



Reasonable Restrictions Under Article 19 of the Constitution of India:

A Critical Study

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ABSTRACT

As stated in Article 19, the freedom of speech and expression, assembly, association, movement, residence, and profession are among the fundamental rights guaranteed by Part III of the Indian Constitution. As stated in Article 19 Clauses (2) to (6), these rights are not unqualified and are subject to reasonable restrictions. In India, the concept of "reasonable restrictions" has been the subject of much debate and interpretation, especially in relation to striking a balance between the rights of the individual and the interests of the community. The evolving legal precedent surrounding the definition of "reasonable" and the importance of proportionality in restricting fundamental rights are highlighted in this article. Maintaining social cohesion requires these limitations. This article looks at the possibility of misuse, particularly when it comes to stifling political opposition, limiting free speech, and stifling dissent. For the sake of the general welfare, these sensible restrictions are essential. To keep India's democratic values from deteriorating, they must always be applied sensibly, openly, and proportionately. This study aims to clarify the conflicts between state interests and individual rights as well as the judiciary's function in upholding a fair balance. The concept of reasonable restrictions under Article 19 is examined critically in this article, along with its



ramifications, judicial interpretations, and the tension between the public interest and individual liberty.

Introduction:

The right to freedom of speech and expression is essential to a democracy's vitality and vibrancy. An Indian citizen's "freedom of speech and expression" refers to their ability to express their ideas and opinions through written or spoken words, pictures, or any other type of visual or communicative expression, such as signs or gestures. It includes the freedom to express one's own opinions and the right to share them. Freedom of expression is essential to a democratic society. The Indian Constitution guarantees the right to freedom of speech and expression in Article 19(1)(a). Only Indian citizens are granted certain freedoms under Article 19. Article 19 does not grant such rights to a foreign national¹.

The Supreme Court ruled in *R.C. Cooper v. Union of India*² and Newspapers case³ that when shareholders formed a company together, their fundamental rights as citizens were not violated. The court decided that Indian citizens should be shielded from government actions that violate the company's and its shareholders' rights. The freedoms protected by Article 19(1) are not unqualified. Statutes passed by Parliament or State Legislatures may limit, restrict, or govern each of these rights in different ways. Therefore, clauses (2) to (6) of Article 19 outline the conditions and purposes for which a legislature may impose "reasonable limits" on the rights protected by Articles 19(1)(a) to 19(1)(g).

The 'right to free speech and expression' means that "Democracy is characterized by free debate and open discussion, which serve as the sole corrective for government actions." In this context, democracy means governance by the people for the people, according to P.N. Justice Bhagwati in the seminal case of "*Maneka Gandhi v. Union of India*"⁴. Open and thorough discussion of public issues is essential because every citizen must have the right to participate in the democratic process and to wisely use their right to vote.

According to Article 19(2)⁵, "Reasonable restrictions may be imposed on the exercise of this right for specific purposes." Any restriction on the right permitted by Article 19(1)(a) that does not adhere to Article

¹ State Trading Corp. of India Ltd. v. Commercial Tax Officer, AIR 1963 SC 1811.

² Bennet Coleman & Co. v. Union of India & Ors., AIR 1973 SC 106

³ AIR 1978 SC 597: (1978) 1 SCC 248.

⁴ AIR 1978 SC 597: (1978) 1 SCC 248.

⁵ The Constitution of India. (1950), Art. 19(2).



19(2) is illegal. Among other rights, the freedom of the press⁶, the right to commercial advertising⁷, the right to silence⁸, the right to vote⁹, the right to travel overseas¹⁰, the right to broadcast¹¹, and the right to know¹² are all included in the right to freedom of speech and expression.

Restrictions on freedom of speech and expression:

The government may pass legislation restricting the right to free speech and expression in a reasonable manner under Article 19(2). Among other things, these limitations protect the state's integrity, security, sovereignty, good relations with other countries, public order, morality and defamation. The only grounds for restricting the right to free speech and expression are those listed in Article 19 (2).

They give the State the authority to enact laws restricting the free expression of people, organizations, social groups, and citizen classes. All possible attacks on individuals, groups, or classes of people, as well as society at large, are covered by Article 19(2). Any restriction that is not covered by Article 19(2) is unconstitutional, according to the Supreme Court's consistent rulings. The Apex Court acts as a watchdog, carefully examining any limitations placed on fundamental rights. The protection of fundamental rights is the Court's job.

