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**REASONABILITY OF REASONABLE RESTRICTIONS ON FREEDOM OF
SPEECH**

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ABSTRACT

“Article 19(1) (a) of the Constitution of India expresses that all residents will reserve the privilege to the right to speak freely of discourse and articulation. The way of thinking behind this Article lies in the Preamble of the Constitution, where a serious determination is made to get to all its resident, freedom of thought and articulation. The activity of this privilege is, be that as it may, subject to a sensible limitation, for specific intentions being forced under Article 19(2) of the Constitution of India. The principal components of right to the right to speak freely of discourse and articulation are that it is accessible to just a resident of India and not to other outside nationals. It incorporates the option to communicate one's perspectives and sentiments at any issue through any medium, model by expressions of mouth, composing, printing, picture, film, film and so on This privilege is, notwithstanding, not total and it permits Government to outline laws to force sensible limitations in light of a legitimate concern for sway and honesty of India, security of the state, cordial relations with unfamiliar states, public request, respectability and profound quality and hatred of court, maligning and prompting to an offense. This limitation on the right to speak freely of any resident might be forced as much by an activity of the State as by its inaction. Along these lines, disappointment with respect to the State to ensure to every one of its residents the crucial right to the right to speak freely of discourse and articulation would likewise establish an infringement of Article 19(1)(a). “

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INTRODUCTION

PART III of the Indian constitution consists of all the fundamental rights and Article 19 consists of rights with respect to freedom of speech and expression. Article 19 states that: “All citizens 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 and omitted
- f) To practice any profession or to carry on any occupation, trade or business”

LIST OF CASES

1. Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal²
2. Brij Bhushan v. State of Delhi(AIR 1950 SC 129)³
3. Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd⁴
4. State of Madras vs Row ⁵
5. P.U.C.L v. Union of India ⁶
6. Dharambir Khattar vs Union of India & Another⁷
7. Romesh Thapar v. State of Madras ⁸
8. Devidas Ramachandra Tuljapurkar vs State of Maharashtra & Ors⁹
9. Sudhakar Prasad vs. Govt. of A.P. and Ors¹⁰

²Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal 1995 AIR 1236 1995 SCC (2) 161 JT 1995 (2) 110 1995 SCALE (1)539

³ Brij Bhushan v. State of Delhi(AIR 1950 SC 129)

⁴ Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd 1995 AIR 2438, 1995 SCC (5) 139

⁵ State of Madras vs Row 1952 AIR 196, 1952 SCR 597

⁶ P.U.C.L v. Union of India AIR 1997 SC 568, JT 1997 (1) SC 288

⁷ Dharambir Khattar vs Union of India & Another W.P. (CRL) 1582 OF 2007

⁸ Romesh Thapar v. State of Madras AIR 1950 SC 124

⁹ Devidas Ramachandra Tuljapurkar vs State of Maharashtra & Ors (Crl.), 1179 of 2010

¹⁰ Sudhakar Prasad vs. Govt. of A.P. and Ors (2001) 1 SCC 516

10. B V P Rao vs Rata Tata and others¹¹

WHAT ARE THE RESTRICTIONS UNDER ARTICLE 19?

The restrictions under article 19 are as follow:

1. **Security of the state:** “ Under Article 19 (2) some reasonable restrictions can be imposed on freedom of speech and expression in the interest of Security of the state. As it is of great importance and the government has the power to put restrictions on the activities which affect the security of the state. Consequently, freedom of speech and expression with regard to an individual, if he is impelling or promoting the commission of a crime, for example, are matters which would undermine State security. Restrictions can be put on that individual. Example, In the case of P.U.C.L v. Union of India, the PIL was filed under Article 32 of the Indian Constitution by PUCL regarding phone tapping. The validity of Section 5 (2) of the Telegraph Act was challenged in this case. Section 5 (2) states the essential elements which need to be fulfilled for the application of the Section is in the interest of public safety and any occurrence of public safety. The government has no right to exercise their power in the said Section if any of these two conditions are not fulfilled. Telephone tapping is violating Article 19 (1) of the Indian Constitution, until and unless it comes under the grounds of restrictions under Article 19 (2).
2. **Sovereignty and Integrity of India:** This ground was added to Article 19 (2) by the Constitution (16th Amendment) Act, 1963, as it is the foremost duty to maintain the sovereignty and integrity of India. This imposes a restriction on freedom of speech and expression and does not permit anyone to challenge the sovereignty of India. It restricts everyone from saying something causing threat to the integrity of India. In Dharambir Khattar vs Union Of India & Another on such occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any

