulings are acknowledging

[51] Justice Aniruddha Bose, Social Justice and the Constitution – Role of Judiciary as Interpreter of Law or Dispenser of Justice?
[52] ibid

structural differences within the system. India is no exception to this global trend, and may appear to be a leader in recent years. But is this approach, sometimes celebrated and often criticized as "judicial activism" outside its mandate, or has the Constitution envisaged this very position for the judiciary?

Honestly, it is the constitutional mandate that the judiciary plays a compassionate role, especially in determining constitutional issues, and the Constitution itself confers certain power and authority on superior courts.

## 4.2 Case Laws

**Indian Express Newspapers Union of India & Ors. Etc. on 6 December, 1984**[53]

'The benefit of the option to talk unreservedly of talk is ensured about; the opportunity of the press is unequivocally reported to be past the extent of this Organization'. In reality, and where there are no formed constitutions, there are settled secured shows or lawful decrees ensuring about the said open door for the people the fundamental reports of the Bound together later on offer observable quality to the said right. The tops of the Indian independence advancement annexed novel enormity to the capacity to talk unreservedly and verbalization which included a chance of press isolated from various chances.

**Bennett Coleman & Co. &Ors vs Union of India & Ors on 30 October, 1972**[54]

There were two different petitions by peruses of "Sakar" paper. 'Me peruse candidates likewise tested the lawfulness of the Demonstration. The solicitors there tested the Everyday Papers (Cost and Page) "there can be no uncertainty that the ability to speak freely and articulation incorporates opportunity of proliferation of thoughts and that opportunity is guaranteed by the freedom of dissemination. Freedom of flow is as fundamental to that opportunity as the freedom of distribution. In reality, without flow distribution would be of little worth".

The Extra Specialist General battled that the news-print strategy didn't disregard strategy and didn't legitimately and quickly manage, the privilege referenced in Article

[53] 1986 AIR 515; 1985 SCR(2) 287; 1985 SCC (1) 641; 1984 SCALE (2)853
[54] 1973 AIR 106; 1973 SCR(2) 757

19 (1)(a). *Red Lion Broadcasting Cc. v. Government Correspondences Com*.[55] "That correction, at that point, we may underestimate it doesn't restrict 'the abbreviating of discourse. Yet, simultaneously, it denies the shortening of the right to speak freely." Craftsmanship, 19(1)(a) certifications to the residents, the essential right of the ability to speak freely and Workmanship. 19(2) list the kind of limitations which may be forced by law. It doesn't follow from this that the opportunity of articulation isn't dependent upon guidelines which may not add up to the edited version. It is an all- out misguided judgment to state that discourse can't be controlled or that each guideline of discourse would be an abbreviated version of the right to speak freely. As such, guideline of discourse isn't conflicting with the idea of the opportunity, of discourse except if the guideline adds up to a compressed version of that opportunity. No opportunity, anyway supreme, can be liberated from guideline. Despite the fact that the privilege under Craftsmanship. In wording outright, dependent upon sensible guidelines. The Privy Chamber said in Province of Australia v. Bank of New South Wales.[56]

Presently, let me inspect this contention with the regard which it merits. On the off chance that the qualification of a purchaser of newsprint is determined based on "First, left it alone noticed, that by these words (First Alteration) Congress isn't suspended from all endless supply of discourse. Enactment which compresses that opportunity is prohibited, however not enactment to augment and advance it."(1) These comments apply with equivalent power to Workmanship. 19 (1) (a) read with Craftsmanship. 13(2). Any law or chief activity which progresses the ability to speak freely can't be considered as an abstract of it. The arrangement being referred to doesn't say that the owner or distributer of a paper ought to lessen its dissemination. On the off chance that the arrangement had said that the owner or distributor must decrease the flow of the paper, one could have perceived a grumbling or edited version of the ability to speak freely. The arrangement, in actuality, just tells the owner/distributor of the paper: "keep up the dissemination at the current level or increment in the event that it you like by decreasing the page switch'. Would this add up to an abbreviated version that is just enhanced and developed.

[55] S.Ct. 89, U.S. 367 395
[56] UKPC 37, AC 235, UKPC HCA 1

## The Secretary, Ministry of vs Cricket Association of Bengal & on 9 February, 1995[57]

The public security and the support of public request. The applicant moved toward this Court in Article 32 of the Constitution guaranteeing that the request repudiated the candidate's key right to opportunity of speech and even articulation. He additionally tested the legitimacy of Area 9 [1-A] of the reviled Demonstration. Most of the Court takes that the freedom of discourse and articulation incorporates opportunity of engendering of thoughts and that opportunity is guaranteed by the opportunity of dissemination. On the side of this view, the Court alluded to 2choices of the U.S.A. Supreme Court viz.,

Exparte Jackson [96 US 727] and Lovell v. City of Griffin[58] [303 US 444] and cited with endorsement the accompanying entry in this manner: "Freedom of course is as basic to that opportunity as the freedom of distribution. For sure, without flow the distribution would be of little worth". Section 9 [1-A] of the reprimanded Demonstration approved the Common Government, "to make sure about the public wellbeing or the upkeep of public request, to deny or direct the passage into or the flow, deal or appropriation in the Area of Madras or any part thereof or any report or class of archives". The Court perceived "public solicitation" and "public prosperity" and held that security of public was a part of the broader thought of public solicitation and in case it was wanted to suggest any issue perceived from and from outside the substance of the enunciation "public solicitation", it wouldn't have been capable for the Madras Gathering to initiate the course of action so far as it related to public prosperity. "Public prosperity" ordinarily suggests security of individuals by and large or their chance from danger. In that sense, anything which will all in all prevent risk to general prosperity may in like manner be se- reestablishing public security. The significance of the enunciation must, regardless, move as shown by the particular situation. The Court by then excused the conflict that the creation sure about of the public prosperity or upkeep of public solicitation would join the State security which was made sure about by Article 19 [2] and also said that where a law infers to support the bother of impediments on a significant language right adequately wide to cover foundation's both inside and even without the limitations of normally acceptable legitimate exercises affecting such right, it is

[57] 1995 AIR 1236; 1995 SCC(2)161
[58] A United States Supreme Court case. This case was remarkable in its discussion of the requirement of persons

ludicrous to hope to keep up it even to the degree that it may be applied inside quite far as it isn't severable.

"Its article in this manner is to control something which, as successfully communicated, is directly related to the course of a paper. Since the stream of a paper is a part of the benefit of the option to talk openly of talk, the Exhibition must be seen as one facilitated against the option to talk unreservedly. It has picked the truth or thing which is a crucial and fundamental property of the start of the capacity to talk uninhibitedly, viz., the choice to circle one's viewpoints to all whom one can reach or one can care to pursue the burden of a boundation. It hopes to get its objective of enabling what are named the tinier papers to ensure about greater dissemination by courses of action which without veil are highlighted restricting the progression of what are named the greater papers with better cash related quality. The reprimanded law far from being one, which just intrudes with the benefit of the option to talk uninhibitedly or talk by some coincidence, does so authentically anyway it attempt to achieve the end by suggesting coordinating the business part of a paper. This type of course isn't acceptable and the courts should be ever cautious in protecting possibly the significant of the clear large number of chances promised by our Constitution. The cause behind this is plainly clear. The chance of speech and verbalization of notion is of premier hugeness under a fame-based Constitution which envisions modifications in the plan of gatherings and governments and should be defended. Undoubtedly, the law being alluded to was made upon the re-recognition o f the Commission of Press anyway since its thing is to impact truly the benefit obviously of papers that would basically undermine their ability to affect mainstream assumption it can't yet be seen as an unsafe weapon that is prepared for being used in opposite to greater part rule government itself.

## Kedar Nath Singh vs State of Bihar on 20 January, 1962[59]

"The demonstrations or words grumbled of must either affect to clutter or should be, for example, to fulfill sensible men that that is their goal or inclination", however the Privy Chamber "the offense comprised in energizing or endeavoring to energize in others certain awful emotions towards the Legislature and not in energizing or endeavoring to energize revolt or insubordination, or such a genuine unsettling influence, extraordinary or little" – Lord Sovereign v. Sadashiv Narayan Bhalerao. Cancellation of

[59] 1962 AIR 955; 1962 SCR Supl.

"subversion" didn't evidently discover favor with the designers of the Indian Constitution. Along these lines, tight and rigid cutoff points have been set to reasonable authoritative abstract of the privilege of free discourse and articulation, and this was without a doubt because of the acknowledgment "the main soul in the planning of the Principal Revision of the Government Constitution" that "it is smarter to leave a couple of its anxious branches to their rich development, than, by pruning, them away to harm the force of those yielding the correct organic products".

## Sakal Papers (P) Ltd., and others vs The Union of India on 25 September, 1961

As likewise to forestall the ascent of monopolistic consolidates so papers may have reasonable chances of more liberated conversation[60]. The impact of the arrangements of the Demonstration is supposed to be to accommodate the most extreme issue which a paper could make accessible to general society at a specific cost and this doesn't in any capacity confine the privileges of the candidates to engender their thoughts. Unfavorably influenced by raising its cost. It is then fought that regardless of whether the flow is unfavorably influenced in this way the basic privileges of the paper proprietors ensured by Workmanship. 19(1)(a) of the Constitution won't be encroached. It is additionally battled that the enactment being referred to doesn't straightforwardly or by implication manage the subject of opportunity of speech and articulation and that therefore no inquiry of the infringement of the arrangements of Craftsmanship. 19(1)(a) at all emerges. The impact of the Demonstration and the Request, as per the respondent, is advancing further the privilege of news-papers as a rule to practice the opportunity of speech and articulation. In this manner, as indicated by the respondent, neither the expectation nor the impact of the activity of the law is to remove or condense the ability to speak freely and articulation of the solicitors, flow of a paper would not be spared by Workmanship 19(2) of the Constitution.

Maybe delineation would make the point understood. Let us guess that the authorization had said that paper "An' or paper "B' (overlooking for the second the issue with the delineation dependent on Workmanship. 14 will not have in excess of a predetermined number of endorsers. Could such a law be legitimate notwithstanding the assurance under Craftsmanship? 19(1)(a) The appropriate response should unhesitatingly be no, in light of

[60] 1962 AIR 305; 1962 SCR(3) 842.

the fact that such a law would be perceived as straightforwardly impinging upon the opportunity of articulation which envelops opportunity of dissemination and to control the resident from spreading his perspectives to some other past the cutoff or number endorsed by the rule. On the off chance that this were along these lines, the way that the enactment accomplishes similar outcome by methods for the timetable of rates has no effect and the effect on the opportunity would in any case be immediate despite that it doesn't show up so all over.

## Pandit M. S. M. Sharma vs Shri Sri Krishna Sinha And Others on 12 December, 1958

It will be seen that this Article assures all residents the right to speak freely of discourse and articulation however doesn't explicitly or independently accommodate freedom of the Press. It has, nonetheless, been held that the freedom of the Press is understood in the right to speak freely and articulation which is given on a resident[61]. Accordingly, in Romesh Thapar v. Province of Madras, this Court has held that opportunity of speech and articulation incorporates the opportunity of spread of thoughts and that opportunity is guaranteed by the opportunity of flow. In Brij Bhushan v. The Province of Delhi[62] it has been set somewhere near this Court that the burden of pre-oversight on a diary is a limitation on the freedom of the Press which is a basic aspect of the privilege to opportunity of speech and articulation pronounced by Craftsmanship. 19(1)(a). To the like impact are the perceptions of Bhagwati, J., who, in conveying the consistent judgment of this Court in Express Papers Ltd.

v. Association of India (1) On page 118 it is stated that the right to speak freely about discourse and expression includes to that extent the possibility of the press. There are two things to note.

