

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 4

2020

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Freedom of Speech and Expression on Internet: An Emerging Right

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ABSTRACT

The Constitution of India under Part III provides certain Fundamental Rights, one of these rights is the Right to Freedom of Speech and Expression given under Article 19 (1) (a) which includes Right to hold opinion, impart information, Right to commercial speech, Right to advertisement etc. The Right to Free Speech and Expression is a cornerstone of a democratic and welfare society and no doubt without this right the democratic nature of our nation as provided in the Preamble will become a deadlock. The primary principle of a democratic society is an untrammelled flow of words in an open discussion. Under no circumstances except as provided under Article 19 (2) the citizens shall be imprisoned from exercising this Right.

After the advent of the Internet this Right was given a wider connotation by the Judiciary. Internet proved to be a great platform where people exercised Free Speech & Expression and raised their voices for noble causes and for National or International issues having sensitivity. If we believe that individual's opinion and thought triggers the progress of civilization then Freedom of Speech on Internet is the key to that progress. The Hon'ble Supreme Court in its prominent Judgement in Shreya Singhal's case interpreted that Freedom of Speech and Expression over Internet is constitutionally protected.

This paper will deal with the concept of Freedom of Speech and Expression under Article 19(1) (a), how judiciary interpreted it through various judicial pronouncements and recent judgements related to Freedom of Speech and Expression over Internet.

I. INTRODUCTION

Expression is a matter of right, liberty and freedom. The liberty of opinions, thoughts, criticism and right to information are the sources of expression. Freedom Speech and expression is the soul of the democracy, where people are set free to express, circulate or publish their opinions, views and ideas regarding any subject matter. Freedom of expression is vital to the fulfilment and expansion of individual personality. In a democratic country like India Freedom of expression is very integral as people are the Sovereign rulers, without

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freedom of speech & expression, the concept of welfare state is practically not possible to achieve. Freedom of speech and expression is indispensable part in the development of intellectual and moral life of either the individual or the nation. This right is not limited to an individual expressing his thoughts but it includes right of the whole community to hear and to be well informed. Democracy is a Government by discussion which could be successfully achieved only when there is efficient participation and involvement of the people in the Government. This right is the most valuable asset in the human possession and in order to make its best use people should be made aware and educated about this right. This right is not limited to any platform or medium and can be exercised by words of mouth, writing, printing, visual representations and in this digital era even on the internet.

The preamble of the Constitution of India states that India is Sovereign, Democratic, Socialistic, Secular and Republic. In our democratic society, liberty of speech and expression is considered as mother of all other liberties. One of the main objectives as laid down in the preamble is to secure liberty of thought and expression to all the citizens. This right is very crucial for development and preservation of free and fair society where government is formed upon the consent and will of the informed citizens and is devoted to protect the rights of all, even the most despised minorities, but this absolutely indispensable right is not absolute in nature and is subject to reasonable restriction provided under Article 19(2), So that it does not deviate from its objective and create chaos, conflict and hatred among the people.

The Internet has proved to be a vital communication tool through which right of freedom speech and expression can be exercised. In the last few years, an emerging movement of people around the globe has been observed who are fighting for justice, equality, accountability, change and respect for human rights. In such movements a very prominent role has been played by the Internet and Social Media which helped people to raise their voices and reach the public instantly and widely, thereby creating a sense of unity, harmony and solidarity.

II. FREEDOM OF SPEECH AND EXPRESSION UNDER THE CONSTITUTION OF INDIA AND INTERNATIONAL CONVENTIONS

The Constitution of India under Article 19(1) (a)³ guarantees the right to freedom of speech and expression to all its citizens. The freedom of speech under Article 19(1)(a) includes the right to express one's criticism, thoughts, feelings, opinions and views on any issue through any medium such as by words of mouth, printing, picture, film, writing, movie, poetry,

³ India Const., art. 19, cl. 1 (a) - All citizens shall have the right to freedom of speech and expression.

speeches etc. It also includes freedom to communicate and the right to propagate, circulate or publish one's opinions and ideas. However this right is not absolute as under Article 19(2) there are reasonable restrictions that can be imposed on the exercise of this right for certain purposes. The right of freedom of expression is not made absolute so that people do not use it as sword to destruct public order, security, and integrity of the nation.

Under Article 19(2)⁴ reasonable restrictions are provided which are as follows:

1. security of the State,
2. friendly relations with foreign States
3. public order,
4. decency and morality,
5. contempt of court,
6. defamation,
7. incitement to an offence, and
8. Sovereignty and integrity of India.

In **Maneka Gandhi v. Union of India**,⁵ 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.”

