

## Key Judgements Under Article 19 of the Constitution of India

- Prachi Shah\*

### Article 19: -

Freedom of is one of the six fundamental rights conferred to the citizens of India under Part III of the Constitution and one of the most important aspects in the hierarchy of personal liberties provided under Article 19 to Article 22 of the Indian Constitution. One has freedom to express freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs, and the like. This expression also connotes publication and thus the freedom of press is included in this category. Freedoms of speech opens channels of free discussions of issues and play a crucial role in public opinion on social, political and economic matters. This article discusses some of the landmark judgments under Article 19 to understand how effective and interpretative this right has been throughout the history of India.

### Key Judgements Under Article 19

*State of Uttar Pradesh v. Raj Narain*<sup>1</sup>

*Secretary, Ministry of I&B v. Cricket Association of Bengal*<sup>2</sup>

The Supreme Court held that Article 19(1)(a) not only ensures freedom of speech and expression but also right to acquire information. Citizens have a right to know and receive information on matters which are of public concern. The freedom also includes freedom to communicate one's opinion without any interference. The Supreme Court giving a broad dimension to Article 19(1)(a) said that

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<sup>1</sup> AIR 1975 SC 865,884:(1975) 4 SCC 428

<sup>2</sup> AIR 1995 SC 1236

freedom of speech not only includes communication but also receipt of information as they are the two sides of the same coin.<sup>3</sup>

The Supreme court reiterated that not only a citizen has a right to receive information but also to disseminate the same under Cricket Association of Bengal case. It further held that government has no monopoly on electronic media and therefore a citizen has a right to telecast and broadcast to the viewers through electronic media. The Supreme Court recommended an autonomous broadcasting authority, independent of the government to control all aspects of the operation of the electronic media. The “right to disseminate” includes the right to communicate through any media - print, electronic or audiovisual - though restrictions were permissible on such rights. The fundamental rights, the Court opined, can be limited only by reasonable restrictions under a law made for the purpose and hence no restrictions can be placed on the right to freedom of speech and statement.<sup>4</sup>

***Union of India v. Association for Democratic Reforms*<sup>5</sup>**

***Dinesh Trivedi, M.P. & Ors v. Union of India*<sup>6</sup>**

After the enactment of the Right to Information Act 2005, the court reiterated that, according to Article 19(1)(a), the right to information is not a legislation but a constitutional guarantee. The Supreme Court stated that the freedom to transmit and acquire information pursuant to Article 19(1)(a) is necessary. It is to guarantee that people are aware, and that one-sided information or misinformation will not render democracy a farce. Further in the case of Dinesh Trivedi The Supreme Court affirmed that, in a modern democratic society governed by the Constitution, it is obvious that citizens are entitled to know about the affairs of the government which they elect.<sup>7</sup>

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<sup>3</sup> Subah Jelis, “Emerging Rights Under Article 19(1)(a) of the Constitution of India”, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2145117](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2145117).

<sup>4</sup> Kumar, Girish, “RIGHTS OF BROADCASTING ORGANIZATIONS: DO WE NEED LEGAL REFORM?”, available at <https://www.nalsar.ac.in/IJIPL/Files/Archives/Volume%202/5.pdf>.

<sup>5</sup> AIR 2001 Del.126,137

<sup>6</sup> (1997) 4 SCC 306

<sup>7</sup> <https://lexlife.in/2020/05/21/explained-freedom-of-expression-in-india/>

***Union of Civil Liberties (PUCL) & Another v. Union of India & Another*<sup>8</sup>**

The Supreme court held that voters have a fundamental right to know relevant qualifications of candidates for office, including information about their income and assets. Accordingly, a section of a law stating that candidates could not be compelled to disclose any information about themselves other than their criminal records was unconstitutional. Further it was emphasized that candidate's declaration of assets and right to privacy are not related because right to privacy is not absolute and a person has to as it is disclose his assets under the Income Tax Act. This is especially true for candidates for public offices. Disclosure of asset declarations is the necessity of the day because of statutory provisions of controlling wide spread corrupt practices.<sup>9</sup>

***Union of India v. Naveen Jindal*<sup>10</sup>*****Bijoe Emmanuel v. State of Kerala*<sup>11</sup>**

In Naveen Jindal, the Supreme Court thoroughly discussed the National flag. The government contended that flying of the National flag on private buildings was not allowed under The Flag Code, 2002 but it was finally held that National flag can be flown with regards to Article 51-A and made the right to fly a qualified right. It was held that "right to fly the National flag" is a right under Article 19(1)(a).<sup>12</sup>

Whereas in the case of Bijoe, the school dismissed three students for their denial to sing the national anthem. Yet when the national anthem was playing, the children took a stand in respect. The legality of the students expulsion was questioned and the Supreme Court held that the students had committed no offence under the Prevention of Insults to the National Honour Act of 1971 and further stated that the dismissal of school children for not singing the national anthem created a violation of their right to freedom of expression.<sup>13</sup> Proper respect is shown to the National Anthem by standing up

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<sup>8</sup> AIR 2003 SC 2363

<sup>9</sup> Ibid.

<sup>10</sup> (2004) 2 SCC476

<sup>11</sup> 1987 AIR 748

<sup>12</sup> (2004) 2 SCC476

<sup>13</sup> Lexlife India, "Explained: Freedom of Expression in India", available at <https://lexlife.in/2020/05/21/explained-freedom-of-expression-in-india/>.

when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing as Article 19 include right to not speak or right to remain silent.