Non-residents who run newspapers do not have the right to freedom of speech and expression, so the freedom of the press cannot be guaranteed as their central right. Moreover, being just a right spilling out of the freedom of discourse and articulation, the freedom of the Press in India remains on no higher balance than the opportunity of speech and articulation of a resident and that no benefit connects to the Press thusly, in other words, as particular from the opportunity of the resident. So, as respects residents running a paper the situation under our Constitution is equivalent to it was the point at which

[61] 1960 AIR 1186
[62] 1950 AIR 129

the Legal Panel chose the instance of Arnold v. The Lord Ruler[63] (4) and as respects non-residents the position may even be more awful. The solicitor asserts that as a resident and a proofreader of a paper he has indisputably the right, subject, obviously, to any law that might be ensured by el. (2) of Workmanship. 19, to distribute a valid and unwavering report of the openly heard and seen procedures of Parliament or (1) [1950] S.C.R. 594.

With respect to the second head of contentions noted above it must be brought up that if the expectation of cl. (1) of Craftsmanship. 194 were uniquely to demonstrate that it was a concise edition of the right to speak freely which would have been accessible to an individual from the Assembly as a resident under Craftsmanship. 19(1)(a), at that point it would have been simpler to state in cl. (1) that the opportunity of speech conferred by Workmanship. 19(1)(a), when practiced in the Governing body of a State, would, notwithstanding the limitations allowable by law under cl. (2) of that Article, be further dependent upon the arrangements of the Constitution and the guidelines and standing requests managing methodology of that Council. There would have been no need for giving another the right to speak freely as the words "there will be the rights to speak freely of discourse in the Assembly of each State "clearly expect to do so.

(4) The arrangements of conditions (1), (2) and (3) will apply corresponding to people who by uprightness of this Constitution reserve the option to talk in, and in any case to partake in the procedures of, a Place of the Governing body of a State or any panel thereof as they apply comparable to individuals from that Lawmaking body."

In Romesh Thapar v. The Territory of Madras[64](1), this Court decided to consider the contention progressed on the premise that the right to speak freely in Craftsmanship. 19(1)(a) takes in additionally the opportunity of the Press in the far- reaching sense demonstrated by me supra. The significance of the ability to speak freely in a popularity-based nation can't be over-accentuated, and in acknowledgment thereof, cl. (2) of Craftsmanship. 19 not at all like different statements of that Article, limits the extent of the limitations on the said opportunity inside similarly smaller cutoff points. "The entire instrument is to be inspected, with a perspective on deciding the expectation of each part. Additionally, impact is to be given, if conceivable, to the entire instrument,

[63] (1914) 16 BOMLR 544
[64] AIR 1950 SC 124

and to each Section and proviso. What's more, in deciphering statements it must be assumed that words have been utilized in their regular and normal significance.

The standard may likewise be expressed in an alternate manner: If two Articles give off an impression of being in strife, each endeavor ought to be made to accommodate them or to make them to coincide before barring or dismissing the activity of one. Article 194(3) of the Constitution, with which we are concerned, doesn't in express terms make that condition subject to the arrangements of the Constitution or to those of Workmanship.

19. Article 194 has three provisions. The primary condition proclaims that there will be freedom of discourse in the Council of each State and that opportunity is explicitly made dependent upon the arrangements of the Constitution and to the standards and the standing requests directing the system of the Lawmaking body. Provision (2) offers insurance to individuals from the Assembly of a State from any risk to any procedures in any Court in regard of anything said or any vote given by him in the Council or any advisory group thereof and to each individual in regard of the distribution by or under the authority of a Place of such a Governing body of any report, paper, votes or strategy. The third provision, with which we are presently legitimately concerned, gives upon a Place of the Assembly of a State and of the individuals and the boards thereof certain forces, benefits and resistances. It is in two sections. The initial Section says that the forces, benefits and vulnerabilities of a Place of the Governing body of a State and of the individuals and the advisory groups of a Place of such Assembly will be, for example, may every once in a while be characterized by the Lawmaking body by law; and the subsequent part proclaims that until so characterized, they will be those of the Place of Hall of the Parliament of the Unified Realm and its individuals and panels, at the beginning of the Constitution. The question is whether these conditions confer the powers, advantages, and vulnerabilities of governing bodies that undermine the basic rights of residents under craftsmanship. Constitution 19(1)(a). The first thing that catches your eye is the good workmanship. Constitution 19(1)(a) regulates the ability and skills of residents to speak fluently and articulate. 194(1) declares that each state has the right to speak freely in the legislatures. While Workmanship. 19(1) is general in wording and is subject just too sensible limitations made under statement (2) of the said Article, Workmanship. 194(1) makes the right to speak freely subject to the arrangements of the Constitution and rules and standing requests managing the method of the Lawmaking body. Provision (2) streams from cl. (1) and it manages security from liability to any procedures in a

Court for people in regard of the demonstrations referenced in that. Be that as it may, these two arrangements don't contact the basic right of a resident to distribute procedures which he is qualified for under Workmanship. 19(1) of the Constitution.

## The Superintendent, Central vs. Ram Manohar Lohia on 21 January, 1960

We will presently continue to think about the protected legitimacy of this part. The material bits of the pertinent arrangements of the Constitution may now be perused: Article 19: "[65]legitimate concern for public request, among several others. To support the current law or another law made by State under clause (2) of Workmanship. 19, is so far pertinent to the current enquiry, 2 conditions ought to be consented to, viz.,

(I) the limitations forced must be sensible; and (ii) they ought to be in light of a legitimate concern for public request. Before we think about the extent of tile word- of impediment, " sensible limitations" and " in light of a legitimate concern for ", it is important to determine the genuine significance of the articulation public request " in the said statement. The articulation public request" has an exceptionally wide undertone. Request is the fundamental need in any composed society. It infers the organized condition of society or network where residents can calmly seek after their ordinary exercises of life. In the expressions of a famous Adjudicator of the High Court of America " the fundamental rights are liable to the rudimentary requirement for request without which the assurance of those rights would be a joke ".

However, every one of these offenses in this manner include aggravations of public serenity and are in principle offenses against public request, the distinction between them being just a distinction of degree, yet for the motivation behind guarding the discipline to be exacted in regard of them they might be characterized into various minor classifications as has been finished by the Indian Corrective Code. Also, the Constitution, in defining the differing standards for reasonable enactment forcing limitations on the crucial rights identified in article 19 (1), has set aside certain cases against the public order solely for the purpose of defrauding or defending the State, and made their expectation of the official end of the oppressed variety of right to free speech and expression, in other words. , nothing that could jeopardize the institutions of the State or jeopardize the overthrow of the State would justify the reduction of the right to free speech ”

[65] 395 U.S. 367, 89 S.ct

"In light of a legitimate concern for public request, the State may restrict and rebuff the causing of 'uproarious and raucous noise' in roads and public spots by methods for sound enhancing instruments, direct the hours and spot of public conversation, and the utilization of the public roads to practice the right to speak freely of discourse; accommodate the ejection of hecklers from gatherings and congregations, rebuff expressions having a tendency to induce a quick penetrate of the harmony or mob as recognized from articulations causing simple 'public bother, irritation or turmoil."

"Exercises, for example, these are so distant in the chain of connection to the support of public request that preventive detainment by virtue of them can't, as we would like to think, fall inside the domain of Passage I of Rundown II. The association considered must, in our view, be genuine and proximate., not outlandish or problematical."

## Shreya Singhal vs U.O.I on 24 March, 2015[66]

The right to speak freely of Discourse and Articulation Article 19(1)(a) of the Constitution of India states as follows:

"Article 19. Security of specific rights with respect to the right to speak freely of discourse, and so on.- All residents will have the right-

(a) to the right to speak freely of discourse and articulation;" Article 19(2) states that:

"Article 19. Insurance of specific rights with respect to the right to speak freely of discourse, and so forth.- (2) Sub-condition (a) of subsection (1) shall not affect the operation of existing laws or prevent States from enacting laws to the extent that such laws impose reasonable limits on the effectiveness of the privileges represented by such sub-claims. In light of India's legitimate interest in power and credibility, national security, sympathetic relations with foreign countries, the demands of the public, kindness or deep qualities or appropriate hatred of the courts, and criticism or incitement to crime[67].

66 (2013) 12 S.C.C. 73

## Telecom Watchdog vs Union of India & Another on 13 July, 2012[67]

Where the ability to speak freely gets interweaved with job it goes through a crucial change and its practice must be adjusted against cultural interest"[68]. Ld. Senior Insight further contended that even something else, nobody has an option to declare an Article 19(1)(a) right when it abuses other's people directly under Article 21 as in Commotion Contamination, AIR 2005 SC 3136: -

"Those who make commotion frequently take cover behind Article 19(1)(a) arguing the right to speak freely of discourse and right to articulation. Without a doubt, the ability to speak freely and right to articulation are key rights however the rights aren't supreme. It's not possible for anyone to guarantee a crucial option to make commotion by intensifying the sound of his discourse with the assistance of amplifiers. While one has an option to discourse, others reserve a privilege to tune in or decay to tune in. It's not possible for anyone to be constrained to tune in and no one can guarantee that he has an option to make his sound goes into the ears or brain of others. It's not possible for anyone to enjoy aural hostility. In the event that anybody expands his volume of discourse and that too with the help of counterfeit gadgets in order to obligatorily open reluctant people. It has been depicted as an "essential common freedom", "a characteristic right" and such. With the advancement of law in India, the privilege.

"On the off chance that support of majority rule government is the establishment with the expectation of complimentary discourse, society similarly is qualified for manage the right to speak freely of discourse or articulation by fair activity. The explanation is self-evident, viz., that society acknowledges free discourse and articulation and furthermore sets caps for the privilege of the larger part. Enthusiasm of the individuals associated with the demonstrations of articulation ought to be taken a gander at from the point of view of the speaker as well as the spot at which he talks, the situation, the crowd, the response of the distribution, the reason for the discourse and the spot and the gathering where the resident activities his right to speak freely and articulation. The State has real intrigue, thus, to control the ability to speak freely and articulation which freedom speaks to the furthest reaches of the obligation of restriction on discourse or

[67] 2012(2) SCALE 682
[68] Those who make noise often take shelter behind Article 19(1)(a) pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute.

articulation not to absolute abusive or offensive discourse or articulation. There is a correlative obligation not to meddle with the freedom of others. Each is qualified for pride of individuals and of notoriety. No one has a privilege to malign others' entitlement to individual or notoriety. Subsequently, the right to speak freely of discourse and articulation is endured insofar as it isn't pernicious or derogatory, with the goal that all endeavors to encourage and guarantee deliberate and serene public conversation or public great should result from free discourse in the commercial center. On the off chance that such discourse or articulation was false thus crazy with regards to its fact, the speaker or the creator doesn't get insurance of the sacred right."

