

## PRESS FREEDOM LAWS IN INDIA

The Constitution, the supreme law of the land, guarantees freedom of speech and expression under Article 19, which deals with 'Protection of certain rights regarding freedom of speech, etc.' Clause (1)(a) of Article 19 states, "All citizens shall have the right to freedom of speech and expression."

The open discussion of ideas allows individuals to fully participate in political life, making informed decisions and strengthening society as a result—especially in a large democracy such as India. The placement of Article 19 within the Constitution is revealing—it is found in Part III and is therefore a 'fundamental right'. Pertinently, Part III of the Constitution does not only confer fundamental rights but also confirms their existence and gives them protection.

Hence, even a right to enforce a fundamental right by moving the Supreme Court is guaranteed under Article 32 of the Constitution as a fundamental right. Further, fundamental rights form a part of the 'basic structure' of the Constitution and cannot be amended. While there are certain restrictions imposed on the freedom of speech and expression by Article 19(2), constitutional protection is the greatest guarantee of free speech in India. A system of double restriction is in place, whereby freedom is not absolute, but neither is the power to diminish it.

Article 19(1) (a) draws inspiration from the First Amendment to the United States Constitution, which says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

A key difference is that in the US Constitution freedom of the press is explicitly safeguarded. In the US, free speech can be restricted through defamation laws or because of national security concerns, but the courts have allowed the press much leeway when discussing and criticising issues pertaining to public life. Famously, in *New York Times Co. v Sullivan*, the Supreme Court of the United States said that "discussing the stewardship of public officials" was fundamental to their form of government. A strong line was taken against behaviour that threatened free speech for the sake of offended politicians. Censorship of the press was antithetical to the American way of life envisioned by the ISSUE BRIEF | Media Freedom and Article 193 | [www.orfonline.org](http://www.orfonline.org) | April 2013 founding fathers of that nation, who believed that "the censorial power is in the people over the government, and not in the government over the people."

However, the Indian news press enjoys two-fold protection, namely the freedom of speech and expression guaranteed under Article 19(1) (a) and the freedom to engage in any profession, occupation, trade, industry or business, guaranteed under Article 19(1) (g). Problems arise when Article 19(1) (a) and (g) are read to be one and the same and even the oversight and restrictions in the interest of the 'general public' contemplated under Article 19(6) are ignored because of this confusion.<sup>1</sup>

### PART III

#### FUNDAMENTAL RIGHTS

##### Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.-

(1) All citizens shall have the right-

(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;

(g) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to-

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].