

Article 19: Protection of certain rights regarding freedom of speech, etc

- **Article 19: Protection of certain rights regarding freedom of speech, etc**
- Article 19 is the most important and key article which embodies the “basic freedoms”.
- Article 19(1) provides that all citizens shall have the right- (originally 7, now 6)
 - (a) To freedom of speech and expression;
 - (b) To assemble peaceably and without arms;
 - (c) To form associations or unions;
 - (d) To move freely throughout the territory of India;
 - (e) To reside and settle in any part of the territory of India; and
 - (f) Omitted by **44th amendment act**. (It was right to acquire, hold and dispose of property)
 - (g) To practice any profession, or to carry on any occupation, trade or business.

- **These 6 freedoms are not absolute.**
- The guarantee of the above rights is restricted by the constitution itself by conferring upon the State Power to impose by law reasonable restrictions as may be necessary in the larger interest of the community.
- The restrictions on these freedoms are provided in clause 2 to clause 6 of article 19.
- The restrictions imposed must be reasonable restrictions. It should not be arbitrary or excessive.
- If people were given absolute and complete liberty without any social control the result would be ruin.

19 1 [a] Freedom of Speech and Expression

- Meaning of freedom of speech and expression: The right to express one's own ideas, thoughts and opinions freely through writing, printing, picture, gestures, spoken words or **any other means** is the essence of freedom of speech and expression. It includes the expression of one's ideas through visible representations such as gestures, signs and other means of the communicable medium. It also includes the right to propagate one's views through print media or through any other communication channel.

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- This implies that freedom of the press is also included in this category. The Constitution does not make any special / specific reference to the Freedom of Press. The protagonists of the “free Press” called it a serious lapse of the Drafting committee. However, the freedom of expression includes freedom of press. **Dr. Ambedkar** in this context had said on speaking behalf of the Drafting Committee that the press had no special rights which are not to be given to an individual or a citizen. **Dr. Ambedkar** further said that the “*editors or managers of press are all citizens of the country and when they chose to write in newspapers they are merely expressing their right of expression*”.

Some landmark Supreme Court Judgments regarding the Freedom of press

- **Romesh Thapar v. State of Madras, (1950)**: Freedom of speech and of the press laid at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.”
- **Prabha Dutt v. Union of India ((1982)** :Supreme Court directed the Superintendent of Tihar Jail to allow representatives of a few newspapers to interview Ranga and Billa, the death sentence convicts, as they wanted to be interviewed.

- **Indian Express v. Union of India (1985):** 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.
- In **Sakal Papers v/s Union of India** the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2)

- In a **Rajgopal vs. state of Tamil Nadu 1994** the Supreme Court held that government has no authority in law to impose prior restraint upon publication of the defamatory material against its officials.
- **Maneka Gandhi v. Union of India, (1978)**: Freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.

REASONABLE RESTRICTIONS

- However, Freedom of speech and expression is not absolute. As of now, there are 8 restrictions on the freedom of speech and expression. These are in respect of the sovereignty and integrity of the country. These 8 restrictions were:
 1. Security of the state and public order- Public order means public peace, safety and tranquility.
 2. Friendly relations with foreign states
 3. Public Order
 4. Decency or morality
 5. Contempt of Court
 6. Defamation
 7. Incitement to offence
 8. Sovereignty and integrity of India.

RIGHT TO INTERNET

- With the escalation in technology Internet portray a significant role, so a primitive question arises that: whether access to internet can be considered as a human right or not? In 2016, UNHRC General Assembly articulated access to the Internet an essential human right

- The Apex Court propounded in its recent judgement that: freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys Constitutional protection under Article 19(1)(a) and Article 19(1)(g), but the restriction of such Fundamental Rights should be according to Article 19(2) and (6) of the Constitution, inclusive of the test of proportionality. **Right to access Internet is an integral part of Right to education and Right to Privacy under Article 21A and Article 21 of the Constitution of India respectively.** Internet Access not only enhances the opportunities of students to acquire knowledge but also enhances the quality of Education.

CASES ON RIGHT TO INTERNET

- In **Faheema Shirin RK vs. State of Kerala and others 2019** Hon'ble High Court stated that Right to access internet is a part of Right to education and Right to Privacy under Article 21A and Article 21 of the Constitution of Indian respectively. Internet Access not only enhances the opportunities of students to acquire knowledge but also enhances the quality of education
- In **Anuradha Bhasin vs. Union of India and Ors 2020**. Apex Court in its recent judgement observed that freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys Constitutional protection under Article 19(1)(a) and Article 19(1)(g), but the restriction of such fundamental rights should be according to Article 19(2) and (6) of the Constitution, inclusive of the test of proportionality. Internet is an imperative tool for trade and commerce and plays an important role in carrying e-commerce business as it provides a virtual platform to a businessman which is more affordable.

- **Foundation of Media Professionals vs. Union of India 2020** Appeal was made to restore the 4G internet in the area of Jammu and Kashmir which was imposed on connectivity black out in 2019 August by the central government this ban on 3G and 4G services was challenged.
- The court held that the right to freedom of speech and expression, health, education and Entrepreneurship must be balanced against national security concerns

Freedom to assemble peacefully and without arms [art. 19 1 (b) and 19 (3)]

- The constitution guarantees right to hold meetings and take out processions. The processions and meetings should be unarmed and peaceful. This right may be restricted in the interest of the public order or sovereignty and integrity of the country.
- Section 144 of the Sub-section (6), of the Code of Criminal Procedure can be imposed by the government in certain areas which makes the assembly of 5 or more people an unlawful assembly. This section was challenged in the Supreme Court via **Kamla Kant Mishra and ors. vs State Of Bihar And ors. Case (1962)**, on the basis that it violates article 19(1) of the constitution and thus is invalid. The Supreme Court in its judgment held that power conferred upon the State Government under Section 144, Sub-section (6), of the Code of Criminal Procedure, is constitutionally valid.

Freedom to form Associations and unions or co-operative society [Art. 19 1(c) and Art. 19(4)]

- Article 19 1 (c) guarantees the citizen the freedom to form Association or unions for cooperative societies.
- the word **‘cooperative societies’** were added by **97th Constitutional Amendment 2011**
- It includes the right to form companies, societies partnership, trade Union and political parties. It also includes the right not only to form Association but also to continue with Association as such.

- **Freedom to move freely throughout the territory of India [19 (1) (d) and 19 (5)]**
- Freedom to move freely throughout the territory of India is guaranteed in **19 1 (d)** is in addition to the right to personal liberty guaranteed under **article 21**.
- The basic principle for this right is that the Constitution lays stress that the entire territory is one unit as far as citizens are concerned.
- **Grounds of restriction article 19 (5)** Provides the following Grounds on which the state may put on reasonable restriction:
 - interest of general public
 - protection of interest of any scheduled tribe

- **Freedom to reside and settle in any part of the territory of India article 19 1(e) and article 19 (1) (5)**
- Article 19 1 (a) provides that citizens have the right to decide and settle in any part of territory of India.
- The Object is to remove internal barriers within the country.
- **Grounds of restriction 19 (5)** provides the following Grounds on which the state may put reasonable restriction:
 - interest of general public
 - protection of interest of any scheduled tribe

- **Freedom to practice any profession, or to carry on any occupation trade or business article 19 (1) (g) and article 19 (6)**
- Article 19 [1][g] provides that all citizens shall have the right to practice any profession or to carry on any occupation trade or business.
- The right to carry on business also includes the right to close the business. The state cannot compel a person to carry on business against his will.