## Amar Nath Bali vs The State on 12 September, 1950[69]

Consequently, in the event that we are getting too little ability to speak freely and of the press and an excess of social control of them, the essayist feels that the cure lies, not in changing the law, however in acquiring a High Court whose work force will ensure a reasonable utilization of the standard of sensibility. Despite the Main Alteration the Seditions Demonstration of 1708 was passed by the Congress and it was supported by lower Government Courts, but the issue was never solicited by the High Court. When the war was on, the Surveillance Demonstration was passed. The lawfulness of this Demonstration was brought under the steady gaze of the High Court and Willoughby cites the accompanying section from the judgment of the High Court avowing the feelings which had been acquired underneath: Test for deciding the lawfulness of a Demonstration was set somewhere around his Lordship at as follows:

Thus, the Constitution, in highlighting the transition measures for admissible enactment enforcing, foundations ‘on the crucial rights listed in Article 19(1), has set in an unmistakable classification those crimes against request of public that target sabotaging the safety of the State or ousting it, and made their avoidance the independent avocation for administrative abbreviated version of the right to speak freely of discourse and right to articulation, in other words nothing not exactly imperiling the establishments of the State or compromising its topple could legitimize reduction of the rights to the right to

speak freely of discourse and articulation.

69 AIR(38) 1951 Punjab 18

**Bata India Ltd. vs A.M. Turaz&Ors. on 15 October, 2012**[70]

"The question as to the nature of the freedom of speech in Article 19(1) of the Constitution is an absolute one that came up for consideration before the High Court of Andhra Pradesh in the case of K.V. Ramaniah v. Special Public Prosecutor, wherein the Division Bench has held thus:

Freedom of speech in Article 19(1) cannot be taken to mean absolute freedom to say or write whatever a person chooses recklessly and without regard to any person honor and reputation. The right guaranteed by the Constitution, it must be borne in mind, is to all the citizens alike. The right in one certainly has a corresponding duty to the other and judged in that manner also, the right guaranteed cannot but be a qualified one. Indeed, the right has its own natural limitation. Reasonably limited alone, it is an inestimable privilege. Without such limitations it is bound to be a scourge to the Republic. Thus, there is a marked distinction in the language of law, it's possible interpretation and application under the Indian and the US laws. It is very important to note that freedom of the press is an essential part of democratic government. This freedom is necessary for the smooth running of the democratic process. The original form of freedom is freedom of expression and expression. He has a popular position in the liberation movement and offers help and protection in all other liberties. She is rightly said to be the mother of all other liberties. Freedom of speech plays a vital role in shaping public opinion on social, political, and economic issues. It has been described as a natural human right and so forth. With the development of the law in India, the right to freedom of speech and expression has taken away from its purpose the right to information and the right to publish. "

**Mr. Mahesh Bhatt and Kasturi and vs Union of India (UoI) and Anr. on 7 February, 2008**[71]

Rights presented under Article 19 are common social liberties as recognized from political rights. Assessments, a flat-out need for any majority rule type of government. This opportunity of the media is desirously secured, regardless of whether it is tasteful to the Legislature, specialists or the greater part of popular conclusion. However, the right to speak freely about discourse is not an opportunity to express what one likes or a direct right under the Indian Constitution. The right to speak freely about discourse

[70] 2013 (53) PTC 536
[71] 2008 BusLR 366 Del, 147(2008) DLT 561

and expression must be deciphered comprehensively, but cannot be expanded unnaturally, or at least become meaningless. The goal behind acknowledgment of Key Rights including the right to speak freely of discourse and articulation. Essential rights are energetic and dynamic ideas.

Life of Law isn't rationale yet experience and astuteness. The inquiry whether business notice is ensured and qualified for insurance. At the point when it appears as a business commercial which has a component of exchange or trade it no longer falls inside the idea of the right to speak freely of discourse for the item isn't spread of thoughts ' social, political or financial or promotion of writing or human idea; yet as in the current case the honor of the viability, worth and significance in treatment of specific ailments by specific medications and drugs. In such a case, commercial is a piece of business despite the fact that as portrayed by Mr. Munshi its inventive part, and it was being utilized to advance the matter of the solicitors and had no relationship with what might be known as the fundamental idea of the ability to speak freely. It can't be said that the option to distribute and convey business commercials promoting a person's private issue stated:

The option to distribute and distribute commercials for confidential business news cannot be allowed in the same forum and meridian as the right to free speech and free speech granted to suppress news coverage, public discourse and more. Commercial advertising has a role to play in the exchange of trades and does not necessarily infringe on the right to free speech because it does not constitute a social, political, financial or literary concept or ideology. A business notice may be imaginary but in the puritan sense it is eligible for confirmation under Section 19 (1) (a) of the Constitution as soon as it is vaccinated and suspended for public conspiracy. In a situation where the object is to make a profit only by selling the goods / administration; no part of free speech is included. Security under Article 19(1)(a) in such circumstances will clearly be restricted and dependent upon the public intrigue test, when contrasted with assurance in situations where the primary reason and item is to give data to third people about thoughts, contemplations and suppositions. Thusly, ads welcoming overall population to attempt advance or proceed with utilization of tobacco items, wagering, betting or praising medications and other inebriating substances as solution for illnesses, don't go under the Privilege to the right to speak freely of Discourse and right to Articulation as a Major Right. "Business discourse" can be confined all the more effectively when contrasted with political or social addresses

identifying with public issues, when and if the Administration can show significant avocation for doing as such. Key Right of the right to speak freely of Discourse and right to Articulation ensured under Article 19(1)(a) in the Constitution can't as well as ought to not be reached out to give security to any simple business discourse that supports tobacco items use prompting ailment and medical conditions.

## Smt. Saroj Giri vs Vayalar Ravi and Ors. on 28 April, 1998[72]

That takes us to Article 211. This article gives that no conversation will occur in the Lawmaking body of a State as for the direct of any appointed authority of the High Court or of a High Court in the release of his obligations. This arrangement adds up to an outright Sacred preclusion against any conversation in the Governing body of a State in regard to the legal lead of an appointed authority of this Court or of the High Court.

The way that Article 211 shows up under a point managing "methodology By and large" can't imply that the disallowance recommended by it isn't required. As we have j u s t shown, in attempting to value the full essentialness of this preclusion, we should peruse Articles 211 and 121 together. The facts demonstrate that Article 194(2) in wording accommodates resistance of activity in any Court in regard to a discourse made by a party or a vote given by him in the Administrative Gathering. However, this arrangement itself insistently draws out the way that the Constitution was on edge to ensure complete right to speak freely and articulation inside the authoritative chamber, thus, it played it safe of making explicit arrangement to shield this right to speak freely and articulation by saying that even the penetrate of the Protected disallowance recommended by Article 211 ought not offer ascent to any activity. Without a doubt, the Speaker would not allow a party to negate Article 211, however assuming, unintentionally, or something else, a discourse is made inside the authoritative chamber which repudiates Article 211, the creators of Constitution have offered insurance to such discourse from activity in Court. The House itself may almost certainly, make a move against him.

Through sub-article (1) of Article 105, individuals from Parliament appreciate the right to speak freely of discourse subject just to the arrangements of the Constitution and the standards and standing requests controlling the method of parliament. That express

[72] 1999 CriLJ 498, Bench: B K Roy, P Jain

arrangement is made for the right to speak freely of discourse in Parliament in sub- article (1) of Article 105 proposes that this opportunity is autonomous of the right to speak freely presented by Article 19 and unhindered by the exemptions included in that. This is acknowledgement of the way that individuals should be liberated from all imperatives in the fact of what they state in Parliament in the event that they are adequately to speak to their body's electorate in its thoughts. Sub-article (2) of Article

105 puts contrarily what sub-article (1) states certifiably. Both sub-articles must be perused together to decide their substance. By the initial Section of sub-article (2) no part is liable in a Courtroom or in any comparable council for what he has stated in parliament. This again is acknowledgement of the way that a party requires the opportunity to state what he believes is directly in Parliament undaunted by the dread of being continued against. A vote, regardless of whether casting by voice or by motion or the guide of a machine, is treated as an augmentation of discourse or a substitute of discourse and even is given the assurance that the expressed word has.

2 remarks should be made with respect to the simple language of the initial Section of sub-article (2). To begin with, what has assurance is the thing that has been said and a vote that has been projected, and not something that may have been stated but r a t h e r was not, or a vote that may have been projected yet was definitely not.

Furthermore, the security is expansive, being "in regard of. It is so given to make sure about the right to speak freely in parliament that sub-articles (1) accommodate. It is essential, given the job individuals from parliament must perform. The security is outright against, Court procedures that have a nexus with what has been stated, or a vote that has been projected in Parliament. The second piece of sub-article (2) gives t h a t no individual will be subject to any procedures in any Court in regard to the distribution of any report, papers, votes or procedures if the distribution is by or under the authority of either Place of Parliament. An individual who distributes a report or papers or votes or procedures by or under the authority of Parliament is in this manner given security in similar wide terms against obligation to procedures in any Court associated with such distribution. The Constitution having managed the immensely significant benefit of individuals from Parliament to talk and vote in that as hello consider fit, liberated of the dread of pulling in legitimate procedures concerning what they state or how they vote, accommodates different forces benefits and resistances in sub-article (3). Till

characterized by Parliament by authorization, they are, for example, were appreciated before the Constitution came into power, in other words, they are, for example, were delighted in by the Place of Lodge not long before 26th January, 1950. For it to be built up that any force, benefit or invulnerability exists under sub-article (3), it must be indicated that that force, benefit or insusceptibility had been perceived as inherent in the Place of Lodge at the beginning of the Constitution. So significant was the opportunity to talk and vote in parliament thought to be that it was explicitly accommodated, not left to be accumulated, as different forces, benefits and resistances were, from the Place of Lodge. To the extent that the invulnerability that connects to what exactly is said in parliament and also to a vote casted in that is concerned, arrangement is made in sub- article (2), it is just in different regards that sub-article (3) applies. For fulfillment, however we are not here worried about it, we should include that sub-article (4) gives t h e insurance of the sub-articles that went before it to everyone who reserve the privilege for addressing the House, for instance, the Lawyer General.

Beam, J. who concurred with Bharucha and Rajendra Babu, JJ., held as follows (Paras

97 and 98 of AIR): -

Article 105 of the Constitution manages powers, benefits and inflexible equations yet should be acknowledged concerning the setting wherein it has been utilized and the reason to be accomplished under the arrangement being referred to. The setting wherein the articulation "in regard of has been used in sub-article (2) of Article 105 and the reason for which the ability to speak freely and opportunity to cast a ballot have been ensured in sub-article (2) of Article 105 don't allow any limitation or reduction of such right explicitly given under sub-article (1) and sub-article (2) of Article 105 of the Constitution. However, it should be clarified that the security under section 105(2) of the Constitution must be equated with the actual votes cast and the speeches actually made by the parliamentary representatives in Parliament. In my personal view, the security against procedures in Court as presented under sub-article (2) of Article 105 must need be deciphered largely and not in a confined way.

