



## Article 19(A) Freedom of Speech and Expression

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### INTRODUCTION

Speech is God's gift to mankind. Freedom of expression and speech is fundamental rights playing vital role in exercising and protecting others rights. Freedom of speech and expression means the right to express individuals own convictions and opinions freely by words of mouth, writing, pictures, or any other mode basically freedom of expression and speech means right is regarded as the first condition of liberty. It is truly said that about the freedom of speech and expression that it is a mother of all other liberties.

However, freedom of expression can be abused in certain situations and it transfers into a completely opposite phenomenon. Certain individuals and groups can express ideas on superiority of a certain race, religion or nation, with the intention to humiliate all those not belonging to „their“ group, as well as to incite to exile, isolation and even genocide. In such cases, freedom of expression is interpreted too broadly and transfers into a hate speech. These phenomena highlight the discussion on freedom of expression, its limitations and abuse of this freedom. “The transition we are in and the situation with the media, including the poor “word” culture, is fertile ground for such public dissemination or fuelling of hatred, without any sense of responsibility for the uttered word, which becomes the main generator of the social climate of intolerance and prejudice on national, ethnic and other grounds, which is emerging as a general psychological framework for expansion of all forms of hate crimes- from physical to verbal and psychological violence.<sup>1</sup>”

<sup>1</sup><http://www.legalserviceindia.com/legal/article-77-freedom-of-speech-and-expression.html>

### Freedom of Expression and Speech –Meaning and Scope

Article 19 (a) of Indian constitution say that all citizen shall have right to freedom of expression and speech<sup>2</sup> but under Article 19(2) law imposing reasonable restrictions on the exercise of that right in the interests of the security of the state, friendly relations with foreign states, public order decency or morality, contempt of court, defamation, incitement to an offence, or sovereignty and integrity of India.<sup>3</sup>

One of the most basic elements of a healthy democracy for it allows its citizen to participate fully and effectively in the social and political process of the country. In fact the freedom of speech and expression gives greater scope and meaning to the citizenship of a person extending the concept from the level of basic existence to giving the person a political and social life.<sup>4</sup> Freedom of speech and expression this right is available only to a citizen of India and not to foreign nationals. It is important to note that the scope of the “freedom of speech and expression” in Article 19(1) (a) of the Constitution has been expanded to include the right to receive and disseminate information. It includes the right to communicate and circulate information through any medium including print media, audio, television broadcast or electronic media<sup>5</sup>.

<sup>2</sup><https://www.lawteacher.net/free-law-essays/constitutional-law/freedom-of-speech-and-expression-constitutional-law-essay.php>

<sup>3</sup><https://www.lawctopus.com/academike/freedom-of-speech-and-expression>

<sup>4</sup><https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>

<sup>5</sup><https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>

Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press and the same is incorporated into the freedom of expression, which is given on all citizens (Virender Vs. Province of Punjab, A. 1958, SC. 986 and Sakal Papers Vs. Association of India A.1962 S.C. 305). It has additionally been by this judgment that freedom of the press under the Indian Constitution isn't higher than the freedom of an ordinary citizen.

### Historical Background of Freedom of Speech and Expression

Freedom to express and disseminate one's opinion is a demand of the European enlightenment on the State which took its root initially in England within the framework of common law precedents.<sup>7</sup> At the end of the 18th century, freedom of expression of opinion expanded through the first basic rights proclamations. In the context of English legal position, section 12 of the Virginia Bill of Rights, 1776, declared that the freedom of the press is one of the great bulwarks of liberty and can never be restrained by despotic Governments. Contrary to the English tradition of Parliamentary supremacy the 1st Amendment of the Constitution of United States binds Parliament also. The Congress shall make no law abridging the freedom of speech or of the press. In Article II of the French Declaration of the Rights of Man and of the Citizen, 1789, in the sense of enlightenment, the freedom of opinion was proclaimed as a human right "the unrestrained communication of thoughts or opinions being one of the most precious rights of man. Every citizen may speak, write and publish freely, provided he be responsible for the abuse of this liberty, in the cases determined by law. In the 19th century, the German States guaranteed freedom of opinion in their constitutions within the framework of general criminal laws mostly by express prohibition of subjecting the press to censor.<sup>8</sup> The Federal Constitutional Court has held that for a free democratic State the basic right to freedom of expression of opinion is an "essential constituent because only it enables permanent intellectual discussion, i.e. combat of opinions which are its life breath."<sup>6</sup>

### Scope of Freedom of Speech And Expression

The legal has been developing the region secured by the principal ideal to freedom of speech and

expression. Freedom of speech and expression is a fundamental element that a majority rule government keeps running with. For any majority rules system to flourish, individuals must be given the liberty to express their inclination without any restrictions. This imperative element of the freedom of speech and expression is cherished to the Indian citizens by Article 19(1) (a) of the Constitution of India. It gives that all citizens independent of shading, statement of faith and religion have the privilege to bring their voice up in issues of importance or generally without any limitation inside or without. This freedom comes in for the assumption that reasonability of men comes above everything else, and each person, by his/her own circumspection and knowledge comprehends what is great or bad.

### Freedom of Press

According to Article 19 (a) of the constitution of India guarantees the freedom of speech and expression but not expressly included the freedom of press. The phrase 'speech and expression' is of very wide connotation, 'expression' naturally presupposes a second party to whom the ideas are expressed or communicated. But it is implied that freedom of speech and expression includes freedom of press also. The freedom of expression, thus, includes the freedom to propagate one's own views and the views of others and freedom to communicate views to others.<sup>7</sup> That opportunity is guaranteed by flexibility of their distribution and course. So, the right to speak freely and expression incorporates the freedom of the press.<sup>41</sup> Unlike the American Constitution, Article 19(1) (a) of the India Constitution does not particularly or independently accommodate freedom of the press. The freedom of press means as medium of publication and is closely linked with freedom of person and independency of judiciary.

