

**CLASS- B.A.LL.B IIIrd SEMESTER**  
**SUBJECT- MEDIA LAW**  
**PAPER CODE- BL- 3002(A)**  
**FREEDOM OF SPEECH AND EXPRESSION UNDER INDIAN**  
**CONSTITUTION**

Freedom of speech and expression has been described as the mother of all liberties . preamble of the Constitution of India resolves to secure for the citizen of India, liberty of thoughts, expression and belief. Article 19 (1) of the Indian Constitution says that All citizens shall have the right

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

Article 19(1) (a) of the Constitution of India states that, all citizens shall have the right to freedom of speech and expression. The philosophy behind this Article lies in the Preamble of the Constitution, where we solemn to secure to all its citizen, liberty of thought and expression. The Right of freedom of Speech and Expression implies that every citizen has the rights to express his views, opinions, belief, and convictions freely by mouth, writing, printing or through any other methods<sup>1</sup>. The exercise of this right is, however, subject to reasonable restrictions for certain purposes being imposed under Article 19(2) of the Constitution of India.

**The Grounds on Which This Freedom Could Be Restricted**

Clause (2) of Article 19 of the Indian Constitution imposes certain restrictions on free speech under following heads:

1. security of the State,
2. friendly relations with foreign States
3. public order,
4. decency and morality,
5. contempt of court,

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<sup>1</sup> Divan Madhavi Goradia, Facets of Media Law, EBC, Second Edition ,2013, P.2

6. defamation,
7. incitement to an offence, and
8. Sovereignty and integrity of India.

### **Object of Freedom of speech and expression**

Freedom of speech not only allows people to communicate their feelings, ideas, and opinions to others, rather it serves a broader purpose<sup>1</sup> as well. These purposes can be classified into four:

1. It help individuals in self- realization.
2. Is help in discovery of truth.
3. It help in the decision-making process;
4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change<sup>2</sup>.

### **Different Dimensions of Article 19 (1) (a)**

**In Romesh Thappar v. State of Madras**<sup>3</sup> the Supreme Court held that right to free speech and expression include the right not only to publish but also to circulate information and opinion. Circulation is the lifeline of freedom. Without right to circulate, the right to free speech and expression would have little meaning. The freedom of circulation has been held to be essential as the freedom of publication<sup>4</sup>.

**Sakal Papers (P) Ltd. v. Union of India**<sup>5</sup> the supreme court held that state could not make laws which directly affect the circulation of a newspaper for that would amount to violation of the freedom of speech. The right under article 19 (1) (a) extends not only to the matter which the citizen is entitled to circulate but also to the volume of circulation<sup>6</sup>.

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<sup>2</sup> <https://blog.ipleaders.in/freedom-of-speech/> visited on 15/9/2020, time: 3:00pm.

<sup>3</sup> AIR 1950 SC 124

<sup>4</sup> Nanda Dr. Sukanta K., Media Law, Central Law Publication, First Edition (2014) P. 17-18

<sup>5</sup> AIR 1962SC305

<sup>6</sup> Jain M.P, Indian Constitutional Law, Lexis Nexis, seventh Edition(2014), P. 1027

**Bijoe Emmanuel v. State of Kerala**<sup>7</sup> this case is also known as national anthem and freedom of silence case. In this present case three children were expelled from the school for not singing the national anthem although they respectfully stood when the others were singing the national anthem. They approach the H.C. of Kerala against the slaid order, but H.C. upheld the expulsion valid by imposing the fundamental duty. On appeal, the Supreme Court held that the students did not commit any offence under the Prevention of Insults to National Honour Act, 1971. Also, held that freedom of speech and expression also include the right to silence itself<sup>8</sup>.

In the recent case of **Kanhaiya Kumar v. State of NCT of Delhi**<sup>9</sup> students of Jawaharlal Nehru University organized an event on the Parliament attack convict Afzal Guru, who was hanged in 2013. The event was a protest through poetry, art, and music against the judicial killing of Afzal Guru. Allegations were made that the students in the protest were heard shouting anti-Indian slogans. A case therefore filed against several students on charges of offence under Sections 124-A, 120-B, and 34. The University's Students Union president Kanhaiya Kumar was arrested after allegations of 'anti-national' sloganeering were made against him. Kanhaiya Kumar was released on bail by the Delhi High Court as the police investigation was still at nascent stage, and Kumar's exact role in the protest was not clear<sup>10</sup>.

In **Hamdard Dawakhana v. Union of India**<sup>11</sup>, The validity of the Drug and Magic Remedies (Objectionable Advertisement) Act, which put restrictions on advertisement of drugs in certain cases and prohibited advertisements of drugs having magic qualities for curing diseases was challenged on the ground that the restriction on advertisement abridged the freedom. The Supreme Court held that an advertisement is no doubt a form of speech but every advertisement was held to be dealing with commerce or trade and not for propagating ideas. So Advertisement of prohibited drugs would, therefore, not fall within the scope of Article 19(1) (a)<sup>12</sup>.

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<sup>7</sup> 1986 3 SC 615

<sup>8</sup> Nanda Dr. Sukanta K., Media Law, Central Law Publication, First Edition (2014) P.25

<sup>9</sup> (CRL)558/2016

<sup>10</sup> <https://www.arre.co.in/politics/kanhaiya-kumar-sedition-jnu-delhi-high-court/> visit on 1/10/2020, time- 10:20 am

<sup>11</sup> AIR 1960 SC 554

<sup>12</sup> Divan Madhavi Goradia, Facets of Media Law, EBC, Second Edition ,2013, P.23

In **People’s Union for Civil Liberties (PUCL) v. Union of India**<sup>13</sup> case, public interest litigation (PIL) was filed under Article 32 of the Indian Constitution by PUCL, against the frequent cases of telephone tapping. The validity of Section 5(2) of The Indian Telegraph Act, 1885 was challenged. It was observed that “occurrence of public emergency” and “in the interest of public safety” is the *sine qua non*<sup>14</sup> for the application of the provisions of Section 5(2). If any of these two conditions are not present, the government has no right to exercise its power under the said section. Telephone tapping, therefore, violates Article 19(1) (a) unless it comes within the grounds of reasonable restrictions under Article 19(2)<sup>15</sup>.

