
**ANALYZING THE AMBIT OF 'REASONABLE
RESTRICTIONS': A STUDY OF HATE SPEECH,
DEFAMATION, AND CONTEMPT OF COURT UNDER
ARTICLE 19(1) (A) AND ARTICLE 19(2) OF THE INDIAN
CONSTITUTION**

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ABSTRACT

Article 19(1) (a) of the freedom of speech and expression is the basis of the democratic setup in India and citizens are allowed to engage in the discourse and governance of the nation. The freedom is however limited under Article 19(2), which has brought in the constrained limits of reasonableness, to protect other conflicting constitutional interests like the public order and reputation, and the judicial power. The paper is a consideration of the extent of these restrictions with special attention on hate speech, defamation and contempt of court. The study examines how Indian courts have balanced individual liberty, societal and institutional issues through the provisions of the constitution and interpretation by the courts. It claims that despite judicial scrutiny not precluding utterance of speech, discrepancies remain in the enforcement of the measures of reasonableness and proportionality. There should be a consistent approach to the constitution, however, which should keep restrictions reasonable, limited, and democratic.

Keywords: The Freedom of Speech and Expression, Reasonable Restrictions, Article 19(1) (a), Article 19(2), Hate Speech, Defamation, Contempt of Court, Constitutional Balance, Judicial Review.

1. INTRODUCTION

The freedom of speech and expression is universally considered to be the lifeblood of a democratic society. In India, this is guaranteed in the constitution in Article 19(1) (a), where the constitution guarantees the citizens to express opinions, share their ideas, and engage in the activities of the government. The Supreme Court has always considered this right as fundamental to democracy and has noted that free political discourse is necessary to the efficient operation of representative government.¹ The scope of Article 19(1) (a) extends beyond verbal communication and includes written expression, press freedom, artistic expression, and electronic media.²

The Court in *Romesh Thappar v. The State of Madras* believed in freedom of speech being the foundation of all democratic organizations and that any interference in the freedom of speech should be interpreted in a strict way.³ In *Union of India*, the Supreme Court stressed that the right to press is a subset of Article 19(1) (a) and a watchdog of democracy.⁴ The rulings indicate that the primary role of expressive liberty in the constitutional provisions of India.

1.1 Article 19(2): Reasonable Restriction Evolution

Although Article 19(1) (a) ensures the freedom of expression, Article 19(2) permits the State to exercise reasonable constraints in given circumstances.⁵ The initial Constitution had allowed only the restriction based on grounds of security of the State, defamation, contempt of court and decency or morality. Nonetheless, after a series of laws restricting speech had been judicially declared invalid, Parliament passed the First Constitutional Amendment, 1951, extending Article 19(2) to cover public order, friendly relations with foreign States and incitement to an offence.⁶

The reasonable restrictions have been construed judicially to mean that they should be proportionate and must have a direct nexus between the restriction and a protected interest. *State of Madras v. V.G. Row*, the Supreme Court has set the doctrine that reasonableness was

¹ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

² *Bennett Coleman & Co. v. Union of India*, (1973) 2 SCC 788.

³ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

⁴ *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 SCC 641.

⁵ Article 19(1) (a) and Article 19(2), Constitution of India, 1950, as amended by the Constitution (First Amendment) Act, 1951 (Act No. 1 of 1951).

⁶ The Constitution (First Amendment) Act, 1951.

based on an objective form, which involves the nature of the right, the purpose of the restriction and the level of the kind of limitation imposed.⁷

1.3 Striking a Balance between the Liberty of the Individual and the Interests of the Group

Indian constitutional jurisprudence can be attributed to the presence of an ongoing struggle to strike the balance between individual liberty and stability in the society. Contrary to absolutist paradigms of free speech, the Indian paradigm is of a qualified approach, acknowledging that unchecked expression can be dangerous to societal peace, human self-respect or professional power. In *S. Rangarajan v. P. Jagjivan Ram*, the Supreme Court made it clear that limitations on speech should be grounded on an immediate and imminent threat to a guarded interest, rather than on distant and imaginary fears.⁸

