

“An Analysis of Right to Freedom of Speech and Expression”

Pujarani Behera
University Law College,
Utkal University

“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”

— **John Milton**

ABSTRACT:

Freedom of speech encompasses right to express oneself as well as right to access information. Liberty to express ideas and opinions without hindrance plays an important role in the development of a particular society. Freedom of speech is guaranteed not only by Constitution but also by various International conventions. It is one of the most basic elements for a healthy and open-minded democracy. It allows people to freely participate in the social and political happenings of their country. This article deals with meaning, scope, origin and significance of right to freedom of speech and expression guaranteed under Article 19(1)(a) of the constitution. This study also highlights protection of free speech and different aspects of freedom of speech and expression. It also deals with grounds of restriction imposed under Article 19(2) of the Constitution. In this article, the researcher has tried to discuss briefly about the right to freedom of speech and expression.

KEY WORDS: freedom of speech and expression, Article 19, democracy, freedom of press, UDHR, ICCPR.

INTRODUCTION:

Freedom of speech and expression is the foundation stone of every democratic society. The core of free speech is the ability to speak freely and to acquire information from others. It is regarded as the first condition of liberty. It is regarded as the mother of all other liberties. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.¹ This fundamental right to freedom of speech and expression is guaranteed by the Constitution under Article 19(1)(a). Freedom of expression is recognized as a human right under Article 19 of the Universal Declaration of Human Rights (UDHR) and recognized in international human rights law in the International Covenant on Civil and Political Rights (ICCPR). Free speech is not an absolute right and thus, restrictions may be imposed under Article 19(2). But freedom of expression can only be restricted by law. It also includes right to communicate, print, and advertise the information.

MEANING & SCOPE OF FREEDOM OF SPEECH & EXPRESSION:

Article 19(1)(a) guarantees that all citizens shall have the right to freedom of speech and expression. This right is available only to every citizen of India and not available to any

¹ Dheerendra Patanjali, “Freedom of Speech and Expression, India v America - A Study”.

person who is not a citizen of India i.e. foreign nationals.² Freedom of speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. Thus, it includes the expression of one's ideas through any communicable medium or visible representation, such as, gesture, signs and the like.³ The rights conferred under Article 19 of the Constitution are the rights of free man. These are natural law or common law rights and not created by a statute. As such every citizen is entitled to exercise such rights provided conditions to be imposed whenever so required by the State.⁴

Freedom of expression has four broad special purposes to serve:

- (1) it helps an individual, to attain self-fulfillment;
- (2) it assists in the discovery of truth;
- (3) it strengthens the capacity of an individual in participating in decision making; and
- (4) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

All members of society should be able to form their own beliefs and communicate them freely to others. In total, the fundamental principle involved here is the people's right to know. Therefore, freedom of speech and expression should receive generous support from all those who believe in the participation of people in the administration. It is on account of the special interest which society has in the freedom of speech and expression that the approach of the Government should be more cautious while levying taxes on matters of concerning newspaper industry than while levying taxes on other matters.⁵ Freedom of speech and expression includes carrying out public demonstration but demonstrations whether political, religious or social or other demonstrations which create public disturbances or operate as nuisances or manifestly threaten some tangible public or private mischief are not covered under Article 19(1)(a).⁶

Indian law does not expressly refer to commercial and artistic speech. However, Indian law is developing and it has ruled by the Supreme Court that 'commercial speech' cannot be denied the protection of Article 19(1)(a). It was held that 'commercial speech' is a part of the right of freedom of speech and expression guaranteed by the Constitution. The citizens of India have the right to receive, to read and to listen to the commercial speech. Freedom of speech and expression also includes artistic speech such as, right to paint, sign, dance, write, poetry and literature.

² Hans Muller of Nuremburg v. Supdt., Presidency Jail, Calcutta, AIR 1955 SC 367. Also see State of Gujrat v. Ambica Mills Ltd., AIR 1974 SC 1300.

³ Lowell v. Griffin, (1939) 303 US 444.

⁴ A.K. Gopalan v. State of Madras, AIR 1950 SC 27. Also see Collector of Malabar v. Erimal Ebrahim Hajee, AIR 1957 SC 688.

