

ABSTRACT

PROTECTION OF FREEDOM OF SPEECH & EXPRESSION IN INDIA: WITH SPECIAL REFERENCE TO TRADEMARK RIGHTS AND TRANSBORDER REPUTAION

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The phrase “speech and expression” used in Article 19(1)(a) has a broad connotation. This right includes the right to communicate, print and advertise the information. In India, freedom of the press is implied from the freedom of speech and expression guaranteed by Article 19(1) (a). On the issue of whether ‘advertising’ would fall under the scope of the Article, the Supreme Court pointed out that the right of a citizen to exhibit films is a part of the fundamental right of speech and expression guaranteed by Article 19(1)(a) of the Constitution. Indian law does not expressly refer to commercial and artistic speech. However, Indian Law is developing and the Supreme Court has ruled that ‘commercial speech’ cannot be denied the protection of Article 19(1)(a) of the Constitution. The Court has held that ‘commercial speech’ is a part of the ‘right of freedom of speech and expression’ as guaranteed by our Constitution.

The purpose of this paper is to analyze at both a national and international level the potential conflict between the constitutionally protected right to freedom of expression and trademark rights. The analysis will then consider how freedom of expression affects the application of trademark law. The analysis will conclude with a focus on parody, as a specific type of expression, and the possible merits and pitfalls of this defence, particularly in context trademark Law in India.

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