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ARTICLE 19: A CRITICAL ANALYSIS OF FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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I. ABSTRACT

Article 19² of the Indian Constitution guarantees citizens the fundamental right to freedom of speech and expression. This right is considered the foundation of democracy, enabling individuals to express their opinions freely, which is essential for a participatory and transparent government. Over the years, the Supreme Court of India has elaborated on this right, weighing it against other constitutional values such as public order, decency, morality, and state sovereignty. However, this freedom is not without limits, and reasonable restrictions are in place, leading to significant legal debates and judicial interpretations. Landmark cases like *Maneka Gandhi v. Union of India* and *Shreya Singhal v. Union of India*³ have significantly influenced the understanding and scope of this fundamental right. Recently, challenges such as hate speech, misinformation, and digital censorship have further complicated the practical application of Article 19. This article critically examines the evolving judicial discourse surrounding Article 19, recent legislative trends, and the ongoing challenges to free speech, aiming to provide a thorough perspective on its impact on Indian democracy.

II. KEYWORDS

Article 19, Fundamental right, Internet regulation, Constitution of India.

III. REVIEW OF LITERATURE

A comprehensive review of the literature on Article 19 includes analyses by constitutional scholars and legal theorists. Scholars such as H.M. Seervai and D.D. Basu have offered foundational insights into the framework of free speech within Indian democracy. Seervai's writings highlight the need to balance individual liberty

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² INDIA CONST. ART. 19

³ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

with state-imposed restrictions, while Basu discusses the practical implications of judicial interpretations. P.K. Tripathi's work delves into the philosophical foundations of free speech as essential to democratic governance. Recent scholarship has increasingly focused on freedom of expression in the digital era. Authors like Gautam Bhatia have explored the intersection of free speech, censorship, and the internet, particularly in the context of the Shreya Singhal case.

IV. INTRODUCTION

A. Historical Context

The right to freedom of speech and expression has deep historical roots in India, intertwined with its colonial past and the freedom struggle. During British rule, dissenting voices faced strict censorship and punitive laws like the sedition law under Section 124A⁴ of the Indian Penal Code, 1860, which criminalized speech deemed seditious. British colonial rulers actively restricted freedom of the press and expression to prevent the rise of nationalist sentiment and to control anti-colonial discourse. Prominent freedom fighters, including Mahatma Gandhi and Bal Gangadhar Tilak, were tried under sedition laws for advocating independence and criticizing the British government. The repressive measures taken by colonial authorities underscored the importance of freedom of speech and expression as a cornerstone of democratic rights. Consequently, as India approached independence, the framers of the Indian Constitution recognized the need to guarantee this fundamental right, free from arbitrary governmental restrictions.

B. Constitutional Dimensions

Incorporated as a fundamental right in Part III of the Indian Constitution, Article 19(1)(a) guarantees the freedom of speech and expression to all citizens. Article 19 as a whole enshrines a bundle of freedoms, including the right to assemble peacefully, to form associations, and to move freely throughout the country, each vital to a vibrant democracy. The framers, however, recognized that no right is absolute and

⁴ INDIAN PENAL CODE, 1860, § 124, NO 45, ACTS OF PARLIAMENT, 1860 (INDIA)

incorporated “reasonable restrictions” under Article 19(2)⁵. These restrictions allow the state to limit free speech to protect sovereignty, integrity, public order, decency, morality, or to prevent incitement to an offense. By codifying these restrictions, the Constitution seeks a balance between individual liberty and the collective needs of society.

The debates in the Constituent Assembly highlight the framers' caution in balancing free speech with societal harmony. Dr. B.R. Ambedkar and other members of the drafting committee were mindful of the potential for abuse of free speech, especially in a culturally and religiously diverse nation like India. They envisioned a structure that preserved individual freedoms but also safeguarded against divisive or harmful speech. Article 19(2) thus reflects this balancing act, allowing the government to impose necessary limitations without undermining the essential right.