¹¹ B V P Rao vs Rata Tata and others CRP 279 Of 2002

officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought by transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer

3. **Friendly relations with Foreign States:** A state can impose a restriction on freedom of speech and expression if it affects the friendly relations with other States. It was added to the constitution of India by the (1st amendment) Act, in 1951. It is to be noted that no other constitution in the world has a similar provision in it.
4. **Public order:** The Constitution (1st Amendment), Act, 1951 also added this ground to the constitution, so as to meet the circumstances emerging from the Supreme Court's decision. In the case of *Romesh Thapar v. State of Madras*, the Supreme Court held that the public order is different from the security of the state and from the law and order. Also, seen in the case of local breaches of public order there are no grounds for imposing restrictions on public order. The Supreme Court said that public order is an expression of the public peace, public safety and tranquility. In this case, there was a ban on a Journal by the law in the State of Madras in the interest of public order. The court held that the restrictions imposed by the government were only on the grounds mentioned in Article 19(2). So, in this case, the decision was taken by the Supreme court and the expression public order was added to Article 19 (2) to impose certain restrictions on the freedom of speech and expression.

5. **Decency and Morality:** The words decency and morality are defined in Section 292 to Section 294 of IPC. It empowers the government to put certain restrictions on freedom of speech and expression under this. These sections of IPC restrict the distribution or sale of obscene books etc. in public. *Devidas Ramachandra Tuljapurkar vs State of Maharashtra & Ors*, the section of the Penal Code in dispute was introduced by the Obscene Publications Act, 1925 (7 of 1925) to give effect of the International Convention for the suppression of or traffic in obscene publications signed by India in 1923 at Geneva. It does not go beyond obscenity which falls directly within the words public decency and morality of the second clause of the article. The word, as the dictionaries tell us, denotes the quality of being obscene which means offensive to modesty or decency; lewd, filthy and repulsive. It cannot be denied that it is an important interest of society to suppress obscenity. There is, of course, some difference between obscenity and pornography in that the latter denotes writings, pictures etc. intended to arouse sexual desire while the former may include writings etc. not intended to do so but which have that tendency. Both, of course, offend against public decency and morals but pornography is obscenity in a more aggravated form. Mr. Garg seeks to limit action to cases of intentional lewdness which he describes as dirt for dirt's sake and which has now received the appellation of hard-core pornography by which term is meant libidinous writings of high erotic effect unredeemed by anything literary or artistic and intended to arouse sexual feelings.
6. **Contempt of Court:** The right to freedom of speech and expressions don't allow anyone to contempt of court. Reasonable restriction can be imposed on freedom of speech and expression. Contempt of court is defined in Section 2 of Contempt of Courts Act, 1971. It covers both civil contempt and criminal contempt as well. But, now Indian Contempt Law was amended in the year 2006 and it added to make truth as a defense. *Sudhakar Prasad vs. Govt. of A.P. and Ors.*, In this case also the Supreme Court once again declared that the powers of contempt are inherent in nature and the provisions of the Constitution only recognize the said pre-existing situation. That the provisions of the Contempt of Courts Act, 1971 are in addition to and not in derogation of Articles 129 and 215 of the Constitution. The provisions of Contempt of Courts Act, 1971 cannot be used

for limiting or regulating the exercise of jurisdiction contemplated by the said two Articles. Here it was additionally held by the Apex Court that the High Court cannot create or assume power to inflict a new type of punishment other than the one recognized and accepted by Section 12 of the Contempt of Courts Act, 1971.