⁵ Indian Express Newspaper v. Union of India, (1985) 1 SCC 641; Reliance Petro-chemicals limited v. Indian Newspapers (Bombay) Pvt. Ltd., AIR 1989 SC 190.

⁶ Bimal Gurung v. Union of India, AIR 2018 SC 1459 pp. 1470, 1472.

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. The Supreme Court in **State of Uttar Pradesh v. Raj Narain**⁷, has held that Article 19(1)(a) of the Constitution guarantees the freedom of speech and expression to all citizens in addition to protecting the rights of the citizens to know the right to receive information regarding matters of public concern. In **Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal**⁸ it was held that Article 19(1)(a) includes the right to acquire and disseminate information. The print medium is a powerful tool for dissemination and receipt of information for any citizen.

ORIGIN AND SIGNIFICANCE:

Freedom of speech and expression enjoys special position as far as India is concerned. Its importance can easily be understood by the fact that preamble of constitution itself ensures to all citizens inter alia, liberty of thought, expression, belief, faith and worship. The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as fundamental and human right in Article 19(1)(a) as “freedom of speech and expression”.

Freedom of speech and expression has a long history. It exists in the modern International human rights instrument. It is believed that the idea of free speech may have emerged in the late 6th or early 5th Century BC. The values of the Roman Republic included freedom of speech and freedom of religion.⁹ The Concepts of Freedom of speech can be found in early human rights documents. The Constitutional right to freedom of speech and expression has legally established by England’s Bill of Rights 1689. The 1789 French Revolution has affirmed freedom of speech as an inalienable right. Free speech has been an experiment from the start or at least that’s what Justice Oliver Wendell Holmes suggested nearly a century ago in his dissent in **Abrams v. United States**¹⁰, one of the first decisions to interpret and shape the doctrine that would come to occupy a nearly sacred place in America’s national identity. It is deeply associated with democracy. According to the First Amendment to the United States Constitution, freedom of speech is a basic feature of the Constitution.

The adoption of a constitutional provision is a significant event. It exerts a magnetic attraction.¹¹ Some scholars argue that adoption crystallizes a principle.¹² Freedom to express and disseminate one’s opinion is a demand of the European enlightenment on the State which

⁷ 1975 AIR 865, 1975 SCR (3) 333.

⁸ 1995 AIR 1236, 1995 SCC (2) 161.

⁹ M. P. Charlesworth (March 1943). “Freedom of speech in Republican Rome”. The Classical Review. The Classical Association. 57 (1): 49.

¹⁰ 250 U.S. 616.

¹¹ Maryland Law Review, Volume 42.

¹² Eg., R. BERGER, GOVERNMENT BY JUDICIARY: THE TRANSFORMATION OF THE FOURTEENTH AMENDMENT 288-99 (1977); Berger, Paul Brest's Brief for an Imperial Judiciary, 40 MD. L. REV. 1, 2-7, 26-31 (1981).

took its root initially in England within the framework of common law precedents.¹³ In section 12 of the Virginia Bill of Rights, 1776, it has declared that the freedom of the press is one of the great bulwarks of liberty and can never be restrained by despotic Governments. The Universal Declaration of Human Rights particularly in its Article 19 states that “everyone has right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and import information and ideas through media and regardless of frontiers.”¹⁴

In **Maneka Gandhi v. Union of India**¹⁵, BHAGWATI J., has emphasized on the significance of the freedom of speech & expression in these words:

“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.”

DEMOCRACY AND FREE SPEECH:

“It is a paradox that every dictator has climbed to power on the ladder of free speech. Immediately on attaining power each dictator has suppressed all free speech except his own.”

- **Herbert Hoover**

Freedom of speech and expression has long been a hallmark of a healthy democracy and a free society. It has been held to be basic and indivisible for a democratic polity. It is the fourth pillar of the democracy. Democracy is the Government of the people, by the people and for the people. Thus, democracy lies in the hands of the people and right to freedom of speech and expression plays an important role in the proper smooth functioning of the state. Freedom to speech is a medium given to the people to live with dignity rather than mere animal existence. It has been stated that democracy is no democracy without free speech and expression. There is also necessity to maintain balance because there are also corrupted people who do not use such rights in a proper way. The United States First Amendment protections for free speech are deeply associated with democracy. European Convention of Human Rights guaranteed freedom of expression as a basic human right. It is described as the cornerstone of democracy as it enables people to freely express themselves. Therefore, it is considered as the important element of democracy.