The right to freedom of expression is protected by all the major international human rights instruments such as-

- Article 19⁶ of The Universal Declaration of Human Rights (UDHR).
- Article 10⁷ of The European Convention on Human Rights (ECHR).
- Article 19 (2)⁸ The International Covenant on Civil and Political rights (ICCPR).

⁴ India Const, art., 19, cl. 2.

⁵Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

⁶ The Universal Declaration of Human Rights, 1948, art., 19- 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.

⁷ The European Convention on Human Rights, 1950, art., 10- Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Article 19 (2) is subject to certain restriction given under Article 19 (3)⁹.

III. FREEDOM OF SPEECH & EXPRESSION: A MULTIFACETED RIGHT

The freedom of speech and expression under Article 19(1) (a) is a dynamic concept which is evolving with time and development in technology, this right has diverse facets both with respect to content of speech and expression and in the medium or platform through which communication and exchange of information takes place. Our judiciary in the past few decades has extended the concept of freedom of speech and expression under Article 19(1) (a) and identified the inherent right under this article some of them are mentioned below:

Right to Circulate

The right to freedom of speech and expression has been held to include the right to circulate information and opinion. The free speech and expression would have little meaning without the right to circulate. The freedom of circulation allows the person to publish and disseminate one's opinion without any hindrance to a large population provided it does not fall under Article 19(2).

In **Sakal Papers v. Union of India**¹⁰, the Hon'ble Supreme Court held that no laws can be made by the State which directly affects the circulation of a newspaper as it will result to infringement of the freedom of speech and expression. The right under Article 19(1) (a) protects not only the contents which the citizen is entitled to circulate but also to the quantity and volume of the circulation. This case arose when the newspaper agency challenged the newsprint policy made by the government which restricted the agency to print more no. pages of newspaper than what was allowed.

Right to receive information

The freedom of Speech and expression includes not only the right to circulate and publish information but also include the right to receive information. The Hon'ble Supreme Court gave a broad dimension to Article 19(1) (a) as it said that this right not only include circulation and communication but also receiving the information as they are two sides of the same coin, it ensures the right of the citizens to know the information related to matters

⁸The International Covenant on Civil and Political Rights, 1966, art., 19 (2) - Everyone shall have the right to freedom of expression; this right shall include 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 his choice.

⁹Id., art 19 (3) - The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

¹⁰Sakal Papers v. Union of India, AIR 1962 SC 305.

concerning the public.¹¹ In the case of **S.P.Gupta v. Union of India**,¹² the Court held that right to know is integral part of freedom speech and expression and disclosure of information related to the performance and functions of the government must be the rule.

Right to broadcast

With the development of technology and other available means of expression and communication, the concept of speech and expression was given a broader meaning. It extends to communication using any available medium whether electronic or print or audio visuals, such as films, movies, articles etc.

In this case **LIC v. Manubhai D. Shah**.¹³, a documentary film based on the real event Bhopal Gas Tragedy titled Beyond Genocide was refused to be telecasted by Doordarshan on the ground that it had lost its relevance and also it criticised the state Government's action. The film maker approached the Apex Court, where the court observed that the film maker had a fundamental right under Article 19(1) (a) to exhibit his film and the burden to prove that the film is not in complying with the law is on the party which is opposing to telecast the film. It was held that Doordarshan is a state controlled agency managed through public funds cannot refuse to telecast except on grounds mentioned under Article 19(2).

Right to expression beyond national boundaries

The right to freedom of speech and expression is not limited to national boundaries. The revolution in the means of communications and the advent of electronic media has broken down transnational barriers. This has made exchange and transmission of information and ideas very easy and convenient to any part of the world. Now within fractions of seconds a person can communicate with a large no. of people sitting at different places.

“Everyone has a 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”¹⁴. In the case of, **Maneka Gandhi v. Union of India**,¹⁵ the question whether Article 19(1) (a) is confined to Indian Territory was considered by the Hon’ble Supreme Court and it was held that the right under Article 19(1) (a) is not confined to National boundaries.

¹¹State of Uttar Pradesh v. Raj Narain, AIR 1975 SC 865.

¹²S.P.Gupta v. Union of India, AIR 1982 SC 149.

¹³LIC v. Manubhai D. Shah, (1992) 3 SCC 637.

¹⁴ *Supra* note 4.

¹⁵ Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

Right to advertisement (commercial speech)

Right to advertisement of a product or any service through various methods such as signboards, banners, circulars, hand bills, direct mail, loudspeakers, newspapers, radio, television, on the Internet etc is included under Article 19(1) (a).