C. Legal Dimensions and Scope of Article 19(1)(a)

The Indian judiciary has been instrumental in expanding and refining the interpretation of Article 19(1)(a), linking it with other fundamental rights and adapting it to address emerging challenges. The Supreme Court of India, through various judgments, has consistently upheld the importance of free speech as essential to democratic governance. It has also clarified the meaning of “reasonable restrictions,” emphasizing that restrictions must not be arbitrary or excessive and must serve a legitimate purpose as outlined in Article 19(2). Judicial interpretations have expanded the scope of Article 19(1)(a) to include not only verbal or written expression but also symbolic acts, artistic expressions, and more recently, digital expression, affirming that the right is dynamic and evolving.

The judiciary has also played a pivotal role in safeguarding free speech against legislative or executive overreach. In landmark cases such as *Maneka Gandhi v. Union of India* (1978) and *Shreya Singhal v. Union of India* (2015), the Court emphasized the link between Articles 14 (right to equality), 19 (freedom of speech), and 21 (right to life and personal liberty), ensuring that any state action limiting free speech adheres to principles of fairness, reasonableness, and non-arbitrariness. The

⁵ INDIA CONST. ART. 19(4)

introduction of the Basic Structure Doctrine, which declares that certain fundamental rights form the essence of the Constitution, further entrenches freedom of speech as a core democratic value that cannot be diluted.

D. Philosophical Underpinnings of Freedom of Speech

The right to freedom of speech and expression is not only a constitutional guarantee but also a reflection of India's commitment to democratic principles. Philosophers and political theorists like John Stuart Mill and Alexis de Tocqueville have argued that free expression is essential for the pursuit of truth and the functioning of a democratic society. Mill's "marketplace of ideas" theory suggests that in a free and open society, diverse ideas should compete without restriction, allowing the truth to emerge. This principle resonates with the values embodied in Article 19(1)(a), as it fosters a culture of open debate, constructive dissent, and informed public discourse.

Freedom of speech also underpins individual autonomy and dignity, allowing people to express their identities, beliefs, and opinions without fear of persecution. This right enables citizens to participate in governance, hold authorities accountable, and contribute to societal change. In a diverse society like India, free speech is crucial for promoting social cohesion and respecting differences, as it allows individuals and communities to express their views, fostering understanding and tolerance.

E. Challenges and Current Relevance

Despite its enshrinement in the Constitution, the right to freedom of speech in India faces several contemporary challenges. With the rise of digital platforms, misinformation, fake news, and hate speech have proliferated, prompting calls for regulation. Simultaneously, concerns over governmental overreach, digital censorship, and surveillance continue to threaten individual freedoms. Public dissent, whether in the form of protests or criticism of policies, is often met with restrictive measures like internet shutdowns and sedition charges, raising questions about the resilience of Article 19 in contemporary India.

Furthermore, as society evolves, the scope and limits of freedom of speech must be revisited. Issues such as privacy in the digital age, the right to information, and the

accountability of tech platforms have become central to the discourse on free expression. As the judiciary continues to interpret and expand Article 19, it must address these new challenges while preserving the core principles of democracy and individual liberty.

Challenges under Article 19 on freedom of speech and expression have increased in the digital age, particularly because digital censorship and surveillance have increased. While digital platforms and social media have afforded unprecedented opportunities for expression, they have also introduced new government oversight - for instance, 2021's IT Rules introduce a discourse related to whether the regulation of misinformation needs to take precedence over user privacy or vice versa. Further, the expanding scope of government surveillance-including, notably, through Aadhaar and social media monitoring-is adverse to free expression. This section will delve further into these issues with respect to how the judiciary has responded to them and the dynamics of legal discourse around Article 19 within the specific context of Indian democracy.