This balancing exercise turns out to be very complicated in situations related to hate speech, defamation, and contempt of court. Hate speech poses a threat to social peace; defamation involves right to reputation which is listed under Article 21⁹, and contempt of court involves maintenance of the judicial supremacy. All these grounds are constitutionally approved restrictions as in Article 19(2) but when used in practice, their implementation tends to be viewed as excessive and an infringement on freedom of expression.

2. OBJECTIVES OF THE STUDY

The following are the specific objectives of the present study:

- To interpret the extent of the Freedom of Speech and Expression under Article 19(1) (a) of the Constitution of India and to determine the nature and scope of restrictions that can be made by Article 19(2).
- To critically assess the concept of reasonable restrictions as have been developed through judicial interpretation, specifically on the nexus, proportionality and necessity tests as have been developed by constitutional courts.¹⁰

⁷ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

⁸ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

⁹ *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

¹⁰ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

- To examine the legal position on hate speech in India, and applicable penal laws and court decision, in order to determine how the courts strike a balance between free speech and societal peace and order.
- In order to analyze defamation as a genuinely recognized constraint by the constitution, both civil and criminal aspects, and to judge the judicial rationale of the reputation as part and parcel of the right to life stipulated by Article 21.¹¹
- To look at the issue of contempt of court as a restriction ground under Article 19(2), it is necessary to discuss what it aims at in safeguarding the judiciary at the same time as not suppressing legitimate criticism of the courts.

4. METHODOLOGY

The current research has used the doctrinal and analytical approach of research which is most appropriate in investigating on the provisions of the constitution, the statutory provisions and judicial interpretations of freedom of speech and expression in India. Doctrinal research means a systematic study of legal principles as they have been established through constitutional text, legislation, and even through the application through judicial decisions.¹² This approach allows conducting an organized study of Article 19(1) (a) and 19(2) of the Constitution of India and their interpretation related to constitutional courts.

4.1 Doctrinal Legal Research

The main sources of the current study are the Constitution of India, the enactments of the parliament (the Bharatiya Nyaya Sanhita, 2023 and the Contempt of Courts Act, 1971) and the decisions made by the Supreme Court of India and other High Courts. Cases of reasonable restrictions, hate speech, defamation, and contempt of court have been reviewed with a keen interest to establish the changing judicial standards. Special attention is given to the judicial reasonableness, proportionality and proximity between speech and harm tests.¹³

4.2 Analytical and Critical Approach

Besides analyzing the doctrines, the study also uses critical and evaluative analysis to

¹¹ Subramanian Swamy v. Union of India, (2016) 7 SCC 221.

¹² H.W.R. Wade & C.F. Forsyth, *Administrative Law* (11th ed., Oxford University Press 2014).

¹³ State of Madras v. V.G. Row, AIR 1952 SC 196.

determine the consistency and sufficiency of judicial reasoning. This includes juxtaposing judicial interpretations in various cases to determine trends, inconsistencies or omissions in the interpretation of Article 19(2). This research also examines the issue of whether statutory limitations are constitutional and whether imposing them creates the effect of chilling free speech.¹⁴

4.3 Use of Secondary Sources

Primary legal materials have been supplemented with secondary sources, which have been scholarly articles, constitutional commentaries, law commission reports, and reputed legal journals. These are used to put judicial decisions in context of constitutional theory and democracy at large.

