



LOK SABHA

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BACKGROUND GUIDE

Agenda : Reviewing Article 19(1)(a) Of The Indian Constitution



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LETTER FROM THE EXECUTIVE BOARD

Greetings Parliamentarians!

It gives us immense pleasure to welcome you to this simulation of Lok Sabha at CENMUN, 2018. We look forward to an enriching and rewarding experience. This study guide is by no means the end of research, we would very much appreciate if the Parliamentarians are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes an excellent performance. In the session, the executive board will encourage you to speak as much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!

Regards,

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ABOUT THE COMMITTEE

Introduction:

The Lok Sabha (House of the People) is the Lower house of India's bicameral Parliament, with the Upper house being the Rajya Sabha. Members of the Lok Sabha are elected by adult universal suffrage and a first-past-the-post system to represent their respective constituencies, and they hold their seats for five years or until the body is dissolved by the President on the advice of the council of ministers. The house meets in the Lok Sabha Chambers of the Sansad Bhavan in New Delhi.

Expectations of the Executive Board:

We expect the Parliamentarians to focus on Cases and Incidents of misuse of Freedom of Expression by the people.

Further it is requested that the Parliamentarians may not divert from the issue in hand and only focus on the Agenda. 1

**अगर हम लोकतन्त्र की सच्ची भावना का विकास करना चाहते हैं
तो हम असहिष्णु नहीं हो सकते।
असहिष्णुता से पता चलता है कि हमें
अपने उद्देश्य की पवित्रता में पूरा विश्वास नहीं है।**

**बहुमत का शासन जब ज़ोर-जबरदस्ती का शासन हो जाए
तो वह उतना ही असहनीय हो जाता है
जितना कि नौकरशाही का शासन।**

INDIA

INTRODUCTION

Democracy is based essentially on free debate and open discussion. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.

Freedom of speech is thus, the bulwark of any democratic government. It is regarded as the first condition of liberty. In a democracy, freedom of speech and expression opens up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has received a broad construction by the Supreme Court.

The right given in Art.19 (1) (a) is not merely a right of speech and expression but a right to freedom of speech and expression. The enumeration by other rights is not by reference to 'freedom'. The right under Article 19 are available to citizens only.

The main conception behind granting this freedom to the citizen of India was to allow them to freely develop their thoughts and ideas and share them without any unreasonable hurdle. In the scheme of Constitution of India this freedom is enshrined in the most important part relating to the 'Fundamental rights of the citizen'. And notably, the rights guaranteed under the Indian Constitution as fundamental rights, are very much corresponding to the Human rights of the individuals which were declared universally through the 'Universal declaration of Human Rights'.

Art. 19 (1)(a) includes the rights 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. It thus includes the freedom of communication and the right to propagate or publish opinion. Not only this, but the right to paint or sing or dance or to write poetry or literature is also covered by Article 19(1)(a) because these are all a form of expression. But this right is subject to reasonable restrictions being imposed under Article 19(2).



Why to Protect Freedom of Speech:

Speech is a medium of one's expression. It's a way for a human being to express his or her thoughts. It is what segregates social animals from others and forms the basic foundation of human society. There are many contradictions and similarities between human rights and constitutional rights, but the right to freedom of expression concentrates on both areas being an important element of social and political life. Nevertheless, the proper implementation and extent of these rights are questioned. Freedom of speech offers human being to express his feelings to other, but this is not the only reason; purpose to protect the freedom of speech. There could be more reasons to protect these essential liberties. There are four important justifications for freedom of speech:

- 1) For the Discovery of Truth by Open Discussion:** According to it, if restrictions on speech are tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.
- 2) Free Speech as an aspect of Self-fulfilment and Development:** Freedom of speech is an integral aspect of each individual's right to self-development and self-fulfilment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth. It helps an individual to attain self-fulfilment.
- 3) For Expressing Belief and Political Attitudes:** Freedom of speech provides opportunity to express one's belief and show political attitudes. It ultimately results in the welfare of the society and state. Thus, freedom of speech provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
- 4) For Active Participation in Democracy:** Democracy is most important feature of today's world. Freedom of speech is there to protect the right of all citizens to understand political issues so that they can participate in smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in decision-making. Thus we find that protection of freedom of speech is very much essential. Protection of freedom of speech is important for the discovery of truth by open discussion, for self-fulfilment and development, for expressing belief and political attitudes, and for active participation in democracy. The present study is intended to present the provisions of the American and Indian Constitution which recognize the freedom of speech and expression, the basic fundamental rights of human being. It is also to be examined that what is judicial trend in interpreting the freedom of speech and expression provisions. The study also covers the comparison between the approaches of both countries as far as freedom of speech is concerned.