**Zee Telefilms Limited and Ors. vs State Of Karnataka And Ors. on 10 January, 1997**[73]

The ability to speak freely and articulation under Article 19(1)(a) as confined by Article 19(2). The right to speak freely and articulation incorporates the option to get data and to disperse it. The right to speak freely of discourse and articulation is fundamental, for self-articulation which is a significant method with the expectation of complimentary soul and self-satisfaction. It empowers individuals to add to banters on social and good issues. It is the most ideal approach to locate a most genuine method of anything, since it is just through it that the largest conceivable scope of thoughts can circle. It is the main vehicle of political talk so basic to vote based systems. Similarly, significant is the job it plays in encouraging imaginative and insightful undertakings of different kinds. The option to convey, along these lines, incorporate the option to impart through any media that is accessible whether print or electronic or general media, for example, promotion, film, article, discourse and so forth. That is the reason the right to speak freely of discourse and articulation incorporates opportunity of the press. The opportunity of the press in wording incorporates the option to course and furthermore to decide the volume of such flow. The opportunity incorporates the opportunity to convey or flow one's supposition without obstruction to as enormous a populace in the nation, just as abroad, as is conceivable to reach.

This central right may be limited only by reasonable restrictions under laws enacted for the reasons set out in Article 19(2) of the Constitution. Weight is in a position to legitimize restrictions. Public questioning is not very similar to public welfare, and thereafter no one can limit the privilege of the right to speak freely about discourse and expression because public safety is at stake. Unlike the US Constitution, restrictions on fundamental rights are set forth in Section 19(2) of the Indian Constitution. Subsequently no limitations can be put on the privilege to the right to speak freely of discourse and articulation on grounds other than those predetermined under Article 19(2)." Broadcasting media is characteristically not the same as press or different methods of correspondence/data. The similarity of press is misdirecting and unseemly. This is additionally the view communicated by a few established courts like that of the US"

[73] ILR 1997 KAR 1071, Author: V M Kumar, Bench: V M Kumar

**Remembering these standards, we will currently look at the case available.**

In the first place, would it be able to be said for this situation that there has been an infringement of the assurance of the right to speak freely of discourse and right to articulation ensured to the candidates under Article 19(1)(a) of the Constitution of India by respondents Nos. 1 to 4 by picking the fifth respondent to utilize the K.E.B. Posts? I think not. It should be recollected that the K.E.B. post isn't the sole methods for laying links for the utilization of Satellite TV. It is conceded that even without the utilization of K.E.B. posts, the candidates are in the exchange of Link T.V. As on today, the solicitors are not utilizing the K.E.B. shafts for their Digital TV. Neither the fifth respondent is utilizing the K.E.B. shafts. Honestly, the solicitors are not gripping that their ability to speak freely and articulation spared under Article 19(1)(a) of the Constitution is in any way limited or meddled with by respondents Nos. 1 and 4. On the off chance that the fifth respondent is permitted to utilize the

K.E.B. shafts, similar situations will proceed and won't be additionally decayed. One neglects to see how at that point can the candidates grumble that the issuance of the censured request shortens their privilege delighted in by them under Article 19(1)(a) of the Constitution. The decried request doesn't proclaim that on and after confirmation of the privilege on the fifth respondent, no other Link Administrators other than the fifth respondent will work in Karnataka and draw in himself in the Link T.V. business. The candidates can likewise exist together with the fifth respondent. The impact of giving the option to utilize the K.E.B. shafts doesn't in, any way remove or compress the ability to speak freely and articulation ensured under the Constitution of India that the solicitors are appreciating.

Further, while thinking about the conflict, we need to remember that the State isn't in any capacity diminishing or meddling with the ability to speak freely and articulation delighted in by the candidates by the reprimanded activity. It has just allowed the fifth respondent to utilize the K.E.B. posts to lay link for the Link T.V. In the event that the applicant had been the offeree to whom the benefit had been truly, he would have likewise practiced comparable rights. The solicitor at that point would have paid higher rental to respondents Nos. 1 to 4 to appreciate the benefit whereby the rental that the everyday person shopper would have needed to pay would have been higher. As such, by endeavoring to secure the right to speak freely and right to articulation ensured

under Article 19(1)(a) of the Constitution, what is looked to be accomplished by the solicitors is to guarantee and defend an expanded business benefit of the candidates, at the expense of expanded budgetary duty on the recipients. This isn't allowable under the security guaranteed under Article 19(1)(a). We may for this benefit advert to the accompanying section.

## Halvi .K.S vs The State of Kerala on 20 August, 2020

Indeed, we are daring to discard the writ appeal, when it came up for affirmation itself, since we had the benefit of hearing the educated Unique Government Pleader, who was prepared with the decisions delivered by the Summit Court likewise on the point, starting a trend. To the extent that the issue raised by the candidate is concerned, the fundamental inquiry that rises for thought is whether as is looked for by the solicitor, any rules can be surrounded by this Court so as to manage and control the exercises of the press or rather the print and electronic media. What is clear and tedious is that, according to the Indian Constitution, the press does not have a special specialization for freedom of the press, or even freedom of expression, unlike the major amendments to the US Constitution that guarantee the direct right of the press. Opportunity to speak and speak freely[74]. The press in India is appreciating the right to speak freely and articulation regarding the essential right ensured.

This case aside, we think it would be useful to find the legal history of decisions of the Supreme Court and some High Courts on the right to speak freely of discourse and expression in Indian contexts. Consistent and commendable results. First among the cases that we have run over in such manner is the judgment of the Six Part Constitution Seat of the Peak Court in Romesh Thapar v. Province of Madras [AIR 1950 SC 124]. That was where a limitation contained under Section 9(1-An) of the Madras Upkeep of Public Request Act, 1949 that approves burden of limitations for the more extensive motivation behind making sure about open wellbeing or the support of public request was getting looked at by the Zenith Court. The qualification between open request and public wellbeing was thought of and eventually held that except if a law confining the right to speak freely and articulation is coordinated exclusively against the sabotaging of the State security or its over-toss, this law can't fall inside the booking

under proviso (2) of Article 19 of the Constitution, despite the fact that the limitations which tries to force may have been considered for the most part in light of a legitimate concern for public request. It was held additionally there under that proviso (2) of Article 19 in the Constitution having permitted the burden of limitations on the right to speak freely and articulation just in situations where peril to the State is involved, and an authorization, that is equipped for being applied to situations where no such risk could emerge, can't be held to be sacred and substantial to any degree.

In M.S.M. Sharma v. Sri Krishna Sinha and others[74], the Five Part Constitution Seat of the Peak Court was thinking about the ability to speak freely and articulation of the press versus Article 194(3) of the Indian Constitution and it was held that Article 19 certifications to all citizens the right to speak freely of discourse and right to articulation, but does not explicitly or independently accommodate the Press freedom and that the freedom of the Press is certain in the ability to speak freely and articulation which is presented on a resident. The fundamental right to speak freely and even right to articulation incorporates the opportunity of proliferation of ideas and that opportunity is promised by the course opportunity. Additionally, the burden of prior supervision of the diary has been found to limit freedom of speech, as defined by Brij Bhushan (above), a fundamental aspect of the privilege of the right to speak freely in discourse. , as well as the expressions provided for in Article 19(1).

However, Virendra v. In the case of the Punjab Territory, the holding of newspapers to disseminate ideas or opinions by correspondents proved to be a genuine violation of essential and fundamental rights to freedom of speech and expression. And it's about what could be a decision or underlying copyright. It has been recognized that the right to speak freely and the privilege of the right to speak are individual rights guaranteed to all residents by Article 19(1)(a) in the Constitution of India and there isn't anything in provision (2) of Article 19, that allows the State to shorten this privilege on the base of giving advantages upon common society as a rule or upon a part of public and it isn't available to the State to abridge or encroach the ability to speak freely of one for advancing the overall government assistance of a Section or a gathering of individuals, except if its activity could be advocated under a law, skilled under condition (2) of Article 19 of the Constitution.

[74] AIR 1959 SC 395

## Indelibly Creative Pvt. Ltd. vs Govt. Of West Bengal on 11 April, 2019[75]

It also reinvigorates the beliefs of those who would otherwise be at risk of holding views as dead dogma." This impactful defense of freedom of speech though is also combined with the limitation on 'free expression', generally referred to as the "harm principle", that states ,"the only goal for what power can be rightfully practiced over any civilized community member, against his will, is to protect it from harm to others." While the application of the liberal principles developed by Mill extends to several spheres, the sphere of free speech and expression was regarded to be particularly important to him due to its connection with truth and development. He emphasizes the value of free speech in the following words: "In order for the artist to have a world to express he must first be situated in this world, oppressed or oppressing, resigned or rebellious, a man among men. But at the heart of his existence he finds the exigency which is common to all must first will freedom within himself and universally; he must try to conquer it: in the light of this project situations are graded and reasons for acting are made manifest." A catena of decisions of this Court have emphasized the value of freedom of speech and freedom of expression in our democracy. Freedom of expression and one of the first constitutional cases on freedom of expression, Romesh Thapar v. As Madras State stated

## P.V. Narsimha Rao vs State (CBI) on 17 April, 1998[76]

"It has been recognized that the right to speak freely and the right to "articles" confer immunity, particularly with respect to "everything spoken by Lok Sabha". The word "anything" has the broadest meaning and is equivalent to the word "Everything." The only limitation is the word "in Parliament", which means during parliamentary sessions and during parliamentary work. We are only interested in the Lok Sabha Speech. Once the Parliament has opened and it is established that the deal has been made, everything said in the course of the case is not subject to judgment. This immunity is not only competitive, it is what it should be. The essence of a parliamentary government is that representatives of the people should be able to freely express their opinions without fear of legal repercussions. What they say depends only on the discipline of parliamentary rules, the common sense of

[75] SCC OnLine SC 520
[76] 1998 AIR (SC) 2120, 1998(2) Crimes 124, 1998 (104) CrLJ 2930, 1998 (2) CCR 138, 1998 (3)

lawmakers, and the control of the speaker's process. The courts have no and should not have a say in this matter."

## Raja Ram Pal vs The Hon'ble Speaker, Lok Sabha &Ors on 10 January, 2007[77]

The right to speak freely of Discourse - The primary case in the Speaker's request is for the right to speak freely of discourse in banter. By the last aspect of the 15th century, the Center of Britain appears to have appreciated an unclear right to the right to speak freely of discourse, as an issue or convention instead of by ethicalness of a benefit looked for and acquired Opportunity FROM Capture The second of the standard petitions of Speaker in the interest of the Lodge toward the start of a Parliament is for opportunity from capture. The advancement of this benefit is here and there connected to that of different benefits. Capture was oftentimes the result of the fruitless statement of the right to speak freely of discourse, for instance.

"Freedom of discourse is a benefit basic to every free committee or the council, and also that is asserted by both Houses as an essential benefit. This benefit was from 1541 included by the built-up training in the request of the Hall to the Ruler in the beginning of the Parliament. It is surprising that despite the rehashed acknowledgment o f the certain benefit, the Crown and the Hall were not generally settled upon its cutoff points. This benefit got its last legal acknowledgement after the Insurgency ofi1688. By the 9th Article of the Bill of Rights, it was proclaimed "that the right to speak freely, and discussions or procedures in Parliament, should not to be denounced or addressed in any court or spot out of Parliament [May's Parliamentary Practice, p. 52]".