V. LANDMARK AND LATEST JUDGEMENTS

"The judiciary has significantly contributed to the making and unmaking of freedom of speech and expression in India through landmark judgments. Indeed, these cases not only define the limits of Article 19 but also modify its interpretation to suit changes in society and technology. This chapter turns to cases such as *Maneka Gandhi v. Union of India* and *Shreya Singhal v. Union of India* and analyzes how judicial decisions have assumed an important place in refining democratic values, preventing arbitrary restriction to citizen's freedoms, and seeing that Article 19 continues to evolve with new mediums of expression such as digital media. Each is a watershed in the history of free speech jurisprudence testifying to the fact that the judiciary plays a vital role in reconciling individual liberties with the interests of the state.

1. Maneka Gandhi v. Union of India (1978)⁶

- **Background:** This case marked a turning point in Indian constitutional law, expanding the scope of the right to personal liberty under Article 21. Maneka Gandhi's passport was impounded by the government without a hearing, which she challenged as a violation of her rights to personal liberty and free movement.
- **Judgment and Significance:** The Supreme Court ruled in favor of Maneka Gandhi, establishing that the procedure under which her passport was taken was arbitrary and violated Article 21. More importantly, the Court expanded the interpretation of "personal liberty" to include freedoms protected under Article 19, such as free speech. It held that any restriction on these rights must be "just, fair, and reasonable" and not arbitrary. This case set a precedent for linking Articles 14 (Right to Equality), 19, and 21, creating a robust foundation for assessing future cases that dealt with personal liberty and free speech.

2. Shreya Singhal v. Union of India (2015)⁷

- **Background:** This case challenged the dubious provisions of Section 66A of the Information Technology Act, 2000, wherein online content considered "offensive," "annoying," or "inconvenient" was deemed criminal. Such vagueness led to arbitrary arrests and threatened to be used as a tool to stifle dissent and suppress freedom of speech.
- **Judgment and Impact:** The Supreme Court declared Section 66A as unconstitutional, holding that wide, vague terms posed a basic threat to freedom of speech under Article 19(1)(a). The Court pointed out that this kind of vague prohibition was permissible for the state to unduly limit expression, especially on digital platforms, as these are the only ones left to provide for public discourse in modern times. This ruling even restated that any restriction on free speech must be definite, reasonable, and constitutional,

⁶ Maneka Gandhi vs. Union of India [1978] 2 S.C.R. 621

⁷ Shreya Singhal v. Union of India, (2015) 5 SCC 1

which went on to achieve an important affirmation of the banner of digital freedom under the ambit of Article 19.

3. Navtej Singh Johar v. Union of India (2018)⁸

- **Background:** This landmark case focused on Section 377⁹ of the IPC, which criminalized consensual homosexual acts. LGBTQ+ activists argued that this law violated their fundamental rights to equality, dignity, and freedom of expression.
- **Judgment and Significance:** The Supreme Court read down Section 377, decriminalizing consensual homosexual acts and affirming that individual autonomy and identity are essential to personal freedom. The Court observed that freedom of expression includes the right to be true to one's identity and personal choices. This judgment strengthened Article 19 by recognizing that freedom of expression encompasses not only spoken or written words but also the right to express one's identity. This progressive interpretation furthered the notion that personal dignity and identity are inherent to freedom of speech, emphasizing inclusivity and tolerance in the context of free expression.

4. Anuradha Bhasin v. Union of India (2020)¹⁰

- **Background:** In August 2019, following the revocation of Article 370, the government imposed a prolonged internet shutdown in Jammu and Kashmir. Journalist Anuradha Bhasin filed a petition challenging the restrictions, arguing they impeded the freedom of the press and individual expression.
- **Judgment and Significance:** The Supreme Court held that the indefinite suspension of internet services was unconstitutional and highlighted that freedom of speech and expression includes the right to internet access. The Court mandated periodic review of internet shutdowns to ensure they are justified and not arbitrary. This case underscored the significance of internet

⁸ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

⁹ INDIAN PENAL CODE, 1860, § 375, NO 45, ACTS OF PARLIAMENT, 1860 (INDIA)

¹⁰ Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

access as essential for the exercise of free speech in the digital age. It was a crucial judgment in recognizing that internet restrictions must adhere to the principles of necessity and proportionality, as prolonged shutdowns impede fundamental rights, particularly in regions of conflict.