In **Indian Express Newspapers v. Union of India**<sup>16</sup> the Court, observed that, Article 19 of the Indian Constitution does not use the phrase “freedom of press” in its language, but it is contained within Article 19(1) (a). There cannot be any interference with the freedom of press in the name of public interest. It is, therefore, the primary duty of courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate. Similarly, imposition of pre-censorship of a journal, or prohibiting a newspaper from publishing its own views about any burning issue is a restriction on the liberty of the press<sup>17</sup>.

**Mahesh Bhatt v. Union of India**<sup>18</sup> the Delhi High Court struck down certain Rules framed under the Cigarettes and Other Tobacco Products (Prohibition and Regulation) Act, 2003, as ultra vires, and as violative of Article 19(1)(a) of the Indian constitution. This Act impose a blanket ban on the depiction of smoking in films. The court upheld the right of the film maker and to artist to use his medium of project life in all its hues, its foible included<sup>19</sup>.

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<sup>13</sup> AIR 1997 SC 568

<sup>14</sup> Black’s Law Dictionary: without which not, meaning something that is absolutely essential

<sup>15</sup> Singh M.P., Constitution of India, Eastern Book Company, 12<sup>th</sup> Edition P. 142

<sup>16</sup> 1985 2 SCC 434

<sup>17</sup> Divan Madhavi Goradia, Facets of Media Law, EBC, Second Edition, 2013, P.24

<sup>18</sup> (2009) 156 DLT 725

<sup>19</sup> Bhasin Lalit, Media World & the Law, Universal Law Publishing Co. 2010 edition, P. 27

**K.A. Abbas v. Union of India**<sup>20</sup> This case is one of the first in which the issue of prior censorship of films under Article 19(2) came into consideration of the Supreme Court of India. Under the Cinematograph Act, 1952, films are divided into two categories- ‘U’ films for unrestricted exhibition, and ‘A’ films that can be shown to adults only. The petitioner’s film was refused the ‘U’ certificate, and he challenged the validity of censorship as violative of his fundamental right of freedom of speech and expression. The Court, however, held that motion pictures are able to stir emotions more deeply than any other form of art. Hence, pre- censorship and classification of films between ‘U’ and ‘A’ was held to be valid and was justified under Article 19(2) of the Constitution<sup>21</sup>.

**Bobby Art International v. Om pal Singh Hoon**<sup>22</sup> the petitioner sought the censor of scenes of frontal nudity showing Phoolan Devi being paraded naked before the village folk after days of being gang raped. Supreme court rejecting the plea and held that the rape scene in this movie also helps to explain why Phoolan Devi became what she did. Rape and sex are not being glorified in the film, it shows what a terrible and terrifying effect rape and lust can have upon the victim<sup>23</sup>.

In **Bennet Coleman and Co. v. Union of India**<sup>24</sup> the validity of the Newsprint Control order was challenged. The Order fixed the maximum number of pages which a newspaper could publish, and this was said to be violative of Article 19(1) (a) of the Indian Constitution. The government raised the contention that fixing the newsprint would help in the growth of small newspapers as well as prevent monopoly in the trade. It also justified its order of reduction of

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<sup>20</sup> AIR 1971 SC 481

<sup>21</sup> Singh M.P., Constitution of India, Eastern Book Company, 12<sup>th</sup> Edition P. 142

<sup>22</sup> AIR 1996 SC 1846

<sup>23</sup> Divan Madhavi Goradia, Facets of Media Law, EBC, Second Edition ,2013, P.13

<sup>24</sup> AIR 1973 SC 106

page level on the ground that big dailies devote a very high percentage of space to advertisements, and therefore, the cut in pages will not affect them. The Court held the newsprint policy to be an unreasonable restriction, and observed that the policy abridged the petitioner's right of freedom of speech and expression. Hence, any restriction on the number of pages or fixation of page level of a newspaper invalid and violative of Article 19(1) (a)<sup>25</sup>.

**PUCL v. Union of India**<sup>26</sup> it was held that a voter exercise his freedom of expression under Article 19(1)(a) by casting his vote. For this purpose , the voter is entitled to information about the antecedent of a candidate<sup>27</sup>.

**In Naveen Jindal v. Union of India**<sup>28</sup> the respondent was stopped from flying the National Flag at the top of his factory. Before the High Court, he contended that no law could prohibit the flying of the National Flag by Indian citizens. Flying of National Flag with respect and dignity being a fundamental right, the Flag Code which contains only executive instructions of the Government of India and, thus, being not a law, cannot be considered to have imposed reasonable restrictions in respect thereof within the meaning of Clause (2) of Article 19 of the Constitution of India. The Apex Court held that right to fly the National Flag is a fundamental right but subject to restrictions<sup>29</sup>.

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<sup>25</sup> Jain M.P, Indian Constitutional Law, Lexis Nexis, seventh Edition(2014), P. 1028

<sup>26</sup> AIR 2003 SC 2363

<sup>27</sup> Divan Madhavi Goradia, Facets of Media Law, EBC, Second Edition ,2013, P. 32

<sup>28</sup> AIR 2004 SC 1559

<sup>29</sup> Singh M.P., Constitution of India, Eastern Book Company, 12<sup>th</sup> Edition P. 143

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