

Expansion Scope Article 19

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Topic- Executive and Judiciary [GS Paper-2]

Context- Recently, the Supreme Court (SC) has extended the ground for seeking rights to freedom of speech against other citizens.

Key Highlights

Petition:

- One of the questions before the court was if a fundamental right under Article 19 or 21 of the Constitution of India can be claimed other than against the 'State' or its instrumentalities?
- The Supreme Court replied with a majority ruling leaning towards yes.

Court's order:

- The Supreme court extended free speech against private citizens, opening up a range of possibilities in Constitutional law.

Application of Article 19:

- Article 19 that guarantees freedom of speech and expression is a right invoked against the state.
- Some fundamental rights such as those prohibiting untouchability, trafficking and bonded labour are explicitly against both the state and other individuals.

Reasonable Restrictions:

- Sovereignty And Integrity Of India,
- The Security Of The State,
- Friendly Relations With Foreign States,
- Public Order, Decency Or Morality,
- In Relation To Contempt Of Court,
- Defamation,
- Incitement To An Offence.

Restriction on Curb:

- The right of free speech and expression guaranteed under Article 19(1)(a) cannot be curbed by any additional grounds other than those already written in Article 19(2).

Transformation from state to Citizens:

- The transformation was from
 - State to
 - Authorities to
 - instrumentalities of State to
 - agency of the Government to
 - impregnation with Governmental character to
 - enjoyment of monopoly status conferred by State to
 - deep and pervasive control to
- the nature of the duties or functions performed.

Government's stand:

- **Puttaswamy case:** One of the key arguments by the government was that privacy is a right enforceable against other citizens and, hence, cannot be elevated to the status of a fundamental right against the state.

Impact of Court's Interpretation

- **Obligation:** This interpretation could bring an obligation on the state in order to ensure private entities also abide by Constitutional norms.
- **Regulation sphere increases to a lot:** The questions could range from seeking enforcement of privacy rights against a private doctor to seeking the right to free speech against a private social media entity.

Global Scenario utilised by SC for Decision

- **New York Times vs. Sullivan:** The US Supreme Court found that defamation law, as applied by the state against The New York Times, was inconsistent with certain Constitutional guarantees of the freedom of speech and expression. The SC noted a shift in US law from a "purely vertical approach" to a "horizontal approach."
- **Approach:** A vertical approach provides weightage to individual autonomy, choice and privacy, whereas the horizontal approach seeks to imbibe Constitutional values in all

individuals.

- These approaches which appear to be bipolar opposites, hold the age-old question of individual vs. society.
- A vertical application of rights would mean that it can be enforced only against the state while a horizontal approach would mean it is enforceable against other citizens.

Article 19

- Article 19(1) of the Constitution of India guarantees six fundamental freedoms to every citizen of India, such as
 - Freedom of speech and expression;
 - Freedom to assemble peacefully and without arms;
 - Freedom to form associations, unions or co-operative societies;
 - Freedom to move freely throughout the territory of India;
 - Freedom to reside and settle in any part of the territory of India, and
 - Freedom to practice any profession, or to carry on any occupation, trade or business.

Significance of Article 19

- This freedom is significant because the censorial power lies in the people over and against the Government and not in the Government over and against the people.
- The freedom of speech and expression is required to fulfil the certain objectives such as
 - To discover truth
 - Non self-fulfilment
 - Democratic value
 - To ensure pluralism

Way Ahead

- No jurisdiction in the world seems to be adopting a purely vertical approach or a wholly horizontal approach.
- Thus, the approach for such cases must be a mixed one.