In the case of, **Hamdard Dawakhana v. Union of India**,¹⁶ the court observed:

“Freedom of speech goes to the heart of the natural right of an organised freedom loving society to „impart and acquire information about the common interest“. If any limitation is placed which results in the society being deprived of such right then no doubt it would fall within the guaranteed freedom under Article 19(1)(a). But if all it does is that it deprives a trader from commending his wares, it would not fall within that term”.

In the case of **Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd**,¹⁷ the Hon’ble Supreme Court held that commercial speech is protected under Article 19(1) (a) and cannot be denied merely because it is issued by businessmen, the public has the right to receive commercial speech, to listen and to read it. Article 19(1) (a) provides protection to both speaker as well as recipient of the commercial speech.

IV. SHREYA SINGHAL V. UNION OF INDIA

The entire issue of freedom of speech and expression on internet and reasonable restriction was examined by the Hon’ble Supreme Court in the landmark case of **Shreya Singhal v. Union of India**¹⁸.

FACTS

1. In 2012, a bandh was declared in Maharashtra by Shiv Sena as the leader Bal Thackeray died.
2. Shaheen Dhada and Rinu Srinivasan who lived in Thane, were arrested by the Mumbai Police as they expressed displeasure about the bandh, they posted something on Facebook alleged to be offensive and objectionable under section 66A¹⁹ IT Act, 2000.

¹⁶Hamdard Dawakhana v. Union of India, AIR 1960 SC 554.

¹⁷Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd, (1995) 5 SCC 139.

¹⁸Shreya Singhal v. Union of India, AIR 2015 SC 1523.

¹⁹The Information Technology Act, 2000, sec 66A- Punishment for sending offensive messages through communication service, etc.

Any person who sends, by means of a computer resource or a communication device,—

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to

3. Later on the women were released and their prosecution was dismissed but the incident attracted widespread media attention and public protest.

4. A PIL under Article 32 of the Constitution of India was filed by the women, challenging the constitutional validity of Section 66A on the ground that it violated Article 19 (1) (a).

5. Meanwhile the Supreme Court of India issued an interim order in the case, which prohibited any further arrest for an offence under Section 66A unless the senior police officers approves such arrest. In hand, the constitutionality of the provision was addressed by the Court.

ISSUES RAISED

1. Whether Section 66A of IT Act, 2000 is constitutionally valid?

2. Whether Section 66A of IT Act, 2000 is curtailing Freedom of speech and expression under Article 19(1) (a)?

3. Whether Section 66A of IT Act, 2000 is saved under Article 19(2).

JUDGEMENT

BENCH: Justice Jasti Chelameswar, Justice Rohinton Fali Nariman

The main issue before the Court was whether Section 66A of ITA is violative of the right to freedom of speech & expression guaranteed under Article 19(1)(a) of the Constitution of India, and whether the Section falls within the reasonable restriction under Article 19(2).

The Hon'ble Supreme Court heard the contention of both the parties and by giving the following reasons held Section 66A Of ITA as unconstitutional.

- Words under Section 66A like annoyance, inconvenience etc does not fall within reasonable restrictions under Article 19(2).

The Petitioners contended that Section 66A was unconstitutional because under this Section the intended protection is against inconvenience, danger, annoyance, insult, obstruction, criminal intimidation, injury, or ill-will fall which is not covered under Article 19(2). It also argued that the law should be struck down on the ground of vagueness as it does not specifically define its prohibitions which are creating a “chilling effect” to the right under Article 19(1) (a).

On the other hand, the government contended that the legislature aims to fulfil the needs and

deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

demands of the people and judiciary may only interfere with legislative process when a law is clearly violative of the rights provided under Part III of the Constitution. They also argued that the provision cannot be declared unconstitutional on the ground that it has loose language and vagueness. If the law is non-arbitrary and made through competent legislative process it cannot be declared unconstitutional except when it is violative of fundamental right.

- Only when a discussion or advocacy amounts to incitement freedom can be curtailed

The Court considered three fundamental concepts to understand the freedom of expression i.e. discussion, advocacy, and incitement. According to the Court, mere discussion or advocacy on a particular matter even if unpopular is important part of the right and it can only be curtailed when such discussion or advocacy results to incitement of an offence. While applying the same to this case, the Court observed that Section 66A restricts and limits all forms of communication on internet and doesn't make any distinction between mere discussion or advocacy on a matter and when such words being annoying, offensive or inconvenience affects the public order, security of State, integrity of State etc.

- No clear relation to the protection of public order under Article 19(2)

The Court further held that law fails to ascertain a proximate relation to the protection of public order under Article 19 (2), as according to the law the commission of offence under the provision in question i.e. Section 66A is complete when a person sends message causing annoyance, insult, ill-will etc. the law does not make any distinction between dissemination to a large population and dissemination to an individual, and does not require that the message should have clear tendency to disrupt the public order.

