



## FREEDOM OF SPEECH V/S FREEDOM OF DISSENT

By Liza N. Vanjani  
From GLS Law College

### INTRODUCTION:

#### Article 19. Protection of certain rights regarding freedom of speech etc

- (a) All citizens shall have the right
- (b) To freedom of speech and expression;

#### Article 19 of Indian Constitution, 1949: Freedom of speech and Expression

The main elements of right to freedom of speech and expression are as under-

1. This right is available only to a citizen of India and not to foreign nationals.
2. The freedom of speech under Article 19(1) (a) includes the right to express one's views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc.
3. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.
4. This restriction on the freedom of speech of any citizen may be imposed as much by an action of the State as by its inaction. Thus, failure on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of Article 19(1)(a).

The Grounds on Which This Freedom Could Be Restricted

Clause (2) of Article 19 of the Indian constitution imposes certain restrictions on free speech under following heads:

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
8. Sovereignty and integrity of India

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### CASE LAWS:

In the case of *Indian Express v. Union of India*, it has been held that the Press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of Press includes freedom of publication, freedom of circulation and freedom against pre-censorship.

- 1 (1985) 1 SCC 641
- 2 1995 SCC (5) 139
- 3 (2002) 5 SCC 294.
- 4 1989 SCR (2) 204
- 5 1978 AIR 597
- 6 1986 3 SC 615

In *Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd.*, the Supreme Court held that a commercial advertisement or commercial speech was also a part of the freedom of speech and expression, which would be restricted only within the limitation of Article 19(2). Supreme Court held that advertising, which is no more than a commercial transaction, is nonetheless



dissemination of information regarding the product-advertised. Public at large are benefited by the information made available through the advertisements. In a democratic economy, free flow of commercial information is indispensable.

The Supreme Court observed in *Union of India v. Assn. for Democratic Reforms*<sup>3</sup>, "One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions".

In *S. Rangarajan v.P. Jagjivan Ram*<sup>4</sup>, everyone has a fundamental right to form his opinion on any issues of general concern. Open criticism of government policies and operations is not a ground for restricting expression. Intolerance is as much dangerous to democracy as to the person himself. In democracy, it is not necessary that everyone should sing the same song

In *Maneka Gandhi vs Union of India*<sup>5</sup>, the Supreme Court considered whether Article 19(1)(a) of Indian Constitution was confined to Indian territory and held that the freedom of speech and expression is not confined to National boundaries.

In the case *Bijoe Emmanuel v. State of Kerala*<sup>6</sup> regarding National Anthem, three students were expelled from the school for refusal to sing the national anthem. However, the children stood up in respect when the national anthem was playing. The validity of the expulsion of Page | 5

the students was challenged before the Kerala High Court and they upheld the expulsion of

the students on the ground that it was their fundamental duty to sing the national anthem. However, on an appeal being filed against the order of the Kerala High Court before the Supreme Court, it was held by the Supreme Court that the students did not commit any offence under the Prevention of Insults to National Honour Act, 1971. Also, there was no law under which their fundamental right under Article 19(1) (a) could be curtailed.

### RIGHT TO DISSENT

In any secular democracy, the right to equality, the freedom to practice one's faith and the right to life with dignity go hand in hand with the freedom of expression which includes the right to dissent. If minority rights are inconceivable except in a democracy, democracy itself is unimaginable without the freedom of expression. The freedom of expression in turn is meaningless without the right to dissent.

“Mujh ko to sikhadi hai afran ne zandaqi  
daur ke mulla hain kyun nang-e-  
mussalmani?”

(The West may have taught me faithlessness,  
But why are the mullahs of this age a  
disgrace to Islam?)

—Mohammed Iqbal, renowned poet.

□ Women's organizations, students, trade unionists and some sections of the Bangladeshi academia have strongly condemned this “fundamentalist attack on an individual's freedom of expression”. Internationally, hundreds of renowned writers led by the post-war novelist, Gunter Grass, have risen to Nasreen's defence and have launched strong protests with the Bangladesh government.<sup>7</sup>

<sup>7</sup> <https://cjp.org.in/freedom-to-dissent/>



□ The Constitution grants the people the right to freedom of speech but today, indecent language is the norm. The need is to make fundamental rights more duty-friendly.

□ An issue that has lately gained traction is the argument made by proponents of an absolute and unfettered right to free speech and expression. In light of the recent booking of an assistant professor of a Delhi University college for an alleged

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Facebook post (later deleted) on Goddess Durga that hurt the sentiments of many, there is an urgent need to examine where to draw the line whilst upholding our fundamental rights.

□ Article 19(1)(a) of the Indian Constitution grants every individual the fundamental right to freely speak and express opinions. But even fundamental rights are not absolute. Article 19(1)(a) comes along with reasonable restrictions under Article 19(2) in which Clause IV rightly mentions of adopting decency and morality in one's speech. The other equally significant restrictions are for securing the safety of state, friendly relations with foreign states, public order, sovereignty and the integrity of India, and preventing contempt of court, defamation and incitement to an offence.