The Legislature of India Act, 1935 came into power on 1st April, 1937 and was employable until August14th, 1947. Segments 28 and also 71 of the Administration of India Act, 1935 managed the subject of Benefits and so on of individuals from Government Law Making body and Common Councils separately. The arrangement in Sub-Area (1) of Segment 71 expanded the right to speak freely and insusceptibility to discourse or vote even in the Boards of trustees of the Lawmaking body and furthermore that cover distribution under the authority of an Office of the Assembly of the House. Sub-Segment (1) of Area 71, entomb alia, proclaimed that "Subject to the arrangements of this Demonstration and to rules and standing requests directing the method of the Governing

[77] (2007) 3 SCC 184

body there will be the right to speak freely of discourse in each Common Lawmaking body" and that each part will be qualified for insusceptibility from "any procedures in any court in regard of anything said or any vote given by him in the Assembly or any panel thereof".

Forces, Benefits and Vulnerabilities - for the most part as effectively saw, Articles

105 and 194 utilize practically indistinguishable language. Article 194 became the center of the debate in the UP-Gathering Case. Managing the arrangements included in Provision (1) of Article 194, this Court watched subsequently: - "Proviso (1) clarifies that the ability to speak freely in the governing body of each State that it recommends, is dependent upon the arrangements of the Constitution, and also to the principles and standing requests, directing the strategy of the council. During deciphering this condition, it is important to accentuate that the arrangements of the Constitution to which the right to speak freely of discourse has been presented to the officials, are not the overall arrangements of the Constitution but rather just.

## Kallol Guha Thakurata and Anr. vs Biman Basu, Chairman, Left Front on 31 March, 2005[78]

Despite the fact that it is the central right of each resident to practice the right to speak freely of discourse and even articulation under Article 19(1)(a), the said right has been exposed to certain sensible limitations under Article 19(2). One of such sensible limitations is comparable to Disdain of Court. Different heads under which limitations can be enforced on the ability to speak freely and even articulation are:

i. Sway and honesty of India
ii. State security
iii. Cordial relations with unfamiliar nations
iv. Request of public
v. Respectability
vi. Ethical quality
vii. Slander and
viii. Impelling to an offense.

[78] (2005) 2 CALLT 1 HC, 2005(2) CHN 330

In this way an examination of these heads of sensible limitations exhibits that they spread a wide region and have neighborhood, public and global ramifications. It is subsequently evident that the designers of the Constitution, the majority of whom were denied the right to speak freely of discourse and articulation while they partook in the public opportunity battle, while perceiving the significance of such opportunity as a crucial right of residents, never had faith in the totality of this opportunity. That is the reason this opportunity has been directed by such wide-running heads of limitations. By setting Hatred of Court as a sensible limitation on similar balance as power and honesty of India and the security of Express, the Establishing Fathers needed to underscore the significance of a free and autonomous legal executive.

Any opportunity which is outright and free is exceptionally delicate and powerless. Except if it is controlled, it will die in a matter of moments. So, the mystery is whatever might be the idea of opportunity, it tends to be shielded distinctly by giving up a piece of it. We will in general overlook that we can make the most of our ability to speak freely and articulate adequately just if there is an autonomous and solid legal executive to secure such opportunity and revive it with an understanding which is as per the felt necessities of time.

## Lakhan Singh vs Balbir Singh and Anr. on 30 April, 1952[79]

It has been fought, nonetheless, that the Indian Constitution as corrected by the Constitution (First Alteration) Act, 1951, has adjusted the circumstance and the past law of scorn is no longer in power. Statement (1) (an) of Article 19thof the Constitution awards to all residents the privilege to the right to speak freely of discourse and right to articulation. This privilege is, in any case, subject to the arrangements of Statement (2) of that Article. Prior to its change Proviso (2) remained as follows:

"(2) Nothing in Sub-provision (an) of Condition (1) will influence the activity of any current law to the extent that it identifies with, or keeps the State from making any law identifying with criticism, criticize, maligning, scorn of Court or any issue which insults against conventionality or profound quality or which sabotages the security of, or will in general oust the State".

[79] (2007) 6 SCC 226

It will be seen that before the correction the whole law identifying with 3ibel, slander criticize, scorn of Court, profound or fairness quality or any issue which subverts the security of, or will in general oust, the State was prohibited from the activity of Article 19(1)(a). There was no doubt of any sensibility of the law identifying with the issues determined in Proviso (2). After the change, if the current law or. future law identifying with the issues referenced in Sub-provision (2) negates the constraints of 'sensible boundations on the exercise of the privilege of the right to speak freely of discourse, such law will be void. While in such a manner the altered provision has confined the extent of the said condition, it has broadened its extension toward another path seeing that laws identifying with agreeable relations with unfamiliar States, to public request and to prompting an offense have been included. Presumably the articulation 'sensible limitations' alludes not simply to future laws yet in addition to existing laws. We consider, in any case, that the law of scorn as set somewhere around English and Indian Courts forces only sensible limitations on the activity ofithe privilege of the right to speak freely of discourse and even right to articulation and subsequently the past law proceeds in power even after the change.

Our consideration has been attracted to the American view regarding the matter. Before we talk about the American view, nonetheless, it will be relevant to see that while the Indian Constitution specifically restricts the privilege of the right to speak freely of discourse in the way previously referenced, the assurance of the right to speak freely of discourse and even right to articulation isn't explicitly limited in the American Constitution. The Primary Change of the US Constitution gives that "Congress will make no law abbreviating the ability to speak freely or of the press." The 14thAmendment does not give that "nor will any State deny any individual of life, freedom, or property, without fair treatment of law". The fair treatment provision w a s deciphered by the-US High Court as covering insurance of the ability to speak freely and of the press.

The American Courts were, as it may, not ease back to perceive the need of restricting the ability to speak freely and even articulation. They advanced limitations on the privilege of the right to speak freely of discourse and right to articulation under the convention of what is known as the "police power" of the State. The Government Congress was held to have an inferred capacity to limit the opportunity ensured by the Constitution in the event that it was important "for the activity of different express powers given to

the US as regarding war power, and the High Court has at long last held that the arrangement against condensing the ability to speak freely or of the press doesn't disallow all enactment by Congress.

## S.Sudin vs The Union of India And Others[80]

Therefore, the terms "expression and freedom of expression" should be construed broadly, including freedom to disseminate one's views orally or in writing and audio visually. They also need the right to disseminate their views through print media or other communication channels such as radio and television (No. 32529, 2007 and related cases). Therefore, every citizen of this free nation has, by printing and/or the electronic media, the right to express his or her opinions subject to allowable restrictions laid down in Article 19(2) in the Constitution. Public education is essential to the development of a productive democracy through the print, radio and small-screen media. Freedom of air is the lifeline of every democratic institution and any effort to suffocate, stifle or dissatisfy the right will lead to autocracy and to democracy and dictatorship. The public cannot be conceived of by informing the public of events and developments and educating the voters, an important role in the complex functioning of the nation, in order to advance the public interest. Therefore In W.P (C).No, 32529 of 2007 & connected cases The dissemination of news and views concerning public consumption in 32529 of 2007 & connected cases is a must and any effort to deny that must be frowned upon unless the mishandling of Article 19(2) in the Constitution falls within the boundaries of our democratic framework. Therefore, a person has the right, if they wish to spread its ideas, to publish its views in magazines, newspapers, as well as newspapers or in electronic media because it is understood that these outlets of communication are major suppliers of news and views and have a huge effect in the minds of the readers and viewers. Once it is understood that freedom to express oneself and to express oneself included freedom of movement and dissemination of ideas and cannot indeed be contested, there should be no question that the individual has the right to use the media to respond to the degree of critique against the views that he has expressed. There is a W.P.(C.No)325 of 2007 & connected cases, for every free man. Unquestionable right to lie before the public what feelings he pleases; to prohibit this would be an inroad to his rights, except were permitted under Article 19(2). However, this freedom must be pursued with caution and discretion so as not to encroach

[80] 1997(2) KLT (287)

on the rights of other citizens or endanger the public interest. Section 19 (2) notes, in the interest of, for example, social order, conduct or dignity, or in relation to slander or incitement of crime, that the rights granted under Section 19 (1) (a) are subject to reasonable limits. It is thus proven that a citizen is entitled to publicize, distribute and disseminate his opinions, and any effort to thwart or reject them will infringe Article 19(1)(a), subject to reasonable limitations set out under Article 19(2).

Freedom of Expression and Freedom of Expression Act under section 19(1)(a) provided for in section 19(2); The right to freedom of speech and expression demands the right to receive and communicate information. Freedom of speech and speech is necessary for self-expression, the most important tool for self-expression and freedom of conscience. It encourages people to engage in social and moral debates. This is the only way to find a true model of something so the widest variety of concepts will only circulate through it. It is the only medium with so much democratic political debate.

## Justice (Retd.) MarkandeyKatju vs The Lok Sabha &Anr on 15 December, 2016[81]

The meaning and meaning of the freedom of expression specifically conferred in Parliament in compliance with Article 105 of the Constitution. In the case of Keshav Singh (supra) this Court, while dealing with the three first paragraphs of Article 194 in the Constitution which in substance are similar in their appeal to Parliament to Article 105), has observed that: -

The first 3 substantive cl. of Article 194 address three separate subjects. Cl. (1) states that freedom of expression is subject to the Constitution and to the rules and orders governing the process of a legislature in every State it prescribes. In reading this section, it must be stressed that the clauses of the Constitution to which lawmakers have been accorded freedom of speech do not apply to the clauses of the Constitution's general provisions, but rather to the legislative process. The laws and standing orders may govern the legislature's practice and can also be used to govern it in some provisions of the Constitution. These are Articles 208 and 211, for example. The adjectival clause "regulating the procedure of the legislature" governs both the preceding clauses relating

[81] (2017) 2 SCC 384

to "the provisions of the Constitution" and "the rules and standing orders". Consequently, Article (1) grants lawmakers the right to free expression subject explicitly to the restrictions laid down by their first part. In making this clause subject only to the Constitution provisions, it would thus seem that the Constitutional Authorities wished to state that they found it necessary, distinctly and, in a way, independently of Article 19(1)(a), to confer free speech upon lawmakers. If all the freedom of speech enshrined in Article 19 (1)(a) were to be asserted by legislators, it would not have been appropriate to grant the same right in a way expressly agreed to in Article 194(1), and therefore the inference may legitimately be that Article 19(1)(a) is not one of those clauses in the constitution that regulate first part of cl. (1) of Article 194.

After granting the lawmakers their freedom of expression, Clause 2 stresses how full and unlimited this freedom is intended. The lawmakers are granted the same rights as regards votes they will vote in a legislative term or any of its committees. In other words, even though, in breach of Article 211, an attorney exercising his right to freedom of expression, shall not be liable for any action in any court of law. I mean, if the representative is alleged to have violated the Legislature by any of the fundamental rights set out in Part III of the Constitution by his speech or by his vote, he shall not be liable for any such violation in any court. If, under any other provision of the law, a contentious expression includes defamation or potential or unconstitutional, it is granted a legal action in court under this section of the law. He may be guilty of such a statement in the Senate, and the President may take steps to punish him; but that is another matter. Clearly, in discussions in the courts, the makers of the Constitution consider the importance of absolute freedom to the extent that they feel that law enforcement should provide full protection, as provided by subsection (2), in any court case. about their speech in the legislatures. Subsection (1) therefore provides legislators with freedom of speech in the legislature and subsection (2) clearly states that freedom is limitless.