(a) Security of the State

Public unrest, uprisings, disputes with the state, insurrections and similar acts are all included in the state's security. The definition of state security has also been interpreted by the Apex Court in a number of cases. For the purpose of maintaining state security, the Indian Constitution permits the imposition of reasonable limitations on the right to free speech and expression. The following offenses are covered under the IPC's Chapter VI, "offenses against the State and the Army."

- Fighting, attempting, or planning to fight against the Indian government (as defined by IPC sections 121, 121A, 122, and 123).

⁶ Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641.

⁷ Tata Press Ltd. v. MTNL, (1995) 5 SCC 139: AIR 1995 SC 2438: 1995 (3) SCJ 571.

⁸ Noise Pollution (V), In re, (2005) 5 SCC 733: AIR 2005 SC 3136

⁹ People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399

¹⁰ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

¹¹ Secretary Ministry of Information and Broadcasting v. Cricket Association of West Bengal, (1995) 2 SCC 161.

¹² Secretary Ministry of Information and Broadcasting v. Cricket Association of West Bengal, (1995) 2 SCC 161.



- Attacking a State Governor or the President of India with the intention of preventing or restricting the use of any legitimate authority (section 124, IPC)
- Fighting a state that is at peace with the Indian government (section 125 IPC);
- Helping a state prisoner or a prisoner of war escape (sections 128, 129, and 130 IPC)
- Inciting people to rebel against the government (IPC s. 124A).

(b) Friendly relations with foreign States

The right to free speech and expression may be subject to reasonable limitations by the State as permitted by the Indian Constitution. India needs to maintain friendly and cordial relations with other countries in the modern world. Any elements that might affect these relationships should be looked into by the government. Monitoring unchecked hostile propaganda aimed at a friendly foreign country is the goal. Indian citizens who defame foreign dignitaries face penalties under the country's Foreign Relations Act of 1932. The Executive has the power to prohibit any Indian citizen from joining the armed forces of other countries under the Foreign Recruiting Act of 1874. Suppressing valid criticism of the government's foreign policy is not justified by the desire for friendly relations with other countries. Any state with the exception of India is considered a foreign state under Article 367(3)¹³. For specific reasons the President may issue an order declaring a state to be a non-foreign state. A Commonwealth nation is not regarded as a foreign state under the Constitution, according to the Constitution (Declaration as to Foreign State) Order, 1950.

The Supreme Court held in **Jagan Nath v. Union of India**¹⁴ that a country may be regarded as a foreign power for other purposes even though it is not a foreign state under the Constitution. Commonwealth nations are foreign powers in relation to one another, and their interactions with one another make up foreign affairs. According to Article 19(2), a Commonwealth country is regarded as a foreign country.

(c) Public Order

There is a significant difference between "public order" and "security of state." The Constitutional First Amendment Act of 1951 was passed in response to the Romesh Thapper case¹⁵, in which the Supreme

¹³ The Constitution of India. (1950). Art. 367, cl. 3.

¹⁴ AIR 1960 SC 675 (1960) 2 SCR 942.

¹⁵ Romesh Thapper v. State of Madras, AIR 1950 SC 124.



Court rejected the claim that "security of the state" applied to public order. "Public order" is more than just "state security." Public order is violated by any action that disturbs the peace or tranquillity of the public. Public peace, safety and tranquillity are all synonymous with the term "public order." Offenses against public order include strikes and communal disturbances that are intended only to provoke unrest among employees. The absence of violence and a controlled atmosphere that permits people to go about their daily lives in peace are characteristics of public order. As a result it also concerns public safety. Protecting the community from both internal and external threats is referred to as public safety. The idea of "maintenance of public order" is outlined in Section 31 of the Police Act, 1861, which states that parades and gatherings must not disturb the peace in public areas. Sections 141 to 160 of Chapter VIII of the Indian Penal Code of 1860 list offenses against public tranquillity, while Chapter X of the Criminal Procedure Code describes the duties, authorities and powers granted to the Executive Magistrate for the police to uphold public order and peace. Since "public tranquillity" refers to societal peace, any collective action that disturbs that peace is considered an offense against public tranquillity.