5. **S. Rangarajan v. P. Jagjivan Ram (1989)**¹¹

- **Background:** This case involved the Tamil film *Ore Oru Gramathile*, which faced government censorship for allegedly promoting anti-reservation views. The filmmakers argued that the censorship was an infringement on free expression.
- **Judgment and Significance:** The Supreme Court upheld the filmmakers' right to screen the film, stating that freedom of speech should not be curtailed merely because a topic is controversial. The Court declared that in a democracy, the right to express differing views is paramount, and the state should not restrict expression unless it presents a clear and present danger. This judgment emphasized the importance of tolerance for diverse perspectives in a democratic society and has been cited in later cases concerning the freedom of media and film censorship.

6. **Indiblaze Media Pvt Ltd. v. Union of India (2022)**

- **Background:** This recent case involved a challenge to specific government regulations on digital content. Digital news platforms, including Indiblaze, argued that the Information Technology Rules 2021 imposed undue censorship on digital media, violating Article 19.
- **Judgment and Significance:** The Court, while upholding certain portions of the IT Rules, warned against excessive control over digital platforms, reiterating that digital content deserves similar protections to traditional media. This judgment highlighted that the fundamental right to free speech in India applies to all forms of media, with a caution that regulation must not

¹¹ S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574

infringe upon editorial independence. It reflected the Court's recognition of the unique role of digital media in a democratic society.

7. Romesh Thappar v. State of Madras¹² (1950)

- **Background:** Romesh Thappar, a journalist, challenged the Madras government's ban on his publication for allegedly disrupting public order. This was one of the earliest cases concerning free speech after the Constitution came into effect.
- **Judgment and Significance:** The Supreme Court struck down the government's ban, asserting that freedom of speech was a cornerstone of democracy, integral to political discourse and public participation. This case established that restrictions on free speech should not be used arbitrarily and that curbing free speech demands clear justification. It laid the foundation for future jurisprudence on Article 19, establishing early limits on state intervention in media freedom.

VI. CONTEMPORARY ISSUES SURROUNDING ARTICLE 19

- **Hate Speech and Sedition**

Hate Speech: India has witnessed a rise in hate speech incidents, often magnified through social media and public forums. Hate speech, which is defined as communication that incites hostility, discrimination, or violence based on race, religion, ethnicity, or gender, presents significant challenges to the concept of free speech. The Indian Penal Code (IPC) contains Sections 153A¹³ and 295A¹⁴, which make it illegal to promote enmity between different groups or to intentionally insult religious beliefs. However, the distinction between hate speech and legitimate expression is frequently unclear, resulting in arbitrary enforcement. This creates a dilemma: while it is essential to control hate speech to preserve public order, excessive or inconsistent enforcement can infringe upon true freedom of expression.

¹² Romesh Thappar v. State of Madras, 1950 SCC 436

¹³ Indian Penal Code, 1860, § 153A, No 45, Acts of Parliament, 1860 (India)

¹⁴ Indian Penal Code, 1860, § 295A, No 45, Acts of Parliament, 1860 (India)

Sedition: Section 124A of the IPC, which criminalizes sedition, has become a central topic in debates about free speech. Originally designed to prevent anti-colonial dissent, this colonial-era law has recently been used against journalists, activists, and intellectuals who criticize government policies. Critics contend that the vague and broad language of the sedition law leads to its misuse, suppressing dissent and undermining democracy. Numerous high-profile cases have seen sedition charges leveled against individuals engaged in peaceful protests or criticism, raising questions about whether the law needs reform or repeal. The Supreme Court has recognized these concerns, highlighting the necessity for clear criteria to differentiate between genuine threats to national security and acceptable dissent.

