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**THE ROLE OF CONSTITUTIONAL LAW IN PROTECTING FREE
SPEECH**

***Abstract**— The following presented study is an attempt to understand The Role of Constitutional Law in Protecting Free Speech as per Article 19(1)(a) Freedom of Speech and Expression under The Constitution of India.*

The study discusses the Freedom of Speech and Expression among the people of India and how the Constitution is protecting it with the help of leading cases falling under the different facets of Article 19(1)(a).

As the study proceeds it dwells into the intricacies of Article 19(1)(a) and analyses it along with legal and judicial precedents. The study has adopted the descriptive and analytical research methodology to critically analyze the concept of the role of constitutional law while protecting free speech.

***Keywords:** Freedom of Speech & Expression, Article 19(1)(a), The Indian Constitution.*

1. INTRODUCTION

In the study, the author discusses Art. 19(1)(a) of the Constitution of India and specifically focuses on the role of constitutional law in protecting free speech. In this paper, various leading case laws have been examined to get a critical understanding of the freedom of speech and expression.

Article 19(1) reads as follows:

Protection of certain rights regarding freedom of speech, etc.- (1) 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 unions¹ [or cooperative societies]*
- d. *To move freely throughout the territory of India;*
- e. *To reside and settle in any part of the territory of India;² (and)*
- f. ³[***]
- g. *To practice any profession, or to carry on any occupation, trade or business.⁴*

Freedom of speech and expression means the right to speak, and the right to express oneself through any medium-by word of mouth, writing, pictures, signs, the internet, etc. Every citizen has a right to hold an opinion and to be able to express it, including the right to receive and impart information. The expression 'freedom of speech and expression' has a wide connotation, it includes the freedom

of the propagation of ideas, their publication, and circulation.

2. ANALYSIS

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

Article 19(1) guarantees the right to the former and not to the latter. Freedom of speech and expression has a well-recognized connotation which means the liberty to express one's views, opinions, and beliefs. It does not mean the right to say whatever, whenever and wherever one likes. Other clauses grant the right to do something, whereas 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 precedes them all.

Freedom of speech and expression means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures, or any other mode. A democratic government attaches great importance to this freedom because without the freedom of speech, an appeal to reason, which is the basis of democracy, cannot be made.

2.1 Scope of Freedom of Speech and Expression

There are various facets of the freedom of speech and expression that have been

¹ Ins. by the constitution (ninety-seventh amendment) act, 2011, Sec.2 (w.e.f. 15-02-2012)

² Ins. by the Constitution (forty-fourth amendment) act, 1978, Sec. 2(a)(i) (w.e.f. 20-06-1979)

³ Sub-clause (f) omitted by the constitution (forty-fourth amendment) act, 1978, Sec. 2(a)(ii) (w.e.f. 20-06-1979)

⁴ The Constitution of India

recognized by the courts. Some of the facets or rights that constitute the freedom of speech and expression are as follows:

- Liberty of the press
- Pre-censorship
- Freedom of circulation
- Commercial advertisements
- Dramatic performance
- Right to education
- Right to know
- Right to reply
- Right to remain silent
- Right to use social media
- Casting of vote
- Right to fly the national flag
- Gender identity

2.2 Reasonable Restrictions under Article 19(2)

The freedom of speech and expression does not confer-

- an absolute right to speak or publish without responsibility whatever one may choose, or
- an unrestricted unbridled license that gives immunity for every possible use of language and
- does not prevent punishments for those who abuse this freedom.

Clause (2) of Article 19 specifies the grounds on which the freedom of speech and expression may be restricted. It enables the legislature to impose reasonable restrictions on the right to free speech “in the interest of” or “in relation to” the following-

- sovereignty and integrity of India;
- security of the state;

- friendly relations with foreign states;
- public order;
- decency or morality;
- contempt of court;
- defamation; and
- incitement to an offense.

Reasonable restrictions under these heads can be imposed only by a duly enacted law and not by executive action.

3. UNDERSTANDING THE ROLE OF CONSTITUTIONAL LAW IN PROTECTING FREE SPEECH IN DIFFERENT FACETS

3.1 Liberty of the press

The people of the nation should have the freedom of the press to express their feelings and to make their views known to the people at large. The press is a powerful medium of mass communication and is free to play its role in building a strong variable society. If there is a denial of the freedom of the press or the people, it will necessarily undermine the power to influence people’s opinions and be counter to democracy.

Freedom of the press is nowhere specifically mentioned in Article 19(1)(a) and in the constituent assembly debates, it was made clear by Dr. Ambedkar, that there is no special need to mention freedom of the press separately as it comes under the ambit of the right of expression of a citizen.