(d) Decency and Morality

There is a broad range of morality and decency. The ability of content that is considered obscene to deprave and corrupt people whose minds are susceptible to such immoral influences is how obscenity is evaluated. Therefore if a publication has the potential to arouse sexual cravings and lewd thoughts in a sizable portion of its target audience it is deemed obscene.

In *R. v. Hicklin*¹⁶ was established limitations on the right to free speech and expression for the sake of morality and decency are found in Sections 292 to 294 of the Indian Penal Code. These rules forbid the distribution, sale, or public display of pornographic books or other materials. However, there is no precise definition of obscenity in the Indian Penal Code.

The Supreme Court recognized the standard in case named **Ranjit D. Udeshi v. State of Maharashtra**¹⁷ which is followed in English case "**R v. Hicklin**"¹⁸ to determine obscenity. Based on the cited standard the court upheld the appellant's conviction for selling and possessing such books. The novel named "The Lady Chatterley's Lover," which was prosecuted under Section 292 of the I.P.C. The novel was deemed obscene. After concluding that the Hicklin test was flawed, the Apex Court in "**Aveek Sarkar v. State of**

¹⁶ LR 3 QB 360.

¹⁷ AIR 1965 SC 881.

¹⁸ LR 3 QB 360.



West Bengal¹⁹ applied the "community standard test" to determine obscenity. A picture of a woman who is nude or semi-naked cannot be considered offensive in and of itself unless it has the capacity to provoke strong feelings or reveal overt sexual desires. In order to arouse sexual desire in those who are likely to view it, the image should evoke a depraved mentality. Obscenity must be evaluated from the viewpoint of the average person, and only sexually explicit objects that have the potential to provoke amorous thoughts can be classified as such. The Court concluded, using the "community standard test," that a picture of a woman half-naked and with her breasts fully covered by a man's arm had no potential to corrupt and deprave the minds of those who would hold the magazine or newspaper if it fell into their hands²⁰. "The Indian Penal Code, 1860" contains sections 292-294 that forbid the publication and sale of pornographic material, but they do not apply to indecent depictions of women. Women are frequently portrayed in highly offensive, lewd, and obscene ways. Because they are viewed as nothing more than objects of desire, they are oppressed in society and others' perceptions are tainted. In order to forbid the indecent, improper, and scandalous portrayal of women in any form of writing, publishing, advertising or other media the "***Indecent Representation of Women (Prohibition) Act, 1986***" was deemed necessary. In addition to providing clarification on what constitutes "indecent representation of women" Section 2(c) forbids and penalizes any publication that portrays or portrays women in an offensive way. This is done in any type of advertisement as well as books, circulars, posters etc. "***The Cable Television Networks (Regulation) Act, 1995***", establishes guidelines for the punishment of incarceration and fines for programs that defy established standards and are likely to incite outrage in our society. According to section 5 of the Act and Rule 6(1)(o)²¹ of "***The Cable Television Networks Rules, 1994***", programs that seem unsuitable for "unrestricted public exhibition," as defined by section 5 A cannot be broadcast. The rules and certification specifications for the screening of cinematograph films are outlined in "***The Cinematograph Act of 1952***". While Section 5A deals with film certification and Section 4 lays out the rules for film examination. The provisions for the Board of Film Certification's (CFBC) certification and inspection of cinematograph films are clarified by the combination of Section 4 of the Act and Section 5A of the Cable Television Networks Act. "***The Young Persons (Harmful Publication) Act of 1956***" prohibits the publication of anything that could incite children or young people to commit violent or cruel acts or corrupt or debase their minds. Those who violate the provisions of this Act are subject to penalties

¹⁹ AIR 2014 SC 1495.

²⁰ Devidas Ramchandra Tujjapurkar v State of Maharastra, AIR 2015 SC 2615.

²¹ Cable Television Networks Rules, 1994. Rule 6(1)(o).



which include fines and imprisonment.

The publication and dissemination of electronically formatted content that is erotic or appeals to pornographic interests is prohibited by the “*Information Technology Act of 2000*”. It is illegal to publish or transmit anything that degrades or corrupts those who have interacted with the content such actions are punishable by jail time and fines. To control television commercials the government formed the Advertising Standards Council of India (ASCI) in 1985. By self regulating advertisements ASCI seeks to protect the interests of consumers. The Act's main goal is to restore public trust in advertising by encouraging responsible advertising. A fundamental tenet of this self-regulation code is to guarantee that commercials follow widely recognized norms of propriety and public decency, steering clear of offensive or potentially widespread content that is indecent, obscene, or disgusting.