- It does not cover injury to reputation

The Court observed that Section 66A does not fall within the exception defamation provided in 19 (2) and does not protect persons from defamatory statements on electronic platform, as the court noted that the main ingredient of the offence of defamation is "injury to reputation, and the law does not concern defamation as an objective because it prohibits offensive statements which may cause annoyance, inconvenience to someone without causing any injury to his reputation.

- It is not protected under the restriction of incitement of an offence

The Court observed that the government failed to show that the law intends to restrict communications that incite the commission of an offence because "the mere causing of inconvenience, danger, annoyance, ill-will, danger etc., or being offensive are not offences

under the Penal Code at all.”

- Terms under Section 66A are vague and undefined

As the petitioners challenged the vagueness of the law, the Court followed that where no clarity is given to the law abiding citizen, authorities or Court and where reasonable standard are not provided to define guilt in a provision that creates an offence, a provision which is vague must be struck down for being unreasonable and arbitrary. The Court found that the language of Section 66A is not clear as many terms are open ended and undefined which provides huge possibility to take undue advantage of the said provision by the people having malafide intention.

- Rule of Severability

The rule of severability was applied in this case, and the Court declared only Section 66A as unconstitutional and not the act as a whole. The said section was separated from the act. Therefore on the basis above reasons the Court held Section 66A of IT Act unconstitutional as it violated the right of freedom of speech and expression under Article 19(1) (a) of the Constitution of India.

V. RECENT JUDICIAL PRONOUNCEMENTS

The Judiciary of India has extended the scope of Freedom of Speech and Expression under Article 19(1) (a) of the Constitution of India and ruled that it extends to the Internet and social media.

- **Anuradha Bhasin v. Union of India & Ghulam Nabi Azad v. Union of India²⁰**
(Kashmir Internet shutdown case)

The Apex Court in this case held that the freedom of speech and expression and the right to carry on any business or trade on the internet is protected under the constitution. The Supreme Court ordered the Jammu & Kashmir authorities to instantly restore internet services in all institutions providing necessary services, including banks and hospitals. The Apex Court in its judgment dealt with the process that governs internet shutdowns and restrictions imposed under Section 144 of the Code of Criminal Procedure. On internet shutdowns, the court made it clear that all the orders which lead to an internet shutdown must be put out in public domain. The apex court also made it clear that there cannot be an indefinite extension of internet shutdown orders as it will be unconstitutional.

²⁰Anuradha Bhasin v. Union of India & Ghulam Nabi Azad v. Union of India, 2020 SCC Online SC 25.

- **Lipika Pual v. State of Tripura**²¹

Smt. Lipika Paul, (now retired from Govt. Service) while working in the Department of Fisheries Govt. of Tripura as UDC at Directorate of Fisheries, She canvassed against a Political party by making defamatory & indecent comments against Political Leader who was contesting. It was therefore, alleged that her conduct was in breach of Rule 5(4) of the Conduct Rules and hence she will not get her post retirement benefits.

The Tripura High Court has ruled that posting on social media platforms is virtually the same as a fundamental right guaranteed to the citizens including the govt. employees, it also held that the govt. servants are entitled to express and hold their political beliefs, subject to the restriction mentioned in the Tripura Civil Services (conduct) rules, 1988.

VI. CONCLUSION

Article 19(1) (a) of The Constitution of India provides Freedom of Speech and Expression to all its citizens and is regarded as the mother of all liberties. This right is not limited to any particular medium and can be exercised even in the virtual world. The advent of the Internet gave a huge platform to the people to exercise their Free Speech and Expression instantly and inexpensively. Social media, blogs, posts and all the online content are the ways by which one can express his opinions, thoughts, expressions, ideas etc. to anyone around the whole globe. Freedom of Speech and Expression is the basis of democracy as it opens up channels of free discussion on the issues related to public concern.

The Indian Judiciary has immensely contributed to evolve and make people aware that their fundamental Right of free speech and expression extends over the internet also. The very first case that dealt with the concept of Free Speech and Expression on internet was the Shreya Singhal's case in which the Hon'ble Supreme Court held Section 66A of IT Act, unconstitutional as it violated Article 19 (1) (a) of the Constitution of India.

Recently the Hon'ble Supreme Court and Tripura High Court interpreted that Freedom of Speech and Expression over the Internet is constitutionally protected.

Thanks to our judiciary for interpreting the phrase "Freedom of Speech and Expression" and giving wider connotation because of which many Rights which are not expressly embodied under the Article's plain words has been recognised and one such Right is Freedom of Speech and Expression over the Internet.

²¹Lipika Pual v. State of Tripura, 2020 SCC Online Tri 17.