In *Romesh Thapar v. State of Madras*⁵ Patanjali Shastri CJ observed that:

“Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible. The freedom of such amplitude might involve risks of abuse. But the framers of the constitution may well have reflected, with Madison who was ‘the leading spirit in the preparation of the First Amendment of the federal constitution,’ that ‘it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigor of those yielding the proper fruits’.”

3.2 Pre-censorship

The term censorship comes from the Latin ‘censere’ meaning to give one’s opinion, or to assess. Censorship may be applied to both written and oral communications its span encompasses books, magazines, newspapers, radio, TV, movies, dramas, paintings, plays, speeches, dance, music, art, literature, etc. deemed to be offensive, indecent, obscene, and sexually explicit.

In *Brij Bhusan v. State of Delhi*⁶, the court struck down an order issued under Sec. 7(1)(c), East Punjab Safety Act, 1950, directing the editor and publisher of a newspaper “to submit for scrutiny, in duplicate, before publication, till further

orders, all communal matters and news and views about Pakistan, including photographs and cartoons”, observing:

“There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the freedom of speech and expression declared by Article 19(1)(a).”

3.3 Freedom of circulation

Freedom of the press consists of several rights and one such right is freedom of publication. Publication means dissemination and circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation, the publication would be of little value. The newspapers should have the freedom to publish any number of pages or to circulate it to any number of persons write circulation is said to be the facet of freedom of speech which is one of the fundamental rights guaranteed to the citizens of our country under Article 19(1)(a) of our constitution.

In *Sakal Papers (P) Ltd. v. Union of India*⁷, the daily newspapers (price and page) order, 1960, which fixed the number of pages and sizes which are newspaper could publish at a price was challenged by the petitioners on the ground that it infringed the liberty of the press implicit in Article 19(1)(a). The order affected the liberty of the press because its adoption would mean the petitioners explained either the reduction in the existing number of pages or the raising of the price. In either case, there

⁵ 1950 SCR 594: 1950 SCC 436

⁶ 1950 SCR 605: 1950 SCC 449

⁷ AIR 1962 SC 305: (1962) 3 SCR 842

would be a reduction in the volume or circulation of the paper and, therefore, a direct violation of the liberty of the press. On behalf of the state, the law was justified as a reasonable restriction on the business activity of a newspaper in the interests of the public.

3.4 Commercial advertisements

The essence of free speech is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution restriction or repression by the government. Advertising is a form of communication for marketing and is used to encourage or persuade an audience to continue or take some new action. Most commonly the desired result is to drive consumer behavior with respect to a commercial offering although political and ideological advertising is also common.

A law that put restrictions on the publication, through the press or other means of advertisements to promote the sale of certain goods did not violate the right to free speech or the press. Here in the case of *Hamdard Dawakhana v. Union of India*⁸, the advertisement was part of business, its object was the promotion of business and not the exercise of freedom of speech which is a privilege for the propagation of ideas-social, political, or economic or for the furtherance of literary or humane thought.

3.5 Dramatic performance

Dramatic performance is a form of speech and expression. The constitutionality of films as a media of expression and its prior censorship came up in *K. A. Abbas v. Union of India*.

In *K. A. Abbas v. Union of India*⁹, He was unable to get a 'U' certificate for his film *Tale of Four Cities*, K. A. Abbas questioned the validity of the Cinematograph Act, 1952 along with the rules made under it. Though the government decided to grant the certificate while the petition was pending in the Supreme Court, the court observed that censorship of films including pre-censorship was constitutionally valid in India as it was a reasonable restriction within the ambit of Article 19(2). It was pointed out that 3 censorship was but an aspect of censorship and bears the same relationship in quality to the material as censorship after the motion picture has had a run.

3.6 Right to Education

In *Anand Vardhan Chandel v. University of Delhi*¹⁰, the Delhi High Court, however, held that the right to freedom of speech under Article 19(1)(a) included the right to education. This extension at that time seemed to be far-fetched the decision that the court held, the right to impart, not to receive, education is included in Article 19(1)(g) as decided in *Unni Krishnan, JP v. State of AP*¹¹. In subsequent larger bench decisions also write to impart, not to receive, education has been read in Article 19(1)(g).¹²

⁸ AIR 1960 SC 554: (1960) 2 SCR 671

⁹ (1970) 2 SCC 780: AIR 1971 SC 481

¹⁰ AIR 1978 Del 308

¹¹ (1993) 1 SCC 645

¹² *TMA Pai Foundation v. State of Karnataka*, (1994) 2 SCC 195

3.7 Right to know

The right to know is the species of the right to speech and expression provided by Article 19(1)(a) of the constitution of India. A citizen has a fundamental right to access information. It is the duty of the state to protect a fundamental right. But it is also required to provide the opportunities under which this right can be effectively enjoyed by all. It is relevant to state here that a true democracy cannot exist unless all citizens have a right to participate in public functioning.