5. CONSTITUTIONAL FRAMEWORK

5.1 Article 19(1) (a): Scope of Freedom of Speech and Expression

The right of freedom of speech and expression is a right guaranteed to every citizen in the article 19(1) (a) (a) of the Constitution of India. This is the inception of the democratic system of India and it gives the citizens a chance to engage in political dialogues, voice their disagreements and spread ideas. Judicial interpretation has always been broadened to incorporate the freedom of press, freedom of expression and electronic communications. In *Bennett Coleman and Co. v. Union of India*, the Court appreciated that any restriction on the circulation or the content of publications has a direct effect on Article 19(1) (a).¹⁵

On the same note, in *Romesh Thappar v. State of Madras*, the Court observed that freedom of speech is the backbone of any democratic organization and should be strongly guarded.¹⁶ These jurisdictions dictated that the expression right is not the right of an individual, rather a communal democratic requirement.

5.2 Article 19(2): Grounds of Restriction

Article 19(2) gives the State the power to place reasonable limitations to speech in the name of

¹⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

¹⁵ *Bennett Coleman & Co. v. Union of India*, (1973) 2 SCC 788.

¹⁶ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

the sovereignty and integrity of India, security of the State, good relations with other States, order in the country, decency or morality, contempt of court, defamation, and incitement to commit crime. The Constitution (First Amendment) Act, 1951, greatly extended these grounds, after early judicial defeat of laws against preventive censorship.¹⁷

These grounds can be attributed to the effort by the framers to strike the balance between liberty and social order. But Article 19(2) does not permit the legislature to override the authority and therefore the restrictions should meet the constitutional test.

5.3 Judicial Review of Legislative Limitations

The judiciary is the gatekeeper to the constitution guaranteeing that restraints are kept within reasonable boundaries. In *State of Madras v. V.G. Row*, the Court reposed that reasonableness of a restriction should be ascertained with an objective view given the nature of the right that was infringed, the purpose of the restriction and the proportionate impact.¹⁸

Further, in *Chintaman Rao v. State of Madhya Pradesh* it was considered that reasonable restriction suggested intelligent care and deliberation, and did not refer to arbitrary/excessive restriction.¹⁹ The Court also pointed out that restrictions had to be directly nexus to goal intended to be achieved.

5.4 Constitutional Balance

In this way, the Articles 19(1) (a) and 19(2)²⁰ establish a streamlined constitutional setup: freedom is the rule, restriction the exception. The courts will make sure that there is no suppression of speech based on speculative or unclear reasons. This framework creates a fine balance between the freedom of individuals and national interests, which creates a basis of measuring hate speech, defamation, and contempt of court within the constitutional parameters.

6. REASONABLE RESTRICTIONS: DOCTRINE AND JUDICIAL PERSPECTIVE

The concept of reasonableness in constitutional law refers to the idea that the basis of a

¹⁷ The Constitution (First Amendment) Act, 1951.

¹⁸ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

¹⁹ *Chintaman Rao v. State of Madhya Pradesh*, AIR 1951 SC 118.

²⁰ Article 19(1) (a) and Article 19(2), Constitution of India, 1950, as amended by the Constitution (First Amendment) Act, 1951 (Act No. 1 of 1951).

constitutional law must be reasonable. The term reasonable restrictions as provided in Article 19(2) is a judicial invention and not a legislative privilege. It has always been the case in the Indian courts that limitation of fundamental rights should be supported by the compelling constitutional necessity. In *State of Madras v. V.G. Row*, the Supreme Court has made it quite clear that reasonableness is subject to proportionality, urgency of harm, and degree of interference with the right.²¹

6.1 Doctrine of Proximity

The key aspect of reasonableness is the proximate relationship between speech and harm expected. In *S. Rangarajan v. P. Jagjivan Ram*, the Court opined that exercise of power may only be limited in cases where there is a clear and present danger and no other threats, including remote or speculative dangers, would constitute adequate attention to administrative power.²²

6.2 Emergence of Proportionality

The principle of proportionality is being increasingly applied in the modern constitutional adjudication. In *Modern Dental College v. State of Madhya Pradesh*, although it was not a case about speech, the Court has officially made proportionality a constitutional test, which states that the restrictions must foster legitimate goals, be necessary and offer a reasonable balance between rights and public interest.²³ This judgment has a strong impact on Article 19 analysis.