Similarly, when considering Article 105 of the Constitution in the case of P.V. Narasimha Rao vs State (CBI/SPE)[5], Judge C.P. On behalf of a majority of Bharucha (then the Chief Justice of the Supreme Court was educated) [6] he said the following:

Under section 105 (1), members of the Parliament are entitled to freedom of expression only in accordance with the provisions of the Constitution and the laws and regulations governing the Parliament. The principle in Article105 of free speech in parliament states that this freedom is not limited to the freedoms to which it is granted, regardless of what Article 19 of freedom of speech provides. This recognizes that Members should be free of any

limitations in terms of what they say in Parliament to represent their constituents effectively in their deliberations. Under sub article (2) of Article 105, what sub article (1) says affirmatively is negative. In order to decide their substance, all sub-articles must be read together. No Member is liable in a court of law or in some other relevant tribunal for what he said in Parliament due to the first section of sub-Article (2). Again, the acknowledgment is that a member needs independence in Parliament to say what he feels is correct intolerable from the fear of prosecution. A vote is viewed as a speech extension or a replacement for speech, cast by a voice or by a gesture or by a machine's help; this is covered by the word spoken. The first part of sub article (2) requires making two commentaries on the plain language. Second, the defense of things is what has been said and the votes cast, not something that may but was not said, or a vote that may or may not have been cast. Secondly, the defense is broad, "regarding." The freedom of expression in this Parliament is therefore enshrined in sub-Article (1). Given the role that parliamentarians must play, it is important. The defense is absolute against court cases which have a relation or votes cast in Parliament with what has been said. Second part of subparagraph (2) provides that, when publication is made by or under the competence of any House of Parliament, no person shall be liable to proceedings before any court in respect of publishing any report, articles, votes or proceedings. Therefore, in all the courts connected with those letters, the person who publishes the papers or the report or the votes or proceedings, or under Parliament, shall be dealt with, under the same name, in the case of a trial. After deliberating on the important right of Members of Parliament to speak and vote for the Council, the Constitution enshrines other powers, rights and protections in subsection (3) without fear of attracting legal action against their claims or claims. vote. The Chambers are as they were before the Constitution took effect, before they were enacted by Parliament with a decree, that is, before 26-1-1950 they were kept by the House of Representatives. Determining the existence of all rights, privileges or immunities under subsection (3), must be construed as a provision of the Constitution, power, rights or immunity shall be recognized as a legitimacy of the United Nations. The right to speak and vote was so much needed in Parliament that it was directly provided and not allowed to be collected in the House of Commons as was the case with other powers, rights and protections. In so far as the immunity which is attached to and to the vote kept therein is provided for in sub article (2); sub article 3 applies only in other

respects. For the sake of honesty, while we are not concerned with it, it should be noted that sub article (4), for example, protecting the subparagraphs preceding it, provides immunity to all persons entitled to address the House, for example, the Attorney General."

Under clauses(1) and (2) of Article 105 guaranteeing 'free speech in Parliament' and ensuring absolute protection therefrom, the other rights under Article 105 shall be those established by law from period to period by Parliament and till such time as that House and its members and committees have been established in that sense, immediately prior to the entry into force Section 15 of Constitution (44th Amendment) Act, 1978.'Freedom of speech' in the House is regarded as so sacrosanct and important to the House itself that a special reference is made to it with specifically defined immunity. In Tej Kiran Jain (Supra) a 6 bench Honorable Court judges held the absoluteness of this freedom of speech to be as high as "everything" and to have the only restriction as a result of the term 'in parliament' which was meant during parliamentary sitting and during parliamentary affairs. This 6 judges' bench of the Court held that 'all' was of the most widespread significance.

## Faheema Shirin R.K. Vs. State of Kerala and others[82]

**Facts:** This summary was submitted by a BA student in the third semester affected by the withdrawal from the dormitory. She is staying at a university hostel, a supporting university affiliated with Calicut University. Dormitory prisoners were not allowed to use mobile phones in the dormitory from 10 pm to 6 am, and undergraduate students were not allowed to use laptops in the dormitory. Again, the mobile phone usage restriction period has changed from 6 pm to 6 pm. Until 10 pm, the petitioner went with the other inmates in the house to the Deputy Chief Cabinet Secretary, explaining the inconvenience caused to them by the restrictions, but she did not reply. Observers sent a WhatsApp message informing them that those who did not follow the rules would need to leave the hostel. She then contacted the principal and submitted a letter asking her to relax the restrictions. Later, she received a letter from her that she did not want her to comply with the new rules that restrict the use of the phone from 6 pm to 6 pm. Until 10 pm, her parents met the director and refused to comply with the rules, so her petitioner was asked to tell them that she had to leave the hostel. They issue a note instructing her to leave the dormitory immediately and hold a meeting with the dormitory inmates, where students are informed of the actions taken

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against them and comply with her restrictions. I was asked to write my consent. She submitted a letter of leave because she couldn't attend classes because she had to drive 150km a day. When she arrived at the hostel to leave her room, it was locked and the hostel administrator did not allow her to bring her belongings.

**Issue:** Whether the restrictions on the use of mobile phones imposed by the responsible authorities in enforcing disciplinary action violated the petitioner's basic rights.

## Argument of Respondent:

- Changes in the ban on mobile phone use are said to be affected based on the request of some parents. The applicant was admitted to the hostel as a result of a petition in which he and his father had signed in accordance with the hostel rules and compliance with the hostel management instructions.
- In response to parents' complaints about the excessive use of cell phones in the hostel for women, a meeting was convened on 19.06.2019 where it was unanimously decided to ban the use of cell phones from 6pm. to 10 p.m. going forward to see that students use their reading time for learning purposes only; the decision was communicated to all the hostel inmates by the Deputy Deputies involved.
- The applicant father informs the hostel manager that he has no problem if his daughter uses a cell phone. Warden's complaint to the principal about the embarrassment he received from the applicant's father; his father also came to the college and scolded the prison warden in front of students, parents and other teachers accusing them of banning the use of cell phones in modern times, although the warden did not take any action against him. They simply told her that she could choose to follow the order or leave the hostel in case she did not want to comply. His parents were also present during a law enforcement meeting on the use of cell phones when they misbehaved with a vice president. Also, when the applicant and his or her parents agree to obey the order, they are not expected to object to the same.
- According to the principal, the college has a full library of more than 30,000 books for students to use so they only get information online at 6pm. and 10 p.m. it cannot be said to be an irrational limit. It also emerged that if the applicant wants to collect
- In the case of Sojan Francis v. MG University: 2003, Unniraja v. Principal Medical College 1983, Manu Vilson v. Sree Narayana College 1996 and others are said to have the highest authority to regulate and enforce disciplinary action at the institution

by the head of the institution. ; college and hostel authorities have the right to take appropriate action to maintain good conduct; it is the responsibility of teacher members to take appropriate steps to achieve academic success; it is the duty of the institution to provide education, to maintain good conduct and to enforce the laws and regulations, which mean that the laws are not designed to prevent any fundamental right.

## Argument of Petitioner:

- The applicant or his or her parents were not notified of any hostel meeting or PTA meeting prior to the enactment of the ban on cell phone use.

- This limit is only limited to a girls' hostel such as sex-based discrimination which also violates Article 5 of the UGC. The UGC cited in the (Promotion of Equity in Higher Educational Institutions) Regulations, 2012 empowers college authorities to take appropriate steps to protect the interests of students without exposing them to discrimination based on gender, class, religion, religion, language etc.

- The purpose of introducing such a limit is to ensure that learners use their reading time for learning purposes only. Respondents have not yet stated that the use of a cell phone by any applicant or prisoner has caused inconvenience to other inmates. Therefore, failure to discipline comes only to the point of disobedience.

- While the provincial government is examining the feasibility of digital literacy even at school level as the Department of Education introduced QR Code in textbooks that allow students to scan and read related subjects and topics and watch videos on their smartphones or tablets then such restrictions are imposed by college authorities. By not giving her this right, she is deprived of access to a source of information which in turn affects the quality of education.

- Also, UGC has issued a regulation (Credit Framework for online learning courses through SWAYAM) advising Universities to identify courses where credits can be transferred to a

student academic record for courses offered at SWAYAM. It is therefore said that such restrictions will deprive students of their opportunity to acquire a SWAYAM platform. The internet is made mainly by mobile phones due to the unavailability of wi-fi in the hostel.

- It is said that the right of access to the Internet is part of the freedom of speech and expression guaranteed under Article 19 (1) (a) and that the restrictions do not fall within the reasonable limits contained in Section 19 (2) of the Constitution of India.

- The laws of the University of Calicut provide accommodation for students in section 7, those students who do not live with their parents or guardian will be required to stay in any hostels maintained by the University or under the University or hostels or accommodation approved by the University in section 4. College / hostel accreditation hosted by the organization and the college is responsible for providing hostel accommodation, students living away from the college / away from their parents.

- The appellant also relies on the decision of the high court in the case of Anuj Garj v. Hostel Association of India: (2008), Shreya Singhal v. Union of India: (2015), PUCL v. Union of India: (1997) and other restrictions and its expulsion are therefore illegal as it violates his fundamental right to freedom of speech and expression, the right to privacy, the right to education and the right to property under Art.300A. It is therefore argued that the restrictions on his basic right to privacy are guaranteed under Article 21 of the Constitution of India. As an adult, no one has the authority to interfere with his or her freedom of use of the cell phone. Changes to the rules on the basis of parental concern and turning off the electric lights at 10 p.m. violated their right to liberty, the right to privacy and the violation of his privacy and the freedom of others.

## Judgement:

While it is true that the Principal of the college has the highest authority to enforce disciplinary action and there can be no dispute that the rules and regulations imposed should be adhered to by students and that teachers are like parental parents to look after. after developing and guiding students in their pursuit of education to pursue higher education, rules should be amended to keep pace with technological advances so that students have access to information from all available resources. The hostel authorities may be allowed to check whether there are any disturbances or disturbances of other students due to the use of a cell phone or to take action if there is a complaint like this. The

amount spent on its use and the direction to provide it during the study hours is completely justified.

• It is worth noting that the college attorney general argued strongly that in the absence of a challenge to the rules and regulations, the applicant could not be heard disputing the action taken in accordance with the rules. But this time the law stated that cell phones could not be used in a hostel. Therefore, all that is left is a decision / directive to restrict / restrict the use of the mobile phone from 6pm to 10pm and the direction to hand over the cellphone to the manager.

• If it is found that such an act violates fundamental freedoms and confidentiality and will affect the future and employment of students seeking information and competing with their peers, such an order or prohibition will not be enforced.

• While following the discipline it is important to see the good features of the cell phone as well. As held by this Court in the decision of the case of Anjitha K.Jose (supra), the limit should be linked to the discipline and where there is no indication that there has been any misconduct due to the use of a cell phone. the beggar, who can stand. The fact that no other student has opposed the ban or that everyone else has obeyed the instructions will not make the ban legal if it is illegal. No student will be forced to use a cell phone or not use a cell phone. It is up to each student to decide with confidence and self-determination that he or she will not misuse it and will only use it to improve the quality of his or her education.