In **Romesh Thappar v. State of Madras**¹⁶, Chief Justice Patanjali Shastri observed that: “... (The freedom) lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of

¹³ A.V. Dicey, “Introduction to the Study of Law of the Constitution” Macmillan, New York, 1959, 10th edi., p. 238ff, 247ff.

¹⁴ United Nations General Assembly Resolution No. 217A (III), 10th December, 1948.

¹⁵ 1978 AIR 597, 1978 SCR (2) 621.

¹⁶ AIR 1950 SC 124:1950 SCR 594.

popular government, is possible. A 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.” Justice K.K. Mathew has observed as follows: “As the freedom of expression concerning public affairs is indispensable to the operation of the democratic system, it is a necessary implication from the provisions of the Constitution establishing it”.¹⁷

Freedom of speech and expression is an important element of democratic society. Most of the people assume that democracy is limited to voting. But it is not like that. Democracy is so much more than voting. Even after elections, even after the governments are formed, citizens still have a say in the country. They are allowed to put their views even after they have cast their votes. It does not only mean that a citizen can say things in an articulate, coherent or respectful manner. It also includes rude, offensive, incoherent and even confusing sayings. There is also reasonable restrictions on the freedom of speech and expression to regulate the state in proper manner.

PROTECTION FREEDOM OF SPEECH AND EXPRESSION IN INTERNATIONAL LAW:

In International Law, freedom to express one’s views and opinions is considered as an essential element. This freedom of speech and expression is firmly protected in the international treaties, regional human rights instruments and newly established domestic human rights laws and it is now considered to be a norm of customary international law. Article 19 of the UDHR protects the freedom of speech and expression which says that- “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Under the ICCPR, freedom of expression includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of a person’s choice”.¹⁸ This protects expression in all forms, including spoken, written and sign language, and non-verbal expressions through artworks.¹⁹ In society, without free speech, enjoyment of other rights can not be possible.

International, national and regional standards also recognize freedom of speech and expression. This right is enshrined in Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, Article 13 of the

¹⁷ K.K. Mathew, “Democracy, Equality and Freedom” in Upendra Baxi (eds.), Eastern Book Company, Lucknow, 1978, p. 98.

¹⁸ United Nations, 1966, Article 19(2).

¹⁹ UN Human Rights Committee, 2011, para. 12

American Convention on Human Rights and Article 9 of the African Charter on Human and People's Rights.

Free speech provides opportunity to express one's belief and show political attitudes for the welfare of the society and state. Thus, it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. It plays an important role in democracy. It strengthens the capacity of an individual in participating in decision-making process. Freedom of speech is an integral aspect of individual's right to self-development and self-fulfillment. Thus, protection of freedom of speech is very much crucial.

FREEDOM OF SPEECH AND PRESS:

“Our liberty depends on the freedom of the press, and that cannot be limited without being lost.”

— **Thomas Jefferson**

Freedom of speech and expression is indispensable in a democracy. The fundamental right of the freedom of the press implicit in the right to freedom of speech and expression, is essential for political liberty and proper functioning of democracy. Freedom of press is implied from the freedom of speech and expression and it is regarded as a “species of which freedom of expression is a genus”. In **Romesh Thapar v. State of Madras**,²⁰ Patanjali Shastri J., rightly 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 liberty of the press*” as defined by *Lord Mansfield*, “consists in printing without any license subject to the consequences of law”. Thus, the liberty of the press means liberty to print and publish what one pleases, without previous permission. The freedom of press is not confined to newspapers and periodicals. It includes also pamphlets and circulars and every sort of publication which affords a vehicle of information and opinion.²¹

The American Press Commission has said, “Freedom of the press is essential to political liberty. When man cannot freely convey their thoughts to one another, no freedom is secured, where freedom of expression exists in the beginning of a free society and means for every intention of liberty are already present. Free expression is therefore, unique among liberties”.²² The Indian Press Commission has also expressed a similar view. It says that “Democracy can thrive not only under the vigilant eye of its legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which opinion can become articulate”.