Freedom of Speech in India

History:

Pre-Independence

Free speech, which was once respected in earlier times, was not so allowed in the later ages. However, different movements have seen its exposure come forward and reform the society. The Bhakti period was one where different modes of expressions broke several stereotypes and combatted social evils. These similar modes continued through rich culture and literature. Literature has always been a medium to generate public conscience and to spread awareness regarding matters of social importance. The right to freedom and speech of expression has always taken new forms, but has remained an inseparable part of human society.

At the time of British rule, absolute freedom was not granted. On practical grounds, many speeches which influenced the people towards freedom were banned. People were also charged with sedition in this regard. There were several newspapers and journals which became important tools during India's freedom struggle but there struggle with governmental regulations. This goes against many modern principles and our right to freedom of speech and expression in the Constitution of India. The development of constitutionally guaranteed fundamental human rights in India was inspired by historical examples such as England's Bill of Rights (1689), the United States Bill of Rights (approved on 17 September 1787, final ratification on 15 December 1791) and France's Declaration of the Rights of Man (created during the revolution of 1789, and ratified on 26 August 1789). Under the educational system of British Raj, students were exposed to ideas of democracy, human rights and European political history. The Indian student community in England was further inspired by the workings of parliamentary democracy and Britishers political parties.

In 1919, the Rowlatt Act gave extensive powers to the British government and police, and allowed indefinite arrest and detention of individuals, warrant-less searches and seizures, restrictions on public gatherings, and intensive censorship of media and publications. The public opposition to this act eventually led to mass campaigns of non-violent civil disobedience throughout the country demanding guaranteed civil freedoms, and limitations on government power. Indians, who were seeking independence and their own government, were particularly influenced by the independence of Ireland and the development of the Irish constitution. Also, the directive principles of state policy in Irish constitution were looked upon by the people of India as an inspiration for the independent India's government to comprehensively tackle complex social and economic challenges across a vast, diverse nation and population.

In 1928, the Nehru Commission composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities, and limit the powers of the government. In 1931, the Indian National Congress (the largest Indian political party of the time) adopted resolutions committing itself to the defence of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom. Committing themselves to socialism in 1936, the Congress leaders took examples from the Constitution of the Soviet Union, which inspired the fundamental duties of citizens as a means of collective patriotic responsibility for national interests and challenges.

Post-Independence

Task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composing of elected representatives. The Constituent Assembly first met on December 9, 1946 under the presidency of Dr. Sachidanand, later Dr. Rajendra Prasad was made its President. While members of Congress composed of a large majority, Congress leaders appointed persons from diverse political backgrounds to responsibilities of developing the constitution and national laws. Notably, Bhimrao Ramji Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. A notable development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions.

The fundamental rights were included in the First Draft Constitution (February 1948), the Second Draft Constitution (17 October 1948) and final Third Draft Constitution (26 November 1949), prepared by the Drafting Committee. The drafting of the Constitution and its adoption gave a new interpretation to the right of freedom of speech where it was considered to be an important part of society. The right to freedom of speech and expression was said to be part of the democratic spirit of the country. At the same time, its absoluteness is not the part of our constitutional scheme. The law of sedition has always been a barrier to one's freedom of speech and expression.

Freedom of speech under the Constitution of India and the reasonable restrictions In India, is granted by Article 19(1) (a). However, this right of freedom to speech and expression is not completely unchecked. Article 19(2) allows for reasonable restrictions to be imposed on all fundamental rights, including that to freedom of speech and expressions. The parliamentarians are expected to come up with detailed research on the relations between fundamental rights and reasonable restrictions with special focus on the particular agenda.