- **Digital Censorship and Social Media Regulation**

The Role of Social Media: Platforms such as Twitter, Facebook, and WhatsApp have significantly changed how we engage in public discussions, offering a unique space for free expression. However, they also come with distinct challenges, including the swift dissemination of misinformation, fake news, and hate speech. The nature of social media content, which is easily accessible and widely shared, can rapidly shape public opinion, occasionally resulting in real-world violence or unrest. This situation has sparked calls for tighter regulations on digital platforms.

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules¹⁵, 2021: These regulations reflect the government's effort to oversee digital media and social platforms by requiring compliance with requests to remove illegal content, trace message origins, and establish grievance redressal systems. Although these rules aim to combat misinformation and improve accountability, they have faced criticism for potentially giving the government too much power over digital content.

¹⁵ Ministry of Electronics & Information Technology, *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* (updated Apr. 6, 2023), available at <https://www.meity.gov.in/writereaddata/files/Information%20Technology%20%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20%28updated%2006.04.2023%29-.pdf>

Detractors argue that this could lead to censorship, stifle dissent, and violate user privacy, particularly concerning the requirement to trace messages on platforms like WhatsApp. This ongoing debate highlights the conflict between ensuring digital order and safeguarding the right to free speech online, with social media companies, civil society, and the government frequently clashing over the enforcement and consequences of these rules.

- **Media Freedom and Press Censorship**

Restrictions on Investigative Journalism: The Indian press is essential for holding those in power accountable, and Article 19 provides implicit protection for press freedom. However, there is an increasing trend of pressures and restrictions on media outlets, particularly those that criticize government actions or policies. Journalists often face intimidation, legal harassment, defamation lawsuits, and, in severe cases, threats of physical violence. For instance, investigative reporters who uncover corruption or human rights abuses encounter various challenges, from being denied access to information to facing imprisonment on charges such as sedition or defamation.

Foreign Funding Regulations: The Foreign Contribution (Regulation) Act (FCRA) has been utilized to restrict funding for specific media organizations, especially those that receive international donations. Critics contend that these measures undermine media independence by limiting financial resources available for investigative journalism. Such restrictions raise serious concerns about the viability of a free press, as foreign-funded or independent news organizations frequently engage in thorough reporting that is vital for democratic transparency.

Self-Censorship: The interplay of legal and social pressures has resulted in self-censorship within the media sector. The fear of legal repercussions or government retaliation can cause journalists and editors to shy away from covering sensitive issues, such as government corruption, human rights abuses, or contentious policies, thereby weakening the press's role as a check on governmental authority.

- **Public Dissent and Protest Rights**

Anti-CAA Protests: The protests against the Citizenship Amendment Act¹⁶ (CAA) in 2019 and 2020 highlighted the significant limitations on public dissent. Across India, large groups of protesters gathered to express their opposition to the Act, which they claimed was discriminatory based on religion. In response, authorities enforced Section 144 of the Code of Criminal Procedure, which restricts public gatherings in various locations. The implementation of Section 144¹⁷, often accompanied by internet shutdowns, underscores the conflict between the state's need to maintain order and the constitutional right to protest as outlined in Article 19(1)(b) (the right to assemble peacefully).

Farmers' Protests: In a similar vein, the farmers' protests against agricultural reforms saw thousands of farmers gathering in and around Delhi. This movement continued for months, despite government attempts to disrupt the gatherings through roadblocks, internet shutdowns, and legal actions against protest leaders. These measures sparked discussions about the boundaries of peaceful assembly and the constraints on protest rights, particularly regarding freedom of movement and expression. The farmers' protests highlighted how peaceful assembly serves as a crucial platform for public opinion and the potential limitations that excessive state intervention can place on civil liberties.

Police Action and Judicial Oversight: Recently, there have been numerous instances of police action against protesters and activists, raising alarms about overreach. The judiciary has frequently stepped in to safeguard protest rights, emphasizing that dissent is a vital component of democracy. However, varying judicial responses in different cases have fueled ongoing discussions about the extent of Article 19 protections for those who dissent.