Unlike the American Constitution, Article 19(1)(a) of the Indian Constitution does not expressly mention the liberty of the press but it has been held that liberty of the press is

²⁰ AIR 1950 SC 124.

²¹ *Lowell v. Griffin*, (1938) 303 US 444; *Sakal papers Limited v. Union of India*, AIR 1962 SC 305.

²² *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

included in the freedom of speech and expression. “The press has no special rights which are not to be given of which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press”.²³

The Expression connotes also publication and thus the freedom of the press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. The freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value.²⁴

The freedom of speech and expression includes liberty to propagate not one’s views only. It also includes the right to propagate or publish the views of other people,²⁵ otherwise this freedom would not include the freedom of the press. In **Prabhu Dutt v. Union of India**,²⁶ the Supreme Court has held that the right to know news and information regarding administration of the government is included in the freedom of press. But this right is not absolute and restrictions can be imposed on it in the interest of society and the individual from which the press obtains the information.

Justice Blackstone, in his Commentary on the Laws of England, while dealing about the freedom of press in England observed as follows: “The liberty of the press, properly understood, is essential to the nature of a free State; but that this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press. But if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity.....”

In **Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India**²⁷, the Supreme Court after pointing out that communication needs in a democratic society should be met by the extension of specific rights e.g., the right to be informed, the right to inform, the right to privacy, the right to participate in public communications, the right to communicate, etc., proceeded to observe as follow: “In today’s free world freedom of Press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non formal education possible in large scale particularly in the developing world where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspaper being surveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.

²³ Dr. Ambedkar’s speech in Constituent Assembly Debates, VII, 980.

²⁴ Romesh Thappar v. State of Madras, AIR 1950 SC 124; Life Insurance Corp. Of India v. Manubhai D. Shah, (1992) 3 SCC 637.

²⁵ Srinivas v. State of Madras, AIR 1931 Mad 70.

²⁶ AIR 1982 SC 6. See Sheela Barse v. State of Maharashtra, (1997) 4 SCC 373.

²⁷ AIR 1986 SC 515:(1985) 2 SCR 287:(1985) 1 SCC 641.

The authors of the article which are published in the newspapers have to be critical of the action of the Government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power.”

Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press and the same is included in the freedom of expression, which is conferred on all citizens²⁸. It has also been by this judgment that freedom of the press under the Indian Constitution is not higher than the freedom of an ordinary citizen.

INTERNET AND FREEDOM OF SPEECH:

Internet access is definitely a part of the basic rights of all. It aids the right to expression and free speech. Besides, the internet has become an accepted medium of communication. Access to Internet is merged with manifold fundamental rights like Education, information, communication, free speech and expression, health among others.

Right to access internet is a fundamental right. Suspension and shutdown of the internet and communication services is an infringement of the Freedom and rights guaranteed and safeguard under Art.19 of the Constitution. Using of internet is something like freedom to connect. It was held that the “freedom to access the internet” is a fundamental right and is protected under Article 19(1)(a) of the Constitution.²⁹ Government cannot deprive the citizens of fundamental rights except under certain conditions explicitly mentioned in the constitution. Right to freedom of speech and expression guarantees individuals the liberty to express themselves, criticize others and comment on issues.

Access to Internet is a fundamental right under Article 19 of the Constitution, subject to some restrictions and said freedom of press is a valuable and sacred right. It said magistrates, while passing prohibitory orders, should apply their mind and follow doctrine of proportionality. Arbitrary and Unreasonable Internet shutdowns by the Government is a violation of the fundamental rights to information, education and free speech protected by the Constitution. In **Faheema Shirin. R. K vs State of Kerala**³⁰, It is claimed that the right to access internet forms a part of Freedom of speech and expression guaranteed under Article 19(1)(a) and the restrictions imposed do not come within reasonable restrictions covered by Article 19(2) of the Constitution of India.