• The only restrictions are that they should not cause inconvenience to other students. While exercising the right to privacy, individuals such as the applicant will also realize that this does not infringe on the privacy of another student living in a hostel especially in his or her room.

• In any case, it is not right for a parent to scold teachers or the principal or principal if their action is not acceptable to him or her. Such practices of insulting teachers, however, in the presence of students and the community are wrong or wrong and are not expected of educated parents and are therefore revoked. However, what should be considered in this case is the absurdity of the restriction that results in the applicant being dismissed.

• According to University Rules and UGC Rules, the college is bound to have a hostel so that students can stay close to the college so that they can have enough time to focus on

their studies. Therefore, hostel managers are expected to apply only those rules and regulations for disciplinary action. Strengthening discipline will not be a barrier to students' access to information.

• For the reasons mentioned above, the imposition of such restrictions is unreasonable and therefore the respondent must re-admit the complainant to the hostel without delay. It is stipulated that the applicant or his or her parent must not commit any act in a manner that dishonors any of the defendants or any other teacher or administrator or Matron at the hostel / college. The applicant and any other inmate must also ensure that there is no disruption caused by the use of cellphones in the hostel.

## Anuradha Bhasin v. Union of India[83]

The issue begins right from 05.08.2019, when Constitutional Order 272 was issued by the President, applying all provisions of the Constitution of India to the State of Jammu and Kashmir, and modifying Article 367, the Interpretation of it in its application to the State of Jammu and Kashmir.

Subsequently, the trip of the outsiders was cut short and arrangements were made for them to go back, educational institutions and offices were also shut down until further orders. District Magistrates, comprehends breach of peace and tranquility, and hereafter imposed restrictions on movement and public gatherings by applying Section 144 of Cr.P.C. On 04.08.2019, internet services, mobile connectivity and landline were shut down until further orders.

The petition W.P. (C) No. 1031 of 2019, was filed by Ms Anuradha Bhasin. She was the executive editor of the Kashmir Times Srinagar Edition who argued internet to be essential for the modern press. The petitioner pointed out that print media could come to an end without internet since the newspaper had not been published from 06.08.2019.

The petitioner's argument was about the failure of the government to give a valid reason for passing such order as required in Suspension rules. She additionally pointed out the reason for such orders to be passed was wholly based on mere apprehension of risk interns of law and order which was not the case.

[83] 2020 SCC ONline SC 25

the petitioner was to point that the government needs to find a way to balance the measures necessary to maintain national security on one hand and the rights of the citizens. However, the state is establishing it as the ground for passing the order to restrict the rights of the citizens. He claimed that restrictions were to be imposed temporarily, however, are imposed for more than a hundred days.

It is necessary to publish order is a component of natural justice and it even is made accessible to the general public. The state cannot claim any kind of privilege before the court for not producing such judgements. Furthermore, the proportionality test was upheld by the court and must be seen that restrictions imposed on the fundamental rights of citizens are reasonable or not.

The subsequent petition W.P. (C) No. 1164 of 2019 was filed by Member of Parliament, Mr Ghulam Nabi Azad, whose argument was that the state cannot claim any kind of privilege before the court for not producing such orders. Additionally, he stated that the national emergency can only be declared in a handful of cases, whereas in this case, neither internal not external disruption exists. There was no apprehension in the law and order of the state and hence no need of passing Section 144 of CrPC. His contention was not to restrict everybody however to impose specifically against the people of the certain category who neglect the peace

The state should impose the least restrictive measures and must balance the fundamental rights of citizens with the safety of people. And imposing restrictions on the internet, it impacts not only freedom of speech and expression but also the freedom to carry any trade, profession or occupation. However this petition was withdrawn during arguments, the petitioner suggested that the restrictions imposed injure the rights of the law-abiding citizens.

On the other hand, the respondent side Mr K.K. Venugopal the Attorney General submitted that the condition of Jammu and Kashmir having militancy has to be taken into account. He produced the in the court the contention for passing such order was after taking the cognizance of the circumstance in the state. The mere reason was to take preventive measures knowing about the history of internal and external militancy, otherwise it could lead to huge barbarity. He compared the circumstances to that of 2016 when terrorist was killed and similar actions were taken by the officials.

Mr Tushar Mehta, the Solicitor General expressed that the intention was to protect the citizens which are the first and foremost duty of the state. He considered such orders to be necessary to have peace in the state. He claimed that such orders are systematically being relaxed depending upon the present circumstances of the region.

The Magistrates contended that there is almost full relaxation which was earlier imposed based on threat perception. All televisions, radio channels and newspapers are functioning including the one where the petitioner is working. The orders passed under Section 144 of CrPC can be preventive for the safety of the citizens. He justified that it is impractical to segregate the ones who are agitators from the peacemakers. He argued that the internet was never restricted in Jammu and Ladakh. Even though, through social media messages can be sent and received to people to incite ruckus.

The intention of restricting internet in some regions was not only social media but also dark web, which allows sale and purchase of illegal weapons. He concluded that all the orders passed have followed the procedure in Suspension Rules and are being reviewed strictly.

## Issues

## Raised

### Issue 1:

Whether the freedom of speech and expression and freedom to practise any profession, or to carry on any occupation, trade or business over the Internet is a part of the fundamental rights under Part III of the Constitution?

### Issue 2:

Whether the freedom of the press of the Petitioner in W.P. (C) No. 1031 of 2019 was violated due to the restrictions?

### Issue 3:

Whether the imposition of restrictions under Section 144, CrPC was valid? Whether the Government can claim exemption from producing all the orders passed under Section 144, CrPC?

## Issue 4:

Whether the Government's action of prohibiting internet access is valid?

## Legal Provisions

- Information Technology Act, 2000
- The Telegraph Act, 1885
- Constitution of India: Article 19(1)(a) and Article 19(1)(g)
- Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules, 2009
- Code of Criminal Procedure, 1973: Section 144
- The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

## Rational

**Issue 1:** Freedom of speech and expression and freedom to practice any profession, trade, to carry on any occupation or business over the Internet is an integral part of the fundamental rights under Part III of the Constitution.

The Supreme court of India held that freedom of speech and expression through the internet is an essential part of Article 19(1)(a). They focused upon the prior ruling in the case of Indian Express V. Union of India which declared freedom of print medium is an essential right under Article 19(1)(a). Subsequently, in the case of Odyssey Communications Pvt. Ltd. V. Lokvidayan Sanghatana, it was held that the right of individuals to exhibit films is protected under Article 19(1)(a).

Since the Internet is one of the main means of transmitting information, freedom of speech and freedom of self-expression via the Internet are fundamental rights under this Article.

Although the government can force reasonable limitation and only if they are following Article 19(2). Reasonable is limited to interests such as sovereignty, integrity, security, friendly relations with foreign countries, public order, decency or morality or contempt of

court, defamation or incitement to crime, including, but not limited to in full, as appropriate.

## The Court held that:

The right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected". This statement means that restrictions on access to the Internet must be reasonable and within the limits established by Art. Constitution 19(2) and 19(6). The Court notes that while ensuring peace and tranquility, freedom of speech and expression is not undue burden.

**Issue 2:** Freedom of press of the applicant in W.P. (C) No. 1031 of 2019 was not violated due to the restrictions applied.

The court rejected the application. There is no doubt that freedom of the press is one of the essential features of democracy and is very well protected by the Constitution. Applicant could not provide evidence that the state had made an order restricting freedom of speech, including the production and distribution of newspapers. Therefore, the court cannot determine the validity of such claims. Since then, the petitioner has resumed publishing. Therefore, the court did not consider it offensive and believed that the government had secured press freedom.

**Issue 3:** The application of restrictions based on Section 144 CrPC is invalid. The Government cannot claim an exemption from the submission of orders made in accordance with section 144, CrPC.

The Court held that the power cannot vanquish legitimate expression of opinion or grievance or exercise of any democratic rights. This section can only be imposed in case of an emergency and not for the prevention of instruction or injury to any lawfully employ. Therefore, mere disturbance in the law and order of the state may not necessarily lead to a breach of public order. Only the magistrate and the state have the right to decide whether there is a likelihood of threat to public peace. No person should be deprived of his liberty unless it is dangerous and therefore repetition of the imposition of such orders would be a clear abuse of power.

The court held that the state had to publish the order placing restrictions before the court. It had cited difficulty in determining the legality of the restriction imposed when the state refused to produce the order before the court. The state must provide all relevant information necessary which is needed. As per the interpretation of Article 19, freedom of speech and expression includes right to information. The state has no right to pass such law based on mere apprehension of danger. Hence, this cannot be a valid ground or reason to refuse to produce the order.

**Issue 4:** Government's action of prohibiting internet access is not valid. The Court highlighted that it had to consider both procedural and substantive elements to determine the Constitutional legality of the internet shutdown.

The procedural mechanism has two components. First, there is a contractual component between Internet Service Providers and the Government. Second, there is the statutory component as mentioned under the Information Technology Act, 2000, the Code of Criminal Procedure, 1973 and the Telegraph Act.

The Suspension Rules under Section 7 of the Telegraph Act were passed in 2017 and allowed the restriction of internet contingent on certain safeguards. Addition to this Section 5(2) of the Telegraph Act permitted suspension orders only in case of a public emergency or for the safety of the public. Although to pass such an order determination of the existence of emergency is required.

The suspension rules did not explicitly mention the maximum duration of a suspension order. Hence, it is up to the Review Committee to determine the duration and to make sure it does not exceed beyond such period which is necessary.

## Judgement

The court held that the government cannot contend any exception for providing any order before the court which is passed under Section 144 of the CRPC. The court declared the internet to be essential in today's life and thereby freedom of speech and expression and freedom to practice any profession, occupation or trade on the internet is a part of fundamental right under Part III of the Constitution.

Furthermore, the court held that the prohibition for access to the internet will only be valid in certain circumstances only otherwise it'll cease to exist. Such impositions

affect the Fundamental Rights of the people, therefore the court ordered to follow the test of Proportionality to satisfy that no kind of violation of natural justice exists.

The court did not remove the restrictions on internet and movement of the citizens; however, the judgement deliver widened the interpretation of freedom of speech and expression by including the right to access the internet which was an essential part of the Article which could only be restricted in the situation of national security.

The judgement did not provide immediate relief to the citizens affected due to these orders but laid down principles for future suspension orders and their procedure to prevent the state for abuse of power. This is a solution for further issues.

The Internet has become a tool for spreading a piece of important news or is necessary for a two-way conversation. It has become an integral part of the life of people. In a situation such as todays, the circumstances of coronavirus lockdown, wherein because of internet connection students all over the world can have access to education even after staying at home, people around the world can work and make money for their living.

In a situation such as this internet plays a crucial role, which now has become a right in the interpretation of Right of Freedom and expression under Part III of the Indian Constitution.