The use of expressive freedoms in proportionality was affirmed in *Anuradha Bhasin v. Union of India*, in which the Court declared that restrictions on freedom of expression had to be temporary, reasonably proportioned, and that they had to be reviewed after a specific time.²⁴ An indeterminate limitation on rights, even in the name of national security, was declared unacceptable.

6.3 Role of Judiciary in Prevention of Chilling Effect

Another area that the judiciary has taken note of when it comes to the effect of excessive regulation on the freedom of speech is the chilling effect. In *Shreya Singhal v. Union of India*,

²¹ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

²² *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

²³ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

²⁴ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

the Court declared Section 66A of the IT Act unconstitutional on the ground of vagueness, noting that ambiguity in restrictions discourages the exercise of law.²⁵ This ruling supports the fact that ambiguity and vagueness are contrary to constitutional reasonableness.

7. HATE SPEECH AND REASONABLE RESTRICTIONS

7.1 Concept and Constitutional Placement

The constitutional placement of the concept is an element, often treated in its own right and applicable to various different concepts.

Though the Constitution does not clearly spell out the concept of hate speech, it is something expressed under the umbrella of Article 19(2) when it poses a danger to the peace of the city or constitutes incitement to offence. Hate speech is used in a broad sense to refer to any type of expression that keeps hostility or violence toward a group of people or an individual based on factors like religion, caste, race or language. The constitutional rationale of regulating hate speech is to save the social peace and communal discord in a pluralistic society.

7.2 Statutory Framework

Penal laws are the main form of regulation of hate speech with references to sections 196 and 299 of the Bharatiya Nyaya Sanhita, 2023. Section 196 makes it a criminal offense to promote enmity among groups and Section 299 is an offence of intentional and malicious nature intended to give rise to religious sensibilities.²⁶ These are operational provisions which give meaning to the terms of the grounds of public order and incitement to offence in Article 19(2).

7.3 Judicial Interpretation

Judiciary has always believed that offensive expression is not enough to warrant restriction, but an immediate connection is necessary between speech and public disorder. In *Ramji Lal Modi v. State of Uttar Pradesh*, this provision was affirmed by the Supreme Court, which admitted that only aggravated types of insult to religion, i.e. those done with deliberate and

²⁵ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

²⁶ Sections 196 and 299, Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), criminalizing promotion of enmity between groups and deliberate acts intended to outrage religious feelings respectively.

malicious intent are punishable.²⁷

Pravasi Bhalai Sangathan v. Union of India, the Court taking note of the increasing threat posed by hate speech, did not become a law-maker in judicial review, but instead stressed that regulation was necessary, by means of legislation, with repetition of constitutional boundaries of Article 19(2).²⁸

Further, in *Amish Devgan v. Union of India*, the Court stated that hate speech should be evaluated in a contextual manner, which includes evaluating intent, content and effect and reiterated that only speech which has a tendency to cause disorder to the population or provoke violence can be curtailed.²⁹

7.4 Proximity and Proportionality

Proximity and Proportionality explains that the juvenile offenders must be confined in the juvenile facilities where they should be detained in accordance with the offense they have committed.

Courts have once again emphasized that a ban on so-called hate speech should meet the proximity and proportionality tests. In *Shreya Singhal v. Union of India* although the case concerned a speech online, the Court declared that the indeterminate limitations are invalid and that only the speech that constitutes incitement can be restricted.³⁰ This rule also applies to the regulation of hate speech.

8. DEFAMATION AND REASONABLE RESTRICTIONS

8.1 Constitutional restriction of defamation

Article 19(2) directly acknowledges defamation as one of the reasons to limit speech. Constitutional justification, the constitution has been identified to protect the reputation of an individual which has been declared by the courts to be an inherent right to life in Article 21. The right of expression, thus, does not go that far too unwarranted assaults on personal dignity.