7. **Defamation:** Article 19(2) imposes a restriction on a person to prevent him from making a defamatory statement which defames the reputation of another person. A person is known by his/her reputation in the society, so the constitution puts restrictions on freedom of speech. Defamation is a crime under Section 499 and Section 500 of IPC. Right to freedom of speech and expression doesn't give any person an absolute right. It doesn't give a right to a person to hurt any other person's reputation. *B V P Rao vs Rata Tata and others*, B V P Rao contended that Tata Tea had twisted and suppressed the facts projecting him in a very poor light by alleging that there was no response from him as home secretary in December 1995 for providing security after the Tata Tea received a letter from the Ulfa demanding hundred walkie-talkie sets. Rao, who was then the state power commissioner, claimed damage of Rs 1 crore against the Tata Tea, its managing director R Krishna Kumar and chairman of Tata group of companies Ratan Tata.

8. **Incitement to an Offence:** The Constitution (1st Amendment Act), 1951 added the incitement to an offence ground. The right to freedom of speech and expression prohibits people from committing an offence. The word Offence is defined in the General Clause Act which states that offence is an act or omission done by a person and is punishable by any law for the time being in force. It is very evident from the above analysis that these grounds contained in Article 19 (2) are concerned about the national security of India and the interest of society. The grounds such as the sovereignty of India, the security of the states, public order and friendly relation with foreign states are concerned with national security. Whereas grounds related to it in the interest of society are decency and morality, contempt of court, defamation and incitement to an offence.

IMPORTANCE OF RESTRICTIONS UNDER ARTICLE 19

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 audiovisual 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 as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. There should be reasonable and proper nexus or relationship between the restriction and achievement of public order.

Freedom of speech and expression is the bulwark of democratic government. This freedom is essential for the proper functioning of democratic process and is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving protection to all other liberties. It has been truly said that it is the mother of all other liberties. That liberty includes the right to acquire information and disseminate the same. It includes the right to communicate it through available media without interference to as large a population of the country, as well as abroad, as is possible to reach. Right to know is the basis right of the citizens of a free country and Art. 19(1)(a) protects that right. Right to receive information springs from Art 19(1)(a). There should be reasonable and proper nexus or relationship between the restriction and achievement of public order.

CHAPTER 4: SHOULD FREEDOM OF SPEECH AND EXPRESSION HAVE LIMITS

Right to freedom is a very comprehensive domain whereby citizens are entitled to be free with regard to their movement, occupation, assemblies etc. But as it is said that a right of one should not hinder the right of another. Moreover, everyone has a duty towards the state, one should use Freedom of expression in a way that it should not provoke any person or incite violence. Similarly, with every right so conferred has a consequence if its domain is not circumscribed. Hence, this right is not absolute but comes with certain restrictions. The restrictions that are in coherence with the national interest can be illustrated as-

Security of State, Friendly relations with foreign states, Public Order, Decency and Morality, Contempt of Court, Defamation, Incitement to an offence, Sedition.

While having an overview of these restrictions it is evident that the intention of the legislature by giving a right to freedom is to look after others interest as well, including state and individuals. Had these restrictions been not imposed it would be highly chaotic for the courts to balance the rights amongst different entities of the State. The rights and duties go hand in hand and never be looked through different visions. The words ‘in the interest of public order’, as used in the Article 19 include not only utterances as are directly intended to lead to disorder but

CONCLUSION

Every citizen of India enjoys the rights of freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India. Expressing one’s opinions or views through speech is the right of every individual. It is not limited to only expressing one’s views through words but an individual has a right to circulate those views or opinions in writing, through advertisements or through audiovisuals. Right to freedom of speech and expression also comprises the right to information, right to press, right to broadcast, right to commercial speech. Reasonable restrictions can be imposed on the right to freedom of speech and expression under Article 19 (2) of the Indian Constitution. The rights granted under Article 19 is not an absolute right. They can be restricted in case of national security and in the interest of society.”