RIGHT TO INFORMATION:

RTI stands for Right to Information. Right to Information is a part of fundamental rights under Article 19(1) of the Constitution. Article 19 (1) says that every citizen has freedom of speech and expression. Section 2(f) of the RTI Act defines Information as: “Information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples,

²⁸ Virender Vs. State of Punjab, AIR 1958, SC. 986 and Sakal Papers Vs. Union of India, AIR 1962 S.C. 305.

²⁹ Anuradha Bhasin v. Union of India & Ors., Writ Petition (Civil) No. 1031 of 2019.

³⁰ W.P(C).No.19716/2019-L.

models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for a time being in force.

Right to Information (RTI) is defined under Section 2(j) as:

“Right to Information” means the Right to Information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- i. Inspection of work, documents, records;
- ii. Taking notes, extracts, or certified copies of documents or records;
- iii. Taking certified of materials;
- iv. Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

As early as in 1976, the Supreme Court said in the case of **Raj Narain vs State of UP**³¹, that people cannot speak or express themselves unless they know. Therefore, right to information is embedded in Article 19. In the same case, Supreme Court further said that India is a democracy. People are the masters. Therefore, the masters have a right to know how the governments, meant to serve them, are functioning. Further, every citizen pays taxes. Even a beggar on the street pays tax (in the form of sales tax, excise duty etc.) when he buys a piece of soap from the market. The citizens therefore, have a right to know how their money was being spent. These three principles were laid down by the Supreme Court while saying that RTI is a part of our fundamental rights.

In **People’s Union for Civil Liberties v. Union of India**³², it was held that “Right to Information is a facet of the freedom of ‘speech and expression’ as contained in article 19(1)(a) of the constitution of India. Right to Information, thus, indisputably is Fundamental Right.” In **Govt. of India v. The Cricket Association of Bengal**³³, the Supreme Court says that “the freedom of speech and expression includes right to acquire information and disseminate it. It enables people to contribute to the debate on social and moral issues. Right to freedom of speech and expression means right to education, to inform, to entertain and right to be educated, informed and entertained. Right to telecast is, therefore, within the ambit of Article 19 (1) (a).”

Right to information is an important aspect of free speech. Right to know, to receive and to impart information has been recognized as the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. Right to Information Act-2005, talks about peoples’ right to ask information from Government official, prohibits discloser of certain documents under section 8 of the Act. These exceptions are generally the grounds of

³¹ 1975 AIR 865, 1975 SCR (3) 333.

³² AIR 2004 SC 1442.

³³ (1995) 2 SCC 161.

reasonable restrictions over freedom of speech and expression under Article 19(1) of Constitution of India.

GROUNDINGS OF RESTRICTIONS ON FREEDOM OF SPEECH & EXPRESSION:

The restriction on the rights under Article 19(1) can only be imposed by a 'Law' and not executive or departmental instructions. No freedom can be absolute or completely unrestricted.³⁴ Freedom of speech and expression is subject to limitations imposed under Article 19(2) which empowers the State to put 'reasonable' restrictions on the following grounds, e.g., security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to offence and integrity and sovereignty of India.

(a) Sovereignty and integrity of India.

Sovereignty and integrity of India was added to clause (2) of Article 19 by the Constitution (Sixteenth Amendment) Act, 1963. Freedom of speech and expression can be restricted so as not to permit to any one to challenge the integrity or sovereignty of India or to preach cession of any part of India from the Union. It is to be noted that sedition is a ground on which restriction on freedom of speech and expression may be imposed but it is not mentioned in clause (2). In **Devi Saren v. State**,³⁵ it has been held that Sections 124A and 153A of IPC impose reasonable restriction in the interest of public order and is saved by Article 19(2).

(b) Security of the state.

Reasonable restriction can be imposed on freedom of speech and expression in the interest of security of the State. In **Romesh Thappar v. State of Madras**,³⁶ the Supreme Court has occasion to interpret the meaning of the words 'security of the state'. The Court said that there are different grades of offences against 'public order'. Every public disorder cannot amount to be regarded as threatening the security of the State. The term 'security of the state' refers only to serious and aggravated forms of public disorder, e.g., rebellion, waging war against the state, insurrection and not ordinary breaches of public order and public 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 the State.³⁷

(c) Friendly relations with foreign states.