Freedom of speech enjoys special position as far India is concerned. The importance of freedom of expression and speech can be easily understood by the fact that preamble of constitution itself ensures to all citizens inter alia, liberty of thought, expression, belief, faith and worship. The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as fundamental and human right in Article 19(1) (a) as “freedom of speech and expression”. Explaining the scope of freedom of speech and expression Supreme Court has said that the words “freedom of speech and expression” must be broadly constructed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs, and the like. Moreover, it is important to note that liberty of one must not offend the liberty of others. Patanjali Shastri, J. in A.K. Gopalan case, observed, “man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals”. It therefore includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this country therefore has the right to air his or their views through the printing and or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive generous support from all those who believe in the participation of people in the administration. We can see the guarantee of freedom of speech under following heads.

CURRENT DISCOURSE REGARDING ARTICLE 19(1)(A)

- Imposition of pre-censorship on a newspaper, or prohibiting it from publishing its own views or those of its correspondents on a burning topic of the day, constitutes an encroachment on the freedom of speech and expression.

EXAMPLE: In *Brij Bhushan v. State of Delhi*[6] in pursuance of Sec. 7(1)(c) of the East Punjab Public Safety Act, 1949 as extended to the province of Delhi, the Chief Commissioner of Delhi issued an order against the petitioner, the printer, publisher and editor of a English weekly ‘The Organiser’ published from Delhi, directing them to submit, for scrutiny in duplicate, before publication till further order, all communal matters and news and views about Pakistan including photographs and cartoons other than those derived from official sources. The majority of the Supreme Court struck down the order as violative of Art. 19(1)(a).

- Also, freedom to circulate is included in freedom of press, as a publication is of little value without circulation. In *Romesh Thaper v. State of Madras*[8] the Provincial Government in exercise of its powers under Sec. 9 (1-A) of the Madras Maintenance of Public Order Act, 1949, by an order, imposed a ban upon the entry and circulation of the petitioner's weekly journal "Cross Roads" printed and published in Bombay. Majority of the Supreme Court held the order as invalid as violation Art. 19(1)(a).

EXAMPLE: In *Sakal Papers (P) Ltd. v. Union of India*,[9] the Supreme Court held that the right to propagate ideas guaranteed in Art. 19(1)(a) extended not merely to the matter which a person was entitled to circulate but also to the volume of circulation. In this case, in the pursuance of the provision of the Newspapers (Price and Page) Act, 1956, the Central Government issued the Daily Newspapers (Price and Page) Order, 1960 which fixed the maximum number of pages that might be published by the newspaper according to the price charged. The order fixed a minimum price and number of pages which a newspaper was entitled to publish. The petitioners were required to increase the price of their newspaper if they were increasing the pages. On the other hand, if the petitioners were to reduce the price, they were required to decrease the number of pages.

The order was challenged as violative of the freedom of press, since its adoption meant either the reduction in the existing number of pages or raising the price. This amounted to directed infringement of the liberty of the press. The Supreme Court struck down the order.

- An advertisement promoting drugs and commodities, the sale of which is not in public interest, could not be regarded as propagating any idea and, as such, could not claim the protection of Art. 19(1)(a). An advertisement meant to further business falls within the concept of trade and commerce and cannot be regarded as a part of freedom of speech.

EXAMPLE: In *Hamdard Dawakhana v. Union of India* [15] the Supreme Court considered the question that how far are advertisements protected under Art. 19(1)(a). In this case, Parliament enacted an Act with a view to control advertisements of drugs in certain cases. The Act was challenged on the ground that restrictions on advertisements was a direct abridgment of the freedom of expression. The Court stated that an advertisement, no doubt, is a form of speech, but its true character is to be determined by the object which it seeks to promote.

- Television plays a very important and significant role in modern life. Many people obtain the bulk of their information on matters of contemporary interest from the broadcasting medium.