²⁷ *Ramji Lal Modi v. State of Uttar Pradesh*, AIR 1957 SC 620.

²⁸ *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477.

²⁹ *Amish Devgan v. Union of India*, (2021) 1 SCC 1.

³⁰ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

8.2 Dimensions relating to civil and criminal aspects

Defamation in India is conducted both civil and criminal. Civil defamation has compensatory remedies and criminal defamation is provided in sections 356(1) and 356(2) of the Bharatiya Nyaya Sanhita, 2023.³¹ Section 356(2) identifies defamation and gives an exception on truth, public good and fair comment and thus, tries to balance reputation with free speech.

8.3 Judicial Justification of Criminal defamation

The criminal defamation was declared constitutional in *Subramanian Swamy v. Union of India* in which the Supreme Court held that the reputation was an element of Article 21, and sections 356(1) and 356(2) of the Bharatiya Nyaya Sanhita, 2023 were reasonable limitations under Article 19(2).³² The Court did not uphold the argument that criminal defamation was a disproportionate deterrent to speech, observing that there were sufficient safeguards in the law.

8.4 Balancing Free Speech and Reputation

The rationality of the judicial is focused on proportionality and fairness. The Court in *Sahara India Real Estate Corp. v. SEBI* highlighted that the freedom of expression has to be accompanied by the right to fair trial and individual dignity, which substantiates the idea that no right would be absolute.³³

Courts have also taken notice of the fact that the public figures should be under more scrutiny, but false and malicious statements are still actionable. Legal criticism, honest comment, and honest reporting are all constitutionally protected.

8.5 Contemporary Concerns

However, despite the judicial protection, there are still worries about how criminal defamation can be abused in order to suppress dissent. Although the constitutional structure allows restriction, scholars believe that the repeated application of the criminal law can create a chilling effect to the journalistic and political speech. The judiciary is thus charged with an

³¹ Sections 356(1) and 356(2), Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), define and provide punishment for the offence of defamation under the new criminal code in India.

³² *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

³³ *Sahara India Real Estate Corporation Ltd. v. SEBI*, (2012) 10 SCC 603.

ongoing responsibility of making sure that a limit on application of the defamation laws is created only in true instances of reputational loss.

9. CONTEMPT OF COURT AND REASONABLE RESTRICTIONS

9.1 Constitutional Basis

Article 19(2) specifically acknowledges the existence of contempt of court as one of the basis of limiting freedom of speech and expression. The reason for this lies in the need to maintain the same level of trust in individuals with regards to the administration of justice and the safeguarding of the judicial systems against any form of assault that can hinder or bias legal courses of action. Punitive power in contempt is based on Articles 129 and 215 of the Constitution and is also a statutory provision as defined in the Contempt of Courts Act, 1971.

9.2 Nature and Scope of Contempt Jurisdiction

The contempt is broadly categorized as civil and criminal contempt. Criminal contempt encompasses publicity or acts that disgrace the court, meddle with judicial processes or hinder the attainment of justice. The Court in *E.M.S. Namboodiripad v. T.N. Nambiar*, made it clear that fair criticism of judicial performance is acceptable although imputations derogatory to judicial authority do result in contempt jurisdiction.³⁴

Indian courts have, however, time and again pointed out that contempt powers should be used sparingly. In *Brahma Prakash Sharma v. State of Uttar Pradesh*, the court ruled that criticism of judges is not contempt unless it is material and interposes justice.³⁵ This case is an important distinction between constructive criticism and unjustifiable attack.

In this case, there is a question regarding the freedom of expression and the judicial authority.

The conflict between the freedom of speech and the law of contempt was re-opened in *Baradakanta Mishra v. Registrar of High court Orissa*, where the Supreme Court made it clear that the intent of the contempt is not to protect individual judges but to protect the justice delivery system.³⁶

³⁴ *E.M.S. Namboodiripad v. T.N. Nambiar*, (1970) 2 SCC 325.