### Ground of Restrictions on Freedom on Freedom of Speech and Expression,

#### 1. Security of state:

Security of state is of very importance and a government must have power to impose restrictions on the activity affecting it. Under article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of

<sup>6</sup>[http://shodhganga.inflibnet.ac.in/bitstream/10603/102441/9/09\\_chapter-2.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/102441/9/09_chapter-2.pdf)

<sup>7</sup>[http://shodhganga.inflibnet.ac.in/bitstream/10603/102441/9/09\\_chapter-2.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/102441/9/09_chapter-2.pdf)

state.<sup>8</sup> Anyway the expression "security" is exceptionally urgent one. The expression "security of state" alludes just to genuine and bothered types of open request e.g. resistance, taking up arms against the State, revolt and not normal ruptures of open request and open wellbeing, e.g. unlawful get together, revolt, affray. Subsequently speeches or expression with respect to a person, which actuate to or support the commission of vicious wrongdoings, for example, kill are matters, which would undermine the security of State.

### 2. Friendly relation with Foreign states:

In the present global world a country has to maintain good relationship with other countries. Something which has potential to affect such relationship should be checked by government.<sup>9</sup> Remembering this thing, this ground was included by the constitution (First Amendment) Act, 1951. The question behind the provision is to preclude unrestrained noxious publicity against a remote inviting state, which may endanger the upkeep of good relations between India, and that state

### 3. Public order:

Next restriction prescribed by constitution is to maintain public order.<sup>10</sup> This ground was included by the Constitution (First Amendments Act). 'Public order' is an expression of wide undertone and means "that condition of quietness which wins among the individuals from political society because of inner directions authorized by the Government which they have built up."

### 4. Decency and morality:

The best approach to express something or to state something ought to be not too bad one. It ought not to influence the morality of the society unfavorably. Our constitution has dealt with this view and embedded decency and morality as a ground. The words 'morality or decency' are expressions of wide importance. Areas 292 to 294 of the Indian Penal Code give cases of restrictions on the right to speak freely and expression in light of a legitimate concern for decency or morality. These segments prohibit the

deal or appropriation or show of profane words, and so on in public places. No fix standard is set down till currently with reference to what is moral and profane. The standard of morality shifts now and again and from place to place.

### 5. Contempt of court:

In a vote based nation Legal assumes essential part. In such circumstance it ends up fundamental to regard such establishment and its request. Subsequently, limitation on the freedom of speech and expression can be imposed on the off chance that it surpasses the sensible and reasonable farthest point and sums to contempt of court. As indicated by the Section 2 'Contempt of court' might be either 'civil contempt' or 'criminal contempt.' However now, Indian contempt law was corrected in 2006 to make "truth" a guard. Be that as it may, even after such correction a man can be rebuffed for the statement except if they were made in broad daylight intrigue. Again in *Aberrant Expense Professionals Assn. versus R.K. Jain*, it was held by court that, "Truth in light of the realities ought to be permitted as a substantial barrier if courts are requested to choose contempt procedures identifying with contempt continuing identifying with a speech or a publication or article". The capability is that such guard ought not to conceal to escape from the outcomes of a consider push to scandalize the court.

### 6. Defamation:

Ones' freedom, be it of any kind, must not influence the reputation or status another individual. A man is known by his reputation more than his riches or whatever else. Constitution considers it as ground to put limitation on freedom of speech. Fundamentally, an announcement, which injures a man's reputation, adds up to defamation. Defamation comprises in presenting a man to disdain, criticism, or scorn. The civil law in identifying with defamation is still unmodified in India and subject to specific exemptions.

### 7. Incitement to an offence;

This ground was additionally included by the constitution (First Amendments) Act, 1951. Clearly, freedom of speech and expression can't give a privilege to induce individuals to submit offense. The word 'offense' is characterized as any demonstration or omission made punishable by law until further notice in force.

<sup>8</sup><https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>

<sup>9</sup><https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>

<sup>10</sup><https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>

## 8. Sovereignty and Integrity of India:

To maintain sovereignty and respectability of a state is prime obligation of government. Considering into it, freedom of speech and expression can be confined so as not to allow anyone to challenge sovereignty or to allow anyone to lecture something which will bring about risk to trustworthiness of the country.

Article 19(2) law imposing reasonable restrictions on the exercise of that right in the interests of the security of the state, friendly relations with foreign states, public order decency or morality, contempt of court, defamation, incitement to an offence, or sovereignty and integrity of India.

### Does section 66(A) of the IT Act violate Article 19(a) of the constitution of Indian?

Section 66A of the IT: Punishment for sending offensive messages through communication services etc. Any person who send, by means of a computer resource or a communication device,

1. Any information that is grossly offensive or has menacing character;
2. Any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently by making use of such computer resource or a communication device. Any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages<sup>11</sup>

In the event that the police consider a tweet or blog 'horribly offensive' or 'of menacing character', or causing 'burden, annoyance, danger, obstruction or insult', they can prosecute the netizen dependable under Section 66A of the IT Act, which conveys a greatest imprisonment of three years. This is surely a break of the fundamental right to speech.

## CONCLUSION

Freedom of speech and expression is one of the basic guarantees provided by civil society. However in modern world right to freedom of speech is not limited to express ones view through words but it also includes circulating ones views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information of press etc. It is a right to express and self-realization. Basically freedom of expression and speech means right is regarded as the first condition of liberty. But under

<sup>11</sup><https://www.quora.com/Does-Section-66-A-of-the-IT-Act-violate-Article-19-1A-of-the-Constitution-of-India>