EXAMPLE: i) In *Anand Patwardhan v. Union of India*, [19] the petitioner produced a documentary on violence and terrorism in Punjab. The film received a 'U' certificate from the board of film censors. Nevertheless the Doordarshan refused to telecast the film. The Bombay High Court ruled that the refusal to telecast amounted to violation of the petitioner's right under article 19(1)(a). It also amounted to violation of the right of the people under Art. 19(1)(a) to be informed about the situation in Punjab. Accordingly, the court directed Doordarshan to exhibit the film.

ii) In *Indira Jai Singh v. Union of India*, during the course of recording of the interview of the petitioner for a T.V. programme pertaining to 'Law relating to Women' on an interview of Doordarshan itself, she made critical remarks about a Bill which was then pending before Parliament as being violative of women's right to equality. When the programme was telecast, her views on the Bill were deleted. The petitioner in a writ petition asserted that this amounted to censorship of her views by the television authorities as her views were against the views of the ruling party. The Doordarshan authorities justified the deletion on the basis that it only amounted to editing and not censorship. The High Court ruled in favour of the petitioner.

- **Trial by Media:**

Interference with administration of justice is neither a permissible freedom nor an unreasonable restriction. In the case of *M. P. Lohia v. State of West Bengal*, AIR 2005 SC 790, relating to suicide by wife due to her harassment for dowry, an application for grant of anticipatory bail was rejected by Courts below. When special leave petition from such rejection was pending before Supreme Court, an article appeared in a magazine based on an interview of the family of the deceased, giving their version of the tragedy and extensively quoting the father of the deceased as to his version of the case which could all be materials that may be used in the forthcoming trial. The Supreme Court took the view that such articles appearing in the media would certainly interfere with the administration of justice and deprecated such practice and cautioned the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue was sub judice.

- **National Anthem Case:**

Freedom of speech also includes the right to silence. In a case, three children belonging to Jehovah's witnesses were expelled from the school for refusing to sing the national anthem, although they stood respectfully when the same was being sung. They challenged the validity of their expulsion before the Kerala High Court which upheld the expulsion as valid and on the ground that it was their fundamental duty to sing the national anthem. On appeal, the Supreme Court held 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.

- **Freedom of Speech and Sedition:**

The offence of sedition, in India, is defined under Section 124-A of the Indian Penal Code as, "whoever by words either spoken or written, or by signs, or by visible representation or otherwise brings into hatred or contempt or excite or attempts to excite disaffection towards the government established by law in India shall be punished".

In the recent case of *Kanhaiya Kumar v. State of Nct of Delhi*, students of Jawaharlal Nehru University organized an event on the Parliament attack convict Afzal Guru, who was hanged in 2013. The event was a protest through poetry, art, and music against the judicial killing of Afzal Guru. Allegations were made that the students in the protest were heard shouting anti-Indian slogans. A case therefore filed against several students on charges of offence under Sections [124-A, 120-B, and 34]. The University's Students Union president Kanhaiya Kumar was arrested after allegations of 'anti-national' sloganeering were made against him. Kanhaiya Kumar was released on bail by the Delhi High Court as the police investigation was still at nascent stage, and Kumar's exact role in the protest was not clear.

New Dimensions of Freedom Of Speech And Expression:

- **Government has No Monopoly on Electronic Media:**

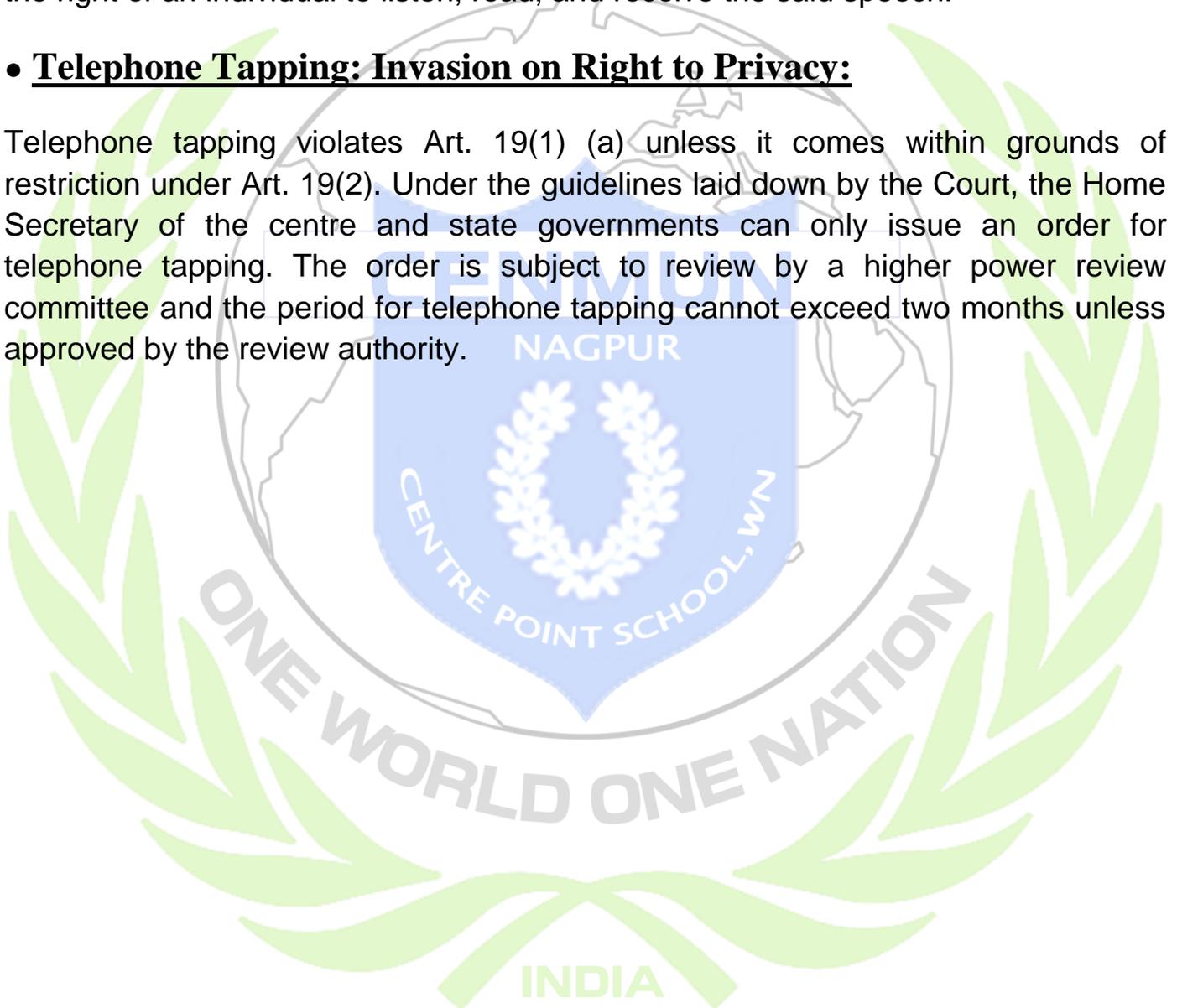
The Supreme Court widened the scope and extent of the right to freedom of speech and expression and held that the government has no monopoly on electronic media and a citizen has under Art. 19(1)(a) a right to telecast and broadcast to the viewers/listeners through electronic media television and radio 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.

- **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.

- **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 centre 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.



A ROAD AHEAD

The delegates are requested to understand the practical approach of Article 19 (1)(a). We would be looking forward to healthy discussions pertaining to prevalent issues and historical outcomes. To understand the scope of the article and finding out important changes required in the Article (if any), checking its feasibility and approach is of primary concern. "Laws are meant to protect and not to be protected", any violation of any law is a danger to the democracy and thus, it becomes necessary to ensure that we abide by those laws.

बोल, कि लब आज़ाद हैं तेरे
बोल, ज़बां अब तक तेरी है
तेरा सुतवां जिस्म है तेरा
बोल, कि जाँ अब तक तेरी है
देख कि आहन-गर की दुकां में
तुन्द हैं शोले, सुर्ख हैं आहन
खुलने लगे कुफलों के दहाने
फैला हर इक जंजीर का दामन
बोल, कि थोड़ा वक्त बहुत है
ज़िस्मों ज़ुबां की मौत से पहले
बोल, कि सच ज़िन्दा है अब तक
बोल, जो कुछ कहना है कह ले

— फैज़ अहमद फैज़