# CHAPTER – V

# CONCLUSION AND SUGGESTIONS

## 5.1 Conclusion

An astonishing method for practicing one's right aside to talk wholeheartedly of talk and clarification. Notwithstanding, it is in like way been progressively utilized for unlawful acts which has offered the ability to the Association's endeavors at controlling on the web media. On one sideit is required to hault all the unfriendly and unlawful substances being moved by methods for online media while obviously there are genuine feelings of dread of infringement of social opportunities of individuals as an unavoidable delayed consequence of oversight. Thus, what is enchanting is the correct standard of the online media which doesn't misuses the basic rights ensured in the Indian Constitution. Notwithstanding, it ought not be so that there will be supreme open entryway given rather a halfway ought to be observed of rule and not control. An assessment of the current IT laws depicts that there is inaccessible and huge force in the responsibility for administering bodies while supervising security in the web. Besides, still, after all that, it isn't adequate to check the abuse of online media. Therefore, a particular authorizing is beguiling to direct online media. Notwithstanding, there are different handy bothers which may grow at the same time. There is a slight line which disconnects the satisfaction in one's advantage and the infringement of the enjoyer's advantage simultaneously. In online media, the activity of the choice to talk uninhibitedly of talk and articulation by one may accomplish the interference of security and criticizing. Once more, the possibility of stunning substance sways starting with one individual then onto the accompanying. A development is an innocuous procedure for gaining some incredible experiences yet offense might be taken by the individual concerned. So similarly, disdain talk, biased individual comments, demanding musings have various consequences for various individuals. Reviewing all the recently referenced, the advantage aside to talk uninhibitedly of talk and articulation and the advantage to security ought to be ensured by the association in the area of online media. It is legitimately pivotal media to pass on one's tendency that ought

to be regarded. Hence, it is supported for the Association to shape a chamber with some specific experts in it and take care at all the reasonable features of the utilization. 1982 gave under Segment 25(2) of the Conventions Show 1962 the notification A dated Walk 1, 1981 was displaced and Rupees. 550 per ton were constrained as customs commitment on newspaper as well as collaborator obligation was constant at Rupees. 275 for every ton. In all Rs. 825 for each ton of paper must be paid as commitment. Under the newspaper technique of the Assembly there were 3causes of flexibly of newspaper -

(i) high oceans bargains. (ii) bargains from the help stock created by the State Trading Association which fuses imported newsprint, besides, (iii) newspaper produced in India. Imported newsprint is a noteworthy Part of the total measure of newspaper utilized by any paper establishment. The authenticity of the burden of import commitment on newspaper imported from abroad under section 12 of the Traditions Demonstration 1962 (Act 52 of 1962) read with Segment 2 and Heading No. 48.01/21 Sub-heading No. (2) in the Primary Plan to the Customs Obligation Act, 1975 (Act 51 of 1975) also, the cost of colleague commitment under the Reserve Showing, 1981 on newspaper as changed by warnings gave under territory 25 of the Conventions Exhibition 1962 with sway from Walk 1, 1981 was tried in the writ petitions. In the writ petitions it was battled (I) that the weight of the import commitment has the quick effect of obliterating the capacity to talk uninhibitedly and verbalization promised in the Constitution as it incited the extension in the expense of papers and the non-negligible results of decrease of their scattering; (2) that with the development of people likewise, capability in the country each paper is depended upon to enlist a modified improvement of at least 5 percent in its stream every year anyway this advancement is authentically 'deterred by the hike in the papers price; (3) that the technique received by the Traditions Demonstration, 1962 and the Customs Duty Act, 1975 in choosing the movement of import commitment has uncovered E the newspaper distributors to Boss impedance; (4) that there was no convincing motivation to constrain customs commitment on newspaper which had thoroughly enjoyed total avoidance from its portion till Walk 1, 1981, as the new exchange position was entirely pleasant. Under the arrangement in power, the State Exchanging Organization of India sells newspaper to little papers with a course of fewer than 15000 at a cost which avoids any import commitment. to medium.

A course some place in the scope of 15000 and 50,000 at a worth which joins 5% advancement valorem commitment (by and by Rs. 275 for each MT) in addition, to large papers having a Spread of more than 50,000 at a worth which joins the cost of 15percent advancement valorem commitment (directly Rupees. 825 for every MT). This course of action of papers into tremendous, medium and little papers is outlandish as the purchases on high seas are often influenced by a distributor possessing numerous papers which may have a spot with different classes; (5) that the gigantic addition in the expense of newspaper resulting to Walk 1, 1981 and also the inflationary budgetary conditions which led to more prominent creation cost have made it unfathomable for the business to bear the commitment any more. While the ability to endure the obligation is an important part in choosing the reasonableness of the request, the continuation of the cost is violative of Article 19(1)(a) and also Article 19(1)(g) in the Constitution. The weight of the cost for gigantic papers by the Pioneer is done with a view to covering dispersal of papers which are significantly distrustful of the introduction of the organization. The request for papers into pretty much nothing, medium additionally, big for explanations behind cost of import commitment is violative of Article 14 in the Constitution; and (6) that the force of the Legislature to demand evaluations of any type on the paper establishment rings the passing cost of the chance of press likewise, would be totally opposite the Constitution's spirit. The Indian Union challenged the writ petitions guaranteeing (I) that the Organization had gathered the commitment in the public enthusiasm to extend the salary of the Organization. Right when prohibition is given from the conventions commitment, the Pioneer needs to satisfy itself that there is another looking at public enthusiasm supporting such exemption as well as that in the nonappearance of any of these open enthusiasm, there is no ability to pardoned anyway to do the order of Parliament which has constant the movement of commitment by the Customs Expense Act, 1975; (2) that the portrayal of papers for reasons for yielding rejection is done the public energy having appreciation to material considerations, and also that the cost was certainly not mala fide since every segment of the overall population needs to deal with its due bit of the budgetary load of the state, cost of customs commitment on newsprint can't be seen as violative of Article 19(1) (a). The solicitation that the heaviness of expense appraisal is irrational is an immaterial factor to the obligation of import commitment on newspaper; (3) that the way that the new exchange place was pleasing was no limit to the burden of import commitment; and (4) since the

commitment constrained is a circumlocutory evaluation which would be borne by the purchaser of paper, the specialist couldn't feel violated by it.

## 5.2 Suggestions

From the above views the following suggestions could have been made:

1. Requirement for a constitutional amendment: a constitutional amendment is required, whereby the right to privacy will be specifically promised by adding a new clause. Such an amendment is appropriate to recognise the right to privacy. Only then can personal freedom be more meaningful, as Art. 21 promises.

2. Evolving National Legislation: India requires a comprehensive framework granting people the freedom to monitor their personal information processing and dissemination. Legislation implementing fundamental concepts of fair information practices is a critical component of this approach. These standards grant people the right to restrict data storage, data exchanges, and secondary uses of data; the right to view personal data and make corrections; the right to protect personal data; and the right to be aware of data collection and transfer. Therefore, the law would impose limits on the consumers' storage and use of personal data. Users of sensitive information will be expected to specifically notify people when sensitive information is gathered and how it could be used. Legislation will mandate recipients of personal information to provide people an ability to discourage further distribution of personal information. Accordingly, internet publishing and gathering of personal information will be sufficiently limited. Data privacy rights, sovereignty rights and data safety interests need to be safeguarded with adequate regulatory frameworks to guarantee data confidentiality and sharing of private or sensitive data in cyberspace.

3. Freedom of speech and expression on the Internet should be maintained and advanced technical and legal solutions should be built to protect online privacy and records. Fair restrictions should remain appropriate in statute, and should not fetter Internet and communications progress. Only in situations of dire need can Internet censorship be invoked on justifiable grounds, such as protecting

national sovereignty, public order and security.

4. A substantive legislation is required that would include an enforcement process that would impose penalties against violators and provide remedy for aggrieved individuals. Most successful will be law establishing a private right of redress for aggrieved citizens along with a government regulator's regulatory enforcement powers.

5. While such a robust privacy policy is sufficient to promise the right of the person to monitor the collection and dissemination of sensitive information, the persons involved must exercise this monitor. Online consumers need to take responsibility for their electronic messages. They must be careful about the content of these messages and use effective security mechanisms, such as encryption, to safeguard their privacy. Individuals will need to consider how much personal information to share when registering on blogs and engaging in commercial transactions. By anticipating the risks of internet use and using previously outlined legal provisions, people will be able to take full advantage of the numerous economic, educational land social opportunities now and in the future in cyberspace.

6. Internet messages are confidential only when you use encryption tools. But most encryption systems aren't user-friendly and so can be useless. No state regulatory framework will be sufficient to protect individuals' privacy. Therefore, individuals must take such precautions:

   A. They do not have confidential personal details (phone number, address, pin credit card number, , health information, date of birth, holiday times, etc.) in chat rooms, social security number, forum threads, e-mail, or in your online profile.

   B. When 'surfing the internet,' submitting email addresses, and engaging in online forums, it's convenient to believe that these things are personal. Online communications, though, could be intercepted and the activities tracked in the vast untamed world of cyberspace.

   C. If someone believes the 'delete' command lets the e-mails vanish, it's a myth.

These communications can be recovered from back-up systems. Computer utility programmers can get messages that got deleted from user's hard drive. If one is involved in permanently wiping messages as well as other program me data, a file erasing programmer can be used.

D. Web consumers must be informed by parents about proper online privacy behavior. Caution about sharing details about yourself and family.

E. User must be known about voluntary knowledge exchange and no data can be accessed without express permission. Often access protected websites when sharing confidential personal information, such as online credit card number. Often use data security methods.

7. Data protection and data privacy are 2 of any civilized nation's most important rights. Every individual and organization have the right to protect and preserve confidential, confidential, commercial and records. This refers more to personal records and data that must be kept confidential in the United States under legislation such as the 1996 Health Care Portability and Transparency Act (HIPAA). India has no dedicated legislation like HIPPA and HIPPA compliance in India is not being practiced. Similarly, in India, we have no dedicated medical privacy regulation that will shield patients' confidential health- related records. In brief, in India, we don't have dedicated data security rules, Indian data privacy rules, and India's privacy laws.

8. As a guideline, a note and take-down protocol modeled after the DMCA is suggested, providing notification to specialist entities within the institutional or technical organizations of Member States. Regarding the EU Directive's second greatest weakness, a "put-back protocol" should be initiated in order to have full security for all concerned parties. Such a protocol should allow the owners of disabled websites the ability to practice protection and at least avoid unwarranted blocking or deleting their content. Finally, responsibility must be enforced on persons who knowingly send misleading or baseless notices leading to the removal of Web page material.

9. involves policing any part of the Internet, it will contribute to privacy loss and potentially have a catastrophic impact. There is a need for consensus on the definition of the word due diligence because ISPs' primary purpose is to create the Internet, not play a policeman's role. "Due diligence" should be viewed narrowly. If an ISP 's conduct is fair, ISP should not be held responsible for any Internet operation. The rules should be realistic, since an ISP cannot be able to control all Internet operations.

10. Despite the usefulness of these areas, though, we do lack regulatory mechanisms in the areas of security of data, data protection and data privacy. We desperately require devising India's data security legislation and privacy rules in India. In India, privacy and data security protections were neglected at the policy level. Indeed, Indian national privacy legislation is also lacking. Also, policy efforts are not satisfactory in India. India's national privacy policy is urgent.

11. The ball is in court again and needs to take a constructive role again. India's Supreme Court must extend privacy protection in India, as it requires hour. Fortunately, the problem is already pending and there wouldn't be much

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