***Bennett Coleman v. Union of India*<sup>14</sup>**

The validity of the Newsprint Control Order was challenged. The order fixed the maximum number of pages a newspaper could publish which was in violation of Article 19(1)(a) of the Constitution. Government contended that by fixing the number of pages would help small newspapers to grow and shall monopoly in trade. It also justified its order of reduction of page level on the ground that big dailies devote a very high percentage of space to advertisements, and therefore, the cut in pages will not affect them.<sup>15</sup> The Court held the order was an unreasonable restriction, and observed that the policy abridged the petitioner's right of freedom of speech and expression. The court also stated that fixing number of pages was depriving the petitioners their right to economic viability and second it restricted the freedom of expression as compulsorily reducing the page limit will lead to reduction of circulation and area of coverage for news and views.<sup>16</sup>

***Brij Bhushan v. State of Delhi*<sup>17</sup>**

The issue arose on the validity of censorship. Chief commissioner of Delhi, issued an order against the printing, publishing and editing of an English Weekly of Delhi; Organizer and directed the petitioner to submit the weekly for scrutiny before the publication. The court struck down the order observing: "The imposition of pre-censorship of a journal is a restriction on the liberty of the press which is an essential part of the freedom of speech and expression declared by article 19(1)(a)."<sup>18</sup>

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<sup>14</sup> AIR 1973 SC 106

<sup>15</sup> Rajan, Shreya, "Five most important judgments by the Supreme Court of India on Freedom of Speech and Expression", available at <https://blog.ipleaders.in/freedom-of-speech/>.

<sup>16</sup> Supra note 14.

<sup>17</sup> AIR 1950 SC 129

<sup>18</sup> Ibid.

***Tata Press v. MTNL***<sup>19</sup>

The Supreme court held that commercial speech or advertisement are a part of the right to freedom of speech and expression. Tata press was therefore entitled to bring out yellow pages comprising advertisements, the annual buyers guide for Bombay. The larger implication of the right to advertisement being elevated to the status of a fundamental right is that from now on it can be restricted only on the grounds specified in Article 19(2).<sup>20</sup> MTNL cannot come in the way of Tata press yellow pages in "public interest" as no such ground is mentioned in Article 19(2). Commercial speech now enjoys as much protection as any other speech.<sup>21</sup>

***Indian Express Newspapers v. Union of India***<sup>22</sup>

The Court, in this case, observed that, Article 19 of the Indian Constitution does not use the phrase "freedom of press"<sup>16</sup> in its language, but it is contained within Article 19(1) (a). Freedom of press cannot be interfered in the name of public interest. The whole aim of the press is to highlight public interest by publishing necessary facts. It is, therefore, the primary duty of courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.<sup>23</sup>

***A. Abbas v. Union of India***<sup>24</sup>

The case was one of its own to discuss the issue of censorship of films under Article 19(2).

Under the Cinematograph Act, 1952, films are divided into two categories- 'U' films for unrestricted exhibition, and 'A' films that can be shown to adults only.<sup>25</sup> The petitioner's film was refused the 'U'

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<sup>19</sup> (1995) 5 SCC 139

<sup>20</sup> Gupta, Anisha, "Freedom of Speech & Expression", available at <https://www.lawfinderlive.com/Articles-1/Article2.htm?AspxAutoDetectCookieSupport=1>.

<sup>22</sup> 1985 2 SCC 434

<sup>23</sup> Ibid.

<sup>24</sup> AIR 1971 SC 481

<sup>25</sup> Supra note 15.

certificate, and he challenged the validity of censorship as violative of his fundamental right of freedom of speech and expression. He contended that no other form of speech and expression was subject to such prior restraint, and therefore, he demanded equality of treatment with such forms. The Court, however, held that motion pictures can stir emotions more deeply than any other form of art. Hence, pre- censorship and classification of films between 'U' and 'A' was held to be valid and was justified under Article 19(2) of the Constitution.<sup>26</sup>

***Odyssey Communication Pvt Ltd v. Lokvidayan Sanghtana***<sup>27</sup>

A PIL was filed under Article 226 to prevent Ministry of Information and Broadcasting from telecasting the serial "Honi-Anhoni" on the grounds that the serial propagated blind and false beliefs amongst the citizens. However, it was held that, the rights of a citizen to exhibit a film on Doordarshan, on the terms and conditions imposed by Doordarshan is a fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) which can be curtailed only on the grounds mentioned in Article 19(2).

***Prabha Dutt v. Union of India***<sup>28</sup>

It was claimed that the right to know about the news and details related to government's administration is included in the freedom of press. The Supreme Court upheld the right claimed by the press to interview prisoners that the right claimed by the Press was not the right to express any particular view or opinion but right to means of information through the medium of interview of the prisoners.

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<sup>26</sup> Supra note 24.

<sup>27</sup> (1988) 1 SCC 131

<sup>28</sup> (1982) 1 SCC 1

***Kameshwar Prasad v. State of Bihar*<sup>29</sup>**

A rule of prohibiting any form of demonstrations by government employees was under scrutiny. The Supreme Court examined the validity of Rule 4A of the Bihar Government Service Conduct Rules which stated that no government servant shall participate in any demonstration in connection with any matter pertaining to his condition of service. It was held that as Article 19 applies to all citizens, government servants in common with other citizens enjoy the protection of fundamental rights and the prohibition on government servants of participation in any demonstrations invalid with some reasonable restrictions.<sup>30</sup>

**Conclusion**

Freedom of expression has always been a fundamental human right but often abused and misused. From the above case laws, it can be understood that the Indian courts have done an excellent job in interpreting Article 19 of the Indian constitution. Not only they have taken subjective interpretation but have criticized the application of freedom of expression. The freedom under Article 19 is essential for the progress of the nation and its liberty.

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<sup>29</sup> 1962 AIR 1166

<sup>30</sup> 1962 AIR 1166