The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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RETHINKING THE "FRIENDLY RELATIONS" EXCEPTION UNDER A. 19(2)

- ***Tamanna Huda Dania Inam***

"If liberty means anything at all, it means the right to tell people what they do not want to hear".

- George Orwell in *Animal Farm*.

ABSTRACT:

Freedom of speech is widely recognised as a fundamental right in many countries and flagged as one of the most significant human rights by various International Treaties. In this day and age, having one's own opinions and thoughts over administrative actions is crucial. Borrowing thoughts and opinions of others have become common and to let AI dictate what we think has become convenient. Amidst all of this, Article 19 (1)(a) is certainly to be fiercely protected. This blog examines the restrictions imposed on Article 19(1)(a) under Article 19(2) with a special focus on the exception of 'friendly relations.' The author is of the view that this exception puts sovereignty and protection of its own citizen's fundamental right of speech and expression in subsequence to other States in guise of 'maintaining diplomatic relations'.

THE EXAMINATION:

In May 1951, the Indