



*LawPublicus*  
The Legal Portal

Volume 1 : Issue 4  
2021

January 2021

Email ID: [Lawpublicusportal@gmail.com](mailto:Lawpublicusportal@gmail.com)  
Website: [www.Lawpublicus.com](http://www.Lawpublicus.com)  
Address: A18 Dayanand Colony Lajpat Nagar - 4  
New Delhi

## **Disclaimer**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of ***LawPublicus*** The Legal Portal. The Editorial Team of ***LawPublicus*** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of ***LawPublicus***. Though all efforts are made to ensure the accuracy and correctness of the information published, ***LawPublicus*** shall not be responsible for any errors caused due to oversight or otherwise.

FOR ***LawPublicus*** The Legal Portal

## **Editorial Team**

### **Editor-in-Chief**

**Mr. Nikhil Kumar Chawla**  
Partner - LawPublicus LLP  
Principal Associate Advocate – DKC & Co.  
Contact: +91-9654441680  
+91-9654030411  
Email ID: [Nikhilchawla29@gmail.com](mailto:Nikhilchawla29@gmail.com)  
[Lawpublicusportal@gmail.com](mailto:Lawpublicusportal@gmail.com)

### **Senior Editor**

**Ms. Yantakshikaa Sharma**  
Partner - LawPublicus LLP  
Career Counsellor  
Email ID: [Yantakshika@gmail.com](mailto:Yantakshika@gmail.com)

### **Senior Editor (Honorary)**

**Mr. KS Rana**  
Practising Advocate  
Contact: +91-9810326424  
Email ID: [Iyotideeprana@gmail.com](mailto:Iyotideeprana@gmail.com)

Senior Editor (Honorary)

**Mr. Sandeep Sharma**

Practising Advocate

Legal Consultant – Ministry of Law and Justice

Contact: +91-9899009517

Email ID: [Sandeepjanmat@gmail.com](mailto:Sandeepjanmat@gmail.com)

Senior Editor (Honorary)

**Ms. Khushboo Malik**

Research Scholar – Faculty of Law (DU)

Email ID: [Malikkhushilaw@gmail.com](mailto:Malikkhushilaw@gmail.com)

## **About Us**

***LawPublicus*** The Legal Portal is a leading journal of multidisciplinary research. It is a free, peer-reviewed, open-access journal that provides insight into diverse and dynamic legal matters.

***LawPublicus*** is a novel initiative by legal minds. As the its name suggests, it is platform for young minds to ignite their willingness and inventiveness in order to contribute to the field of law through new ideas, opinions and thereby contributing to an informed citizenry.

We hope to provide a forum for young and enthusiastic writers to voice their feelings and research on interdisciplinary approaches. We also have in view to evaluate, explore and deliberate, under the tutelage of seasoned editors and academic experts, on current trends and projections based thereon in legal studies. LawPublicus focuses not only on the scholarly writings but also on numerous other approaches such as discussions, interviews, and debates with experts and qualified & industrial professionals.

We are determined and excited to bring authentic, creative and individual ideas and socially-related problems into attention.

***LawPublicus*** calls for research papers, articles, short notes, book reviews & case commentaries, that are distinctive and unpublished.

With this thought, we hereby present to you

***LawPublicus* The Legal Portal**

**Freedom of Speech**  
**and Expression:**  
**Absolute or Qualified-**  
**Analysis On The Basis**  
**Of Constitutional and**  
**Legal Scale**

---

***Authored By:***

**Chandrashekhhar**

Asst. Professor

City Academy Law College  
Lucknow

***Co-Authored By:***

**Aradhana Tripathi**

Asst. Professor

City Academy Law College  
Lucknow

***Co-Authored By:***

**Bhartendra Pratap Singh**

Asst. Professor

City Academy Law College  
Lucknow

---

## **Freedom of Speech and Expression: Absolute or Qualified- Analysis On The Basis Of Constitutional and Legal Scale**

*By: Chandrashekhar, Aradhana Tripathi and Bhartendra Pratap Singh*

### **Abstract**

With the democratic setup, fundamental rights are like a compliment we need to understand this, the foundation of democracy lies in the opposition, in such a set up if opposition becomes blasphemy then it is definitely a threat to democracy. 'Freedom of speech and expression' is one of the most and basic right which can be granted to people and in any democratic society freedom of speech and expression is the basic right and also one of the most important right and it is given in Article 19(1)(a) of the constitution, people need to understand the importance of this right while they are living in any democratic society, when people exercise this right, they strengthen their democracy provided it is being exercised with the political awareness. People must speak in democracy without the Right of freedom of speech of expression. Any democracy would surely collapse and not only in democracy but any form of system without this right, any society would collapse and lose the chance of its development further. In any system the ruler comes of different nature where they try to dictate the whole system in this situation this right, right of freedom of speech and expression can be proved as panacea to dethrone any ruler.

Since the implementation of the constitution our rights have continuously been extended by law or judicial interpretations but in between there have been governments, ruled which tried to curtail the rights of the people but we passed that regime and every such regime has strengthen the democracy in the country like Indira Gandhi tried to curb the rights of people by various laws than judiciary intervened and propounded the theory of basic structure of the constitution which has given security to our rights from the parliament now if any law is passed to curtail the right of the people that gets stuck down in the judicial scrutiny.

## **Introduction**

### **Constitutional Mandate Regarding Freedom of Speech & Expression**

India has a written Constitution which guarantees certain fundamental rights to its citizens. The Preamble of the constitution declares the resolve of the people of India to give to themselves liberty of thought and expression. This resolve is reflected in Article 19(1) (a) which is found in Part III of the Constitution dealing with fundamental rights<sup>1</sup>. Article 19(1)(a)<sup>2</sup> relates to freedom of speech and expression, subject to the restrictions which may be imposed by the State under clause (2) of that Article<sup>3</sup>. The freedom of speech and expression, guaranteed under Article 19(1) (a)<sup>4</sup>, means the right to speak and to express one's opinions by words of mouth, writing, printing, pictures or in any other manner. When a person is talking on the telephone, he is exercising his right to freedom of speech and expression. Freedom of speech is to express one's convictions and opinions or ideas freely, through any communicable medium or visible representation, such as gesture, signs and the like<sup>5</sup>.

It means to freely propagate, communicate or circulate one's opinion or views. It also means to lay what sentiments; a free citizen pleases, before the public. It has been observed<sup>6</sup>: Every free citizen has an undoubted right to lay what sentiments he pleases before the public. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death knell to democracy and would help usher in autocracy or dictatorship<sup>7</sup>. In *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*, the Supreme Court referred to the following justification for limits on freedom of expression: The liberty to express oneself freely is important for a number of reasons. Firstly, self-expression is a significant instrument of freedom of conscience and self-fulfilment. Second justification concerns epistemology. Freedom of expression enables people to contribute to debates about social and moral values... Thirdly,

---

<sup>1</sup> Constitution of India, 1950, Article 19(2).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *People's Union for Civil Liberties v. Union of India*, AIR 1997.

<sup>6</sup> *Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer*, (1994).

<sup>7</sup> *Supra* at 3.

the freedom of expression allows political discourse which is necessary in any country which aspires to democracy. And lastly, it facilitates artistic scholarly endeavours of all sorts<sup>8</sup>.

Freedom of speech and expression in a democracy ensures that the change desired by the people, whether in political, economic or social sphere, is brought about peacefully and through law. That change desired by the people can be brought about in an orderly, legal and peaceful manner is by itself an assurance of stability and an insurance against violent upheavals which are the hall-mark of societies ruled by dictatorship, which do not permit this freedom. It is an important political principle that the government should not suppress communication of ideas. Indeed, this principle is frequently regarded as a cornerstone of liberal democracy.

Every human institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a licence, which would lead to disorder and anarchy<sup>9</sup>. In any civilized society where individual rights are declared and enforced, whether by ordinary law or by the Constitution, the right implies a duty not to abuse that right; for, the right being guaranteed to all citizens alike, it would be hollow to others unless one individual respects the similar rights of others or acts within the bounds of his own right, and does not affect the other rights of other individuals. This limitation, that arises out of the ‘due recognition and respect for the rights and freedoms of others’, is expressly laid down in Article 29(3)<sup>10</sup> of the Universal Declaration of Human Rights, 1948<sup>11</sup>.

As early as 1789, the French Declaration of the Rights of Man, which declared that “free communication of thoughts and ideas is one of the most precious rights of man” , in the same breath stated that this freedom of every citizen was “subject to responsibility for abuse of this liberty in cases contemplated by law”.

---

<sup>8</sup> 4 (1995) 2 SCC 161

<sup>9</sup> D. D. Basu, Law of the Press, 59 (2010)

<sup>10</sup> Universal Declaration of Human Rights, 1948, Article 29(3).

<sup>11</sup> Express Newspapers v. Union of India, (1984).

## **Freedom of Speech and Expression is not absolute: Constitutional and Legal Control Mechanism**

Fundamental rights guaranteed under the Indian Constitution are not based on the theory of natural rights and reasonable restrictions have been imposed on the exercise of different rights in the interests of the community.

Pandit Nehru in this connection correctly said: No individual can override ultimately the rights of the community at large and no community should injure and invade the rights of the individual unless it be for the most urgent and important reasons<sup>12</sup>.

The relation between the individual to the state has always been a subject of difference of opinion amongst thinkers. In India, because the society is traditionally pluralistic, this issue of harmonising the rights guaranteeing freedom to individuals with the rights of the community was full of confusion. There were two schools pondering over the issue of delimiting the sphere of personal freedom with social control. The Chairman of the Advisory Committee, Sardar Vallabhbhai Patel opined: 'These two schools viewed the matter from two different angles. One school of thought considered it advisable to include as many rights as possible, rights in regard to which a citizen may without difficulty go straightway to court of law and get his rights enforced. The other school thought considered it advisable to restrict fundamental rights to a few essential things that may be considered fundamental<sup>13</sup>'.

Between the two schools there was a considered amount of discussion and finally a mean was drawn which was considered to be a good mean. The makers of the Indian Constitution also clarified that there could be no other fundamental rights of the individual than those guaranteed by the Constitution of Part III. Further, it is submitted that in a civil society neither unfettered freedom nor complete immunity from restraint and interference is possible, for that would lead to anarchy. Right to freedom, thus, signifies those rights which should be guaranteed to a citizen without in any way harming similar rights of other citizens. The very concept of freedom carries judicious limits to it<sup>14</sup>.

---

<sup>12</sup> Constituent Assembly Debates, Vol. IX, p. 1194.

<sup>13</sup> Supra at 8.

<sup>14</sup> A. K. Gopalan v. State of Madras, AIR 1950.

However to say that a thing is constitutional is not to say that it is desirable. Hence to opine that restraints on the freedom of speech and expression are permissible under our Constitution is not to say that any particular restraint is undesirable. The freedom of thought and expression and that of the press are not only valuable freedoms in themselves, but are basic to a democratic form of government which proceeds on the theory problems of the government can be solved by the free exchange of thought by public discussion.

Freedom of expression, freedom of opinion, the right to inform, the right to criticize, the right to cajole and the right to persuade are inherent to a healthy democracy. As a general proposition, democracy is the affirmation of the principle that no opinion, however outrageous, can do so much harm as the suppression of that opinion. Of course, in all areas of human endeavor an ordered society requires the self-ordaining of certain limits. It will always be a matter of argument as to where those limits should be drawn-and who should draw them. We are firmly of the view that, in as large measure as possible; these limits should be drawn by the Press for itself. Freedom of expression is certainly not an absolute right.

### **Grounds of Restrictions**

It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some restrictions on this freedom for the maintenance of social order because no freedom can be absolute or completely unrestricted. Accordingly, under Article 19(2)<sup>15</sup> of the Constitution of India, the State may make a law imposing “reasonable restrictions” on the exercise of the right to freedom of speech and expression “in the interest of” the public on the following grounds: Clause (2) of Article 19<sup>16</sup> of the Indian constitution contains the grounds on which restrictions on the freedom of speech and expression can be imposed:

**1) Security of State:** Security of state is of vital importance and a government must have the power to impose a restriction on the activity affecting it. Under Article 19(2)<sup>17</sup> reasonable restrictions can be imposed on freedom of speech and expression in the interest of the security of State. However, the term “security” is a very crucial one. The term “security of the state” refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public

---

<sup>15</sup> Supra at 1.

<sup>16</sup> Supra at 1.

<sup>17</sup> Supra at 1.

safety, e.g. unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State.

**2) Friendly relations with foreign states:** In the present global world, a country has to maintain a good and friendly relationship with other countries. Something which has the potential to affect such a relationship should be checked by the government. Keeping this thing in mind, this ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India and that state.

**3) No similar provision is present in any other Constitution of the world:** In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government. However, it is interesting to note that members of the commonwealth including Pakistan are not a “foreign state” for the purposes of this Constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.

**4) Public Order:** Next restriction prescribed by the constitution is to maintain public order: This ground was added by the Constitution (First Amendment) Act. ‘Public order’ is an expression of wide connotation and signifies “that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established.”

Here it is pertinent to look into the meaning of the word “Public order. Public order is something more than ordinary maintenance of law and order. ‘Public order’ is synonymous with public peace, safety and tranquility. Anything that disturbs public tranquility or public peace disturbs public order. Thus communal disturbances and strikes promoted with the sole object of accusing unrest among workmen are offences against public order. Public order thus implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. Public order also includes public safety. Thus creating internal disorder or rebellion would affect public order and public safety. But mere criticism of government does not necessarily disturb public order.

The words 'in the interest of public order' include not only such utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. Thus a law punishing utterances made with the deliberate intention to hurt the religious feelings of any class of persons is valid because it imposes a restriction on the right of free speech in the interest of public order since such speech or writing has the tendency to create public disorder even if in some case those activities may not actually lead to a breach of peace. But there must be a reasonable and proper nexus or relationship between the restrictions and the achievements of public order.

**5) Decency or morality:** The way to express something or to say something should be a decent one. It should not affect the morality of society adversely. Our constitution has taken care of this view and inserted decency and morality as a ground. The words 'morality or decency' are words of wide meaning. Sections 292<sup>18</sup> to 294<sup>19</sup> of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fixed standard is laid down till now as to what is moral and indecent. The standard of morality varies from time to time and from place to place.

**6) Contempt of Court:** In a democratic country Judiciary plays a very important role. In such a situation, it becomes essential to respect such an institution and its order. Thus, restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. According to Section 2 'Contempt of court' may be either 'civil contempt' or 'criminal contempt.' But now, Indian contempt law was amended in 2006 to make "truth" a defence. However, even after such amendment, a person can be punished for the statement unless they were made in public interest. Again in *Indirect Tax Practitioners Assn. vs R.K.Jain*, it was held by the court that, "Truth based on the facts should be allowed as a valid defence if courts are asked to decide contempt proceedings relating to contempt proceeding relating to a speech or an editorial or article". The qualification is that such defence should not cover-up to escape from the consequences of a deliberate effort to scandalize the court.

**7) Defamation:** One's freedom, be it of any type, must not affect the reputation or status of another person. A person is known by his reputation more than his wealth or anything else. The Constitution considers it as ground to put restriction on freedom of speech. Basically, a

---

<sup>18</sup> Indian Penal Code, 1860, Section 292.

<sup>19</sup> Indian Penal Code, 1860, Section 294.

statement, which injures a man's reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. The civil law relating to defamation is still uncodified in India and subject to certain exceptions.

**8) Incitement to an offense:** This ground was also added by the Constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offense. The word 'offense' is defined as any act or omission made punishable by law for the time being in force.

**9) Sovereignty and integrity of India:** To maintain the sovereignty and integrity of a state is the prime duty of government. Taking this into account, freedom of speech and expression can be restricted so as not to permit anyone to challenge sovereignty or to permit anyone to preach something which will result in threat to integrity of the country.

### **Practical constraints and curtailments**

Freedom of speech and expression, which enable an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19<sup>20</sup>, though freedom activists, as well as most scholars and industrialized jurisdictions throughout the world recognize that freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.

The Indian Constitution, while not mentioning the word "press", provides for "the right to freedom of speech and expression. However this right is subject to restrictions under sub clause (2), whereby this freedom can be restricted for reasons of "sovereignty and integrity of India, the security of the State, and friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt of court, defamation, or incitement to an offence".

Laws such as the Official Secrets Act and Prevention of Terrorism Act (POTA)<sup>21</sup> have been used to limit press freedom. Under POTA, person could be detained for up to six months before the police were required to bring charges on allegations for terrorism-related offences.

---

<sup>20</sup> Supra at 1.

<sup>21</sup> "The Prevention of Terrorism Act 2002".

POTA was repealed in 2004, but was replaced by amendments to UAPA<sup>22</sup>. The Official Secrets Act 1923 remains in effect.

For the first half-century of independence, media control by the state was the major constraint on press freedom. Indira Gandhi famously stated in 1975 that All India Radio is "a Government organ, it is going to remain a Government organ."<sup>23</sup> On 26 June 1975, the day after the so-called emergency was declared in violation of the natural rights of Indian citizens, the Mumbai edition of The Times of India in its obituary column carried an entry that read "DEMOCracy beloved husband of T.Ruth, father of L.I.Bertie, brother of Faith, Hope and Justice expired on 26 June". With the liberalisation starting in the 1990s, private control of media has increased, leading to increasing independence and greater scrutiny of government.

Organizations like Tehelka and NDTV have been particularly influential, e.g. in bringing about the resignation of powerful Haryana minister Venod Sharma. In addition, laws like the Prasar Bharati act passed in recent years contribute significantly to reducing the control of the press by the government. In recent times, the Indian government has been accused of trying to curtail this freedom through various means.

---

<sup>22</sup> Kalhan, Anil; et al. (2006). "Colonial Continuities: Human Rights, Antiterrorism, and Security Laws in India".

<sup>23</sup> "Freedom of the Press". PUCL Bulletin. People's Union for Civil Liberties. July 1982.

## **Conclusion**

Expression through speech is one of the basic guarantees provided by civil society. However in modern world Right to freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audio visual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. It is a right to express and self realization. Two big democracies of world i.e. America and India have remarkably protected this right. As far as India is concerned, this important right is mentioned in Article 19(1) (a), which falls in fundamental right category. Indian courts have always placed a broad interpretation on the value and content of Article 19(1) (a), making it subjective only to the restrictions permissible under Article 19(2).

The words 'in the interest of public order', as used in the Article 19 include not only utterances that are directly intended to lead to disorder but also those that have the tendency to lead to disorder. There should be a reasonable and proper nexus or relationship between the restriction and achievement of public order. Initially, the American constitution was not having any provisions directed to protection of freedom of speech and expression. It was inserted in the constitution vide first amendment of the constitution. The First Amendment has been drafted in broad and sweeping terms, and for this reason, the text of the First Amendment does not contain any standard for determining permissible restrictions on freedom of speech. The restrictions that are permissible now are those that have been developed by the Supreme Court in its interpretation of the First Amendment.

The United States has a complex First Amendment jurisprudence that varies the protection offered free speech according to form. Similarly, India developed its own free speech jurisprudence that applies a "reasonable restrictions" test based on eight mentioned restrictions. The real difference in freedom of speech enjoyed in the United States and India is a question of degree. This difference in degree is attributable to the reasonable restrictions provision and the moral standard of the communities.

In India, if the law is broad then the police powers are even broader, with the Code of Criminal Procedure and the various state police acts providing the police with powers to restrict assemblies, speeches and other activities on the grounds that it may create problems of "public order". It has almost reached the point, where in India in most cities you have designated spaces marked for protests and protests cannot be undertaken just about anywhere. To borrow the American phrase these "free speech zones" are areas where protests and assemblies can be organised after obtaining prior approvals so that the police can arrange for the appropriate security to ensure that there is no violence that erupts. It is also an efficient way of ensuring the local intelligence agencies have a quick and efficient way of keeping a tab on the political activities that are happening in their areas and the grant/denial of permission is often politically coloured<sup>24</sup>.

An array of developments like several pre-Constitutional statutes, recommendations of the Law Commission, significant judicial decisions, debates of the Constituent Assembly etc., have passed one after the other resulting in the present Constitution which guarantees to everyone of her citizens, freedom of speech and expression. The credit for the initiative goes to the Constitution of India Bill, 1895 (described by Mrs. Annie Besant as the Home Rule Bill) followed by the Montague-Chelmsford Report (1918), Nehru Committee Report (1928), recommendations at the several Round Table conferences, the Sapru Committee (1944-45), The Objectives Resolution (1947) and the debates of the Constituent Assembly which continued for as many as thirty-eight days, eleven days in the sub-committee, two in the Advisory committee and twenty-five in the Constituent Assembly.

The Assembly ultimately adopted the comprehensive and impressive array of fundamental rights spread over twenty-two articles and divided broadly into seven categories of rights viz.,

- (i) right to equality,
- (ii) right to freedom,
- (iii) right against exploitation,
- (iv) right to freedom of religion
- (v) cultural and educational rights,
- (vi) right to property and
- (vii) right to constitutional remedies.

---

<sup>24</sup> <https://www.firstpost.com/long-reads/dissent-gagged-ambiguity-of-free-speech-laws>.

It is noteworthy to mention here the recommendations of the Constitutional Review Commission. These recommendations give a new dimension to the study of freedom of speech and expression. After more than two years deliberations, the Constitutional Review Commission submitted its final Report to the Government on 31st March, 2002.

It contained nearly 250 recommendations of which noteworthy are the inclusions of

- (i) the freedom of the press and other media,
- (ii) freedom of information,
- (iii) defence of justification by truth in contempt of Court cases.

It is important to mention here that these recommendations are of vital importance for the survival of democratic polity and free institutions and for ushering in an era of good citizen friendly governance. It is heartening to note that by virtue of The Contempt of Courts (Amendment) Act, 2006, the defence of justification by truth has been added in contempt of court cases. Moreover, right to information has been recognized as a statutory right by virtue of the Right to Information Act, 2005. A special mention needs to be made of the role of the Indian judiciary in interpreting these fundamental rights and in that process; it is significantly widening the scope of the freedom of speech and expression.

---

*This case study is for information purpose only. Nothing contained herein shall be deemed or interpreted as providing legal or investment advice.*