³⁵ *Brahma Prakash Sharma v. State of Uttar Pradesh*, AIR 1954 SC 10.

³⁶ *Baradakanta Mishra v. Registrar of Orissa High Court*, (1974) 1 SCC 374.

In *Re: Prashant Bhushan*, more recently the Court reiterated that although dissent and criticism are vital to the democratic process, those statements that undermine people's trust in the court without supporting the factual basis could amount to criminal contempt.³⁷

9.4 Proportionality and Contemporary Approach

It has been observed in terms of judicial trends that there is a gradual move towards restraint and proportionality. The courts have come to appreciate that too much use of the contempt jurisdiction would be tantamount to stifling the freedom of expression. The point of focus is more on whether the speech in question is a real and substantial menace on the administration of justice or just an insult to judicial sensibilities.

10. THEORETICAL AND COMPARATIVE PERSPECTIVES

10.1 Indian Model of Qualified Free Speech

India is based on a model of qualified free speech, with expressive freedom being guaranteed by the constitution, but being subject to direct restrictions. The Indian framework also incorporates social order and institutional integrity in its constitutional structure unlike those jurisdictions that incorporate almost complete protection of speech because the country is pluralistic.

10.2 Comparative Jurisdictions

The First Amendment free speech jurisprudence in the United States only allows restraint of speech as an imminent act of lawlessness, as formulated in *Brandenburg v. Ohio*,³⁸ this criterion provides much more limited justification of State intrusion than Article 19(2).

By contrast, the United Kingdom follows a more moderate course of action by allowing the limitation of hate speech and contempt by use of statutory provisions like the Public Order Act whilst still allowing freedom of political expression. Indian courts have taken an intermediate position between these two models consisting of constitutional enumeration and judicial proportionality.

³⁷ *In Re: Prashant Bhushan*, (2021) 3 SCC 160.

³⁸ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

10.3 Theoretical Foundations

Theoretically, the harm principle proposed by John Stuart Mill is the reason why speech must be limited to avoid hurting others. The Indian jurisprudence at least in part mirrors this principle in the postulates of proximity and proportionality. Nonetheless, communitarian values are also accepted in Indian courts that allow limitations in order to safeguard the interest of the group like social order and judicial power.

10.4 Proportionality Adopted by Judicial Decree

Proportionality is becoming a universal measure of constitutional adjudication. *Anuradha Bhasin v. Union of India*, limitations to the fundamental rights should have legitimate purposes, necessity, and balance between the individual freedom and the interest of the people.³⁹ This not only conforms Indian jurisprudence to the global constitutional trends, but also conserves the indigenous constitutional ethos.

10.5 Synthesis

Comparative study can be made to show that India does not have an absolutist or an overly restrictive approach. Rather, it is a balanced model and attempts to balance expressive freedom and democratic stability, but only works well when it is applied consistently by the judiciary.

11. CONCLUSION

Article 19(1) (a) of the freedom of speech and expression forms the foundation of the India democratic system, although it is given under the restricting provisions of Article 19(2). Judicial interpretation has seen the development of the ideas of reasonableness, proximity and proportionality as constitutional protections against unreasonable State action.

The discussion of hate speech, defamation and contempt of court proves that even though it has valid constitutional goals such as social peace, personal dignity and judicial integrity, their exercise is always at risk of overextension. The Indian courts have mostly strived to maintain this fine balance by demanding that only the speech that is real and substantial harm can be limited.

³⁹ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

However, these discrepancies in application and the possibility of a chilling effect of criminal punishment point to further judicial vigilance. Conclusively, constitutional democracy is not just powerful because it allows speech, but because it safeguards dissent and it should control expression, which truly constitutes a threat to the constitutional order. To maintain freedom and order, an article 19(2) principled, restrained and rights-oriented application is still necessary.

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