- **Internet Shutdowns and Freedom of Expression**

Internet Access as a Right: In 2019, India experienced the highest number of internet shutdowns globally, often implemented during protests, local disturbances, or security operations. Access to the internet, especially in conflict zones like Jammu

¹⁶ The Citizenship (Amendment) Act, 2019, No. 47 of 2019, Acts of Parliament, 2019 (India).

¹⁷ Section 144, The Code of Criminal Procedure, 1973 (India)

and Kashmir, has frequently been limited, hindering communication and the flow of information.

Anuradha Bhasin v. Union of India¹⁸ (2020): In this landmark case, the Supreme Court recognized that internet access is essential for exercising free speech and expression under Article 19, as well as for facilitating business and education. Although the Court did not classify internet access as a fundamental right, it required regular reviews of internet restrictions, emphasizing that such shutdowns must adhere to the principles of necessity and proportionality.

Impact of Shutdowns on Education and Economy: In addition to hindering free expression, internet shutdowns disrupt vital services like education and healthcare, particularly in rural and underserved areas. During the COVID-19 pandemic, internet access became vital for online learning and remote work, highlighting the detrimental effects of shutdowns. Critics contend that blanket shutdowns infringe on fundamental rights, disproportionately impacting marginalized communities that depend on digital infrastructure for accessing government services and participating in the economy.

- **Right to Privacy and Surveillance**

Aadhaar and Data Privacy Concerns: As digitalization continues to grow, the importance of privacy in relation to free speech has become more pronounced. The Aadhaar project, which is India's biometrics-based national identification system, has sparked significant privacy concerns due to its connection of individuals' biometric data with government services. Critics warn that the data gathered through Aadhaar could be exploited, potentially leading to widespread surveillance and the stifling of dissent. In the landmark case of Justice K.S. Puttaswamy (Retd.) v. Union of India¹⁹ (2017), the Supreme Court affirmed that privacy is a fundamental right under Article 21, thereby implicitly supporting free expression by safeguarding citizens from excessive surveillance.

¹⁸ Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

¹⁹ K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

State Surveillance: The government increasingly employs surveillance technologies like the Central Monitoring System (CMS) and social media monitoring tools to keep tabs on citizens' communications. Critics contend that these systems operate without sufficient oversight and accountability, which threatens free speech, as individuals might hesitate to voice critical or dissenting opinions out of fear of being monitored. The absence of a comprehensive data protection law in India further intensifies these worries, leaving citizens with limited options to challenge unwarranted surveillance by the government or corporations.

VII. CONCLUSION

Article 19(1)(a) of the Indian Constitution, which ensures freedom of speech and expression is one of the cornerstones of India's democratic structure, permitting citizens to voice opinions and question authority in ways that can lead to social change. At the same time, it holds out for fundamental freedoms even as "reasonable restrictions" under Article 19(2) are fashioned to balance individual rights with collective security. The judiciary has performed an important role in guaranteeing this right through important judgments, even going as far as to defend free expression against vague or arbitrary limitations.

However, there are still some obstacles. The archaic sedition law is misused to stem dissent by journalists, activists, and even ordinary people who speak out. While the digital tools expand free speech, it creates problems like misinformation and hate speech that have led to calls for balanced regulation. Moreover, the frequent shutting down of the Internet during protests in sensitive areas creates problems in terms of making information unavailable, which affects the normal course of daily life and democratic participation.

Indeed, it will be very important that civil society, media, and citizens all advance their roles regarding these challenges to make Article 19 work. Civil society organizations can be agents of change through legal reform advocacy and awareness campaigns for the issues of free speech. The role of the media in holding the authorities accountable and informing discourse will be very important. Ultimately, an educated and active citizenry, strong in democratic principles, will help defend

and build freedom of expression. These are the lobbies that together can make Article 19 a viable right and an evolving tool, ready to embrace new social meanings and take on newer roles in supporting India's democracy.