It 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 jeopardise the maintenance of good relations between India and that state. It is to be noted that members of the commonwealth including Pakistan are not a 'foreign state' for

³⁴ M.P. Jain, "Indian Constitutional Law" Lexis Nexis Butterworths Wadhwa Nagpur, Gurgaon, 2012, p. 1104.

³⁵ AIR 1954 Pat 254.

³⁶ AIR 1950 SC 124.

³⁷ State of Bhar v. Shailabala Devi, AIR 1952 SC 329.

the purposes of this constitution. The result is that freedom of speech and expression can not be restricted on the ground that the matter is adverse to Pakistan.

(d) Public order.

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. Article 19(2) did not contain the expression 'public order'. It was held that restrictions could only be imposed on the grounds mentioned in Article 19(2). As a result of this decision the expression 'public order' was added to Article 19(2) as one of the grounds for imposing restrictions on the freedom of speech and expression. Anything that disturbs public tranquility or public peace disturbs public order.³⁸ Thus, communal disturbances³⁹ and strikes promoted with the sole object of causing unrest among workmen⁴⁰ are offences against public order. Mere criticism of Government does not necessarily disturb public order.⁴¹ Under 'Public order' the State would be entitled to prevent propaganda for a State at war with India.⁴²

(e) Decency or morality.

The words "morality or decency" are words of wide meaning. Sections 292-294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency and morality. Obscenity in India is defined as "offensive to modesty or decency; lewd, filthy and repulsive." It stated that the test of obscenity is whether the publication, read as a whole, has a tendency to deprave and corrupt those whose minds are open to such immoral influences, and therefore each work must be examined by itself.

(f) Contempt of court.

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. The Contempt of Courts Act, 1971 defines the expression 'Contempt of court' as follows: According to Section 2, 'Contempt of court' may be either 'civil contempt' or 'criminal contempt'. 'Civil contempt' means wilful disobedience to any judge judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. 'Criminal contempt' means the publication (whether by words spoken or written, or by signs or by visible representations or otherwise) or any matter or the doing of any other act whatsoever, which-

- (i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court;
- (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceedings; or

³⁸ Om Prakash v. Emperor, AIR 1948 Nag 199.

³⁹ Noor Mohammad v. Rex, AIR 1949 All 120.

⁴⁰ Om Prakash v. Emperor, AIR 1948 Nag. 199.

⁴¹ Raj Bahadur Gond v. State of Hyderabad, AIR 1953 Hyd. 277.

⁴² Rex v. Amir Hussain, AIR 1949 PC 152.

- (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

The following acts are, however, not contempt of courts:- Innocent publication and distribution of any matter; publication of fair and accurate report of judicial proceedings; fair criticism of judicial act; complaint against presiding officers made in good faith; publication of fair information relating to proceedings in chambers or in camera.

(g) Defamation.

A statement which injures a man's reputation amounts to defamation. It consists in exposing a man to hatred, ridicule or contempt. In India, Section 499 of IPC, contains the criminal law relating to defamation. It recognizes no distinction between the defamatory statement addressed to the ear or eyes, or slander and libel. These sections are saved as being reasonable restrictions on the freedom of speech and expression.⁴³

(h) Incitement of an offence.

This ground was also added by the Constitution (First Amendment) Act, 1951. Freedom of speech and expression cannot confer a licence to incite people to commit offence. The word 'offence' used here is not defined in the constitution. However, according to the General Clauses Act, "offence shall mean any act or omission made punishable by any law for the time being in force". Incitement have to be determined by the Court with reference to the facts and circumstances of each case.

CONCLUSION:

It can be concluded that the value of the freedom of speech and expression is determined by the extent to which the citizens are able to enjoy such freedom. Freedom of speech and expression is a fundamental human right. It is the bulwark of democratic government. It is also essential for the proper functioning of the democratic process. 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. Every person has the right to freedom of speech and expression. Speech is essential because it helps a human being to convey his thoughts, sentiments and feelings to others. Thus, it is a natural right as a human being acquires it on birth. Therefore, it is a basic right and it should not be taken away from the Citizens.

"If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter."

— **George Washington**

⁴³ Dr. Suresh Chandra v. Panbit Goala, AIR 1958 Cal. 176.