(e) Contempt of Court

Disrespect for the law according to Section 2 of the “*Contempt of Courts Act, 1971*”, "contempt of court" includes "both civil and criminal contempt." It is considered a legal infraction for someone to disobey a judge's decision or otherwise obstruct the legal process in a courtroom. Under the fundamental right to free expression, no person or organization is allowed to take any actions that might be construed as contempt of court. Intentionally breaking a court-issued undertaking or wilfully breaking a judgment, decree, directive, order, writ or other court issued procedure are both considered civil contempt. Criminal contempt is the disclosure of any information or the performance of any action that-

- 1) Decreases or has the potential to reduce the authority of any court, or causes or has the potential to cause scandal.
- 2) Endangers, hinders, or attempts to hinder the fair administration of any legal proceedings, or
- 3) In any way interferes with or has the potential to interfere with the administration of justice, or obstructs it in any way. The following behaviours are not considered contempt of court:

- the harmless publication and distribution of any content.
- The fair and accurate recording of court proceedings
- Reasonable criticism of court proceedings;
- Sincere complaints about the presiding officers:
- Providing accurate information about proceedings held in camera or in chambers. Section 12 stipulates that contempt of court can be punished with a monetary fine of up to Rs. 2000, six



months of simple imprisonment, or both. Under this Act, anyone carrying out judicial duties, including judges and magistrates²² is equally liable for contempt of court. As a result, judges are not immune from criticism of their judicial behaviour as long as the criticism is genuine and represents an objective evaluation of the judges' actions. Even in purely administrative or non-adjudicatory contexts, disparaging a judge's performance is criminal contempt²³.

- Defamation is a criminal offense as well as a tort. Everyone has the same rights regarding their reputation as they do regarding their freedom of speech and expression. As a result, nobody has the right to express themselves in a way that harms the reputation of others. Therefore, the right to free speech and expression is not violated by laws that punish defamation²⁴. Defamation is classified as a criminal offense under Section 499 of the I.P.C.

Conclusion:

Article 19 of the Indian Constitution's reasonable restrictions are a crucial instrument for striking a balance between people's rights and the larger interests of the state and society. While guaranteeing fundamental freedoms, the Constitution's framers acknowledged that in order to safeguard morality, public order, national security, and other important interests, some freedoms had to be restricted under certain conditions. But given their potential to violate individual liberties, particularly in a democracy like India, the extent and implementation of these limitations have come under constant scrutiny. In this delicate balancing act, the word "reasonable" is crucial. Through a number of significant rulings, the Supreme Court of India has shaped and improved its interpretation, making it clearer when and how limitations can be placed. The Court's emphasis on proportionality guarantees that limitations shouldn't go beyond what is required to accomplish a justifiable goal. This is an important safeguard to stop the state from using its power arbitrarily. Even though the legal system offers crucial checks, there are still issues with how these limitations are applied. Terms like "public order" and "morality" are ambiguous, allowing for subjective interpretation. This can occasionally result in the repression of criticism and dissent, particularly when governments use these terms broadly. Particularly, the right to free speech and expression is frequently restricted under the guise of upholding national security or public order, which begs the question of whether such measures are always appropriate given the danger. Concerns have frequently been raised by the media and civil liberties groups that these limitations are being used to suppress political opposition,

²² Andey, J. N. (2006). *Constitutional Law of India* (56th ed., p. 216). Central Law Agency.

²³ *Baradakant v. Registrar, High Court, Orissa, AIR 1974 SC 710.*

²⁴ *Dr. Suresh Chandra v. Panbit Goala, AIR 1958 Cal. 176.*



dissent, and free speech in addition to the justifiable defence of public order. For instance, the abuse of laws pertaining to obscenity, defamation, or sedition has been attributed to attempts by the government to restrict democratic freedoms and regulate public opinion. Therefore, even though reasonable limitations are necessary to safeguard the public interest, they must always be appropriate, reasonable, and short-term to avoid violating the fundamental liberties guaranteed by the Constitution. In line with the democratic ideals of the Indian Constitution, preserving a just and equitable balance between individual rights and state interests will depend heavily on the continued development of jurisprudence pertaining to Article 19.