□ But under the garb of free speech, abusive and indecent language has commonly become an unquestionable part of one's communication. It seems the right to freedom of speech and expression has given way to the right to freedom to abuse another's beliefs. Violence of language and language of violence has become the norm. Sheer abuse never makes it to the cut when it's about free

speech and really has no place even in dissent. Of course, the right to dissent verily makes Article 19(1)(a) healthy, prosperous and democratic.

□ India, since ancient times, has placed great emphasis on the tradition of shastrath. The Constitution-making debates and early post-Independence parliamentary debates, reflect the good health of our tradition to deliberate, discuss, and dissent. India has always boasted of its debate tradition, as it were, but dissent these days is largely becoming synonymous with filthy, hurtful and abusive language.

□ Unhindered flow of free ideas can only be maintained when a certain level of decency and decorum is maintained in speech. Abuse is an act that is carried out not with the objective to have a reasoned debate and discussion and come to an agreeable solution. Rather, the participant becomes an opponent in an act of abuse and the sole purpose then becomes to degrade, humiliate and deliberately attack the other's self-worth. In this process, the executor elevates his position by assaulting others' images, symbols and signs of belief. So, the abuser is not engaging in any discussion, rather s/he is spewing invectives and diluting the real essence of free speech.

□ The maturity and development of any civilised society is gauged by the decency and moral approach adopted in communications to resolve a crisis. Decency is the basic tenet of communication. It is the sign of a patient person who has the qualities of valour and grit. And when an abuser violates basic norms of decency, it is fair to assume that s/he has an approach predicated on not an intention to communicate and



engage but to domination and/or humiliation. The short-term benefits of abuse may  
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lead to immediate gains by mocking others' symbols or gaining cheap popularity but in the longer run it hollows out trust and confidence. Such an attitude also smacks of regression and deters peace and prosperity of society. But sadly, abuse has become a part of popular culture.

□ Right to dissent walks closely with duty to be decent. Dissent or free speech can only be accepted if it's decent in language. And decency is not a contested term. No one can claim abuse to be decent. Speaking of the case of the Delhi University professor, he has abused a tradition that showcases one of the most tolerant and inclusive religions of the world. The very fact that he has been able to make a derogatory statement on a public platform shows the golden virtue of tolerance in Hinduism. Hinduism itself has been premised on the rich liberal philosophy of each pursuing his or her faith in their own individual and convenient manner. 8

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<https://www.dailypioneer.com/2017/columnists/right-to-dissent-duty-to-be-decent.html>

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<https://www.thehindu.com/news/cities/Delhi/right-to-dissent-is-a-core-principle-of-democracy-romila-thapar/article30226195.ece>

“Right to dissent is a core principle of democracy”: Romila Thapar

“The right to dissent is a core principle of democracy and the State must acknowledge the validity of this right. In a true democracy, the right to dissent and the demand for social justice are core concepts. Since it includes all

citizens, its inclusiveness requires it to be secular,” she said, delivering the 12th V.M. Tarkunde memorial lecture on the topic — Renunciation, Dissent and Satyagraha. She said the lecture was also being held on the anniversary of the demolition of the Babri Masjid, “an important symbol of our civilisation reduced to rubble. The rubble remains as a reminder”. Having tracked the continuity of dissent and counterculture through Indian history and linked it to the overwhelming response to Mahatma Gandhi’s call for satyagraha, Prof. Thapar said the right to dissent remains important in modern times. “It remains open to the citizen immersed in the ideology of secular democratic nationalism to articulate this new relationship by reiterating the right to dissent.” Page | 8

#### NEW DIMENSIONS:

Government has no monopoly on electronic media: The Supreme Court widened the scope and extent of the right to freedom of speech and expression and held that the government has no monopoly on electronic media and a citizen has under Art. 19(1)(a) a right to telecast and broadcast to the viewers/listeners through electronic media television and radio any important event. The government can impose restrictions on such a right only on grounds specified in clause (2) of Art. 19 and not on any other ground. A citizen has fundamental right to use the best means of imparting and receiving communication and as such have an access to telecasting for the purpose.

Telephone Tapping: Invasion on right to privacy : Telephone tapping violates Art. 19(1)(a) unless it comes within grounds of restriction under Art. 19(2). Under the guidelines laid down by the Court, the Home Secretary of the center and state governments



can only issue an order for telephone tapping. The order is subject to review by a higher power review committee and the period for telephone tapping cannot exceed two months unless approved by the review authority.

Commercial Advertisements: The court held that commercial speech (advertisement) is a part of the freedom of speech and expression. The court however made it clear that the government could regulate the commercial advertisements, which are deceptive, unfair, misleading and untruthful. Examined from another angle the Court said that the public at large has a right to receive the “Commercial Speech”. Art. 19(1)(a) of the constitution not only guaranteed freedom of speech and expression, it also protects the right of an individual to listen, read, and receive the said speech.<sup>10</sup>

10 <https://www.lawteacher.net/free-law-essays/constitutional-law/freedom-of-speech-and-expression-constitutional-law-essay.php>

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