In *SP Gupta v. Union of India*¹³, it was admitted that whenever the disclosure of a document is clearly contrary to the public interest it is immune from disclosure. But the decision on such immunity will rest with the court, not with the head of the government or department.

3.8 Right to reply

The right to reply i.e. The right to get published one's reply in the same news media in which something is published against or in relation to a person has also been recognized under Article 19(1)(a), particularly when the news media is owned by the state within the meaning of Article 12.¹⁴ It has also been held that a government circular having no legal sanction violates Article 19(1)(a) if it compels each and every pupil to join in the singing of the national anthem despite

his genuine, conscientious religious objection.¹⁵

3.9 Right to remain silent

In India, the right to remain silent is a fundamental right under Part III of the Indian Constitution. Article 20 ensures fair trial and lawful arrest of a person. The right to remain silent is guaranteed under Article 20(3). The right to remain silent is against self-incrimination in India which immunizes a person accused of an offense compelled to be a witness against himself. The foundation principle of self-incrimination is based on fair trial and silence which do not amount to the conviction of an accused until the accused is proven guilty beyond a reasonable doubt in a court of law.

In the case of *Banwarilal v. State*¹⁶, the Supreme Court held that an accused is presumed to be innocent and the evidential burden to establish the guilt of the accused is laid on the prosecution. The criminal system in India has adopted an adverse system of trial which provides that a person who was arrested by the police with a reason to believe that the person must have committed an offense.

3.10 Right to use social media

A telephone is also a means of expression. A person talking on telephone exercises his right to freedom of speech and expression. "Telephone tapping" unless it comes within the grounds for restrictions

¹³ 1981 Supp SCC 87: AIR 1982 SC 149

¹⁴ *Manubhai D. Shah v. LIC*, AIR 1981 Guj 15

¹⁵ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615: AIR 1987 SC 748

¹⁶ 1956 Cri LJ 841

under Article 19(2) would violate Article 19(1)(a) of the constitution.¹⁷

In *Shreya Singhal v. Union of India*¹⁸, The court confirmed the classification should not be seen as a door for creating new inroads into that right by holding that “any laws seeking to impose a restriction on the freedom of speech can only pass muster if it is approximately related to any of the eight subject matters set out in Article 19(1)(a).”

3.11 Casting of vote

As an aspect of the democratic process, the court has also recognized that casting the vote is a former speech for a voter. For the exercise of that, the voter also has the right to know the antecedents of the persons whom he must vote for so that he can make an informed choice.

In *PUCL v. Union of India*¹⁹, the court clarified that the right to vote is not a fundamental right, it is basically statutory or at the most a constitutional right. Later, in *Kuldip Nayar v. Union of India*²⁰, the court held that “a right to elect, fundamental though it is to democracy, is neither a fundamental right nor a common law right, but pure and simple, a statutory right.”

3.12 Right to Fly the national flag

¹⁷ *People’s Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301

¹⁸ (2015) 5 SCC 1, 131

¹⁹ (2003) 4 SCC 399: AIR 2003 SC 2363

²⁰ (2006) 7 SCC 1: AIR 2006 SC 3127

The right to fly national flags freely with respect and dignity is included in Article 19(1)(a). But unlike the US, the court has disapproved of flag burning as free speech or free expression.²¹

3.13 Gender identity

Gender identity has also been recognized as an aspect of expression under Article 19(1)(a). Dealing with the issue of transgenders the court has held that “values of privacy, self-identity, autonomy, and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the state is bound to protect and recognize those rights.”²²

4. CONCLUSION

In this paper, the author has explained the freedom of speech and expression among the people of India and how the constitution is protecting it with the help of leading cases falling under the facets of freedom of speech and expression.

The paper dwells into the elaboration of the different facets of Article 19(1)(a) and analyzes it along with legal and judicial proceedings.

²¹ *Union of India v. Naveen Jindal*, (2004) 2 SCC 510: AIR 2004 SC 1559

²² *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, 490

After studying the bare act, various reference books, and case law materials, it can only be concluded that Article 19(1)(a) is a very important part that the common people should have knowledge about.

It incorporates flowing one's perspectives by words or recorded as a hard copy or through general media instrumentality, promotions, or through some other correspondence channel. It additionally involves the right to data, the opportunity of the press, and so forth. Consequently, this major right has a tremendous degree. From the above case regulation examination, the Court has consistently put an expansive translation on the worth and items in Article 19(1)(a), making it emotional just to the limitations reasonable under Article 19(2). Endeavors by narrow-minded specialists to check or gag this opportunity have forever been immovably repulsed, more so when public specialists have double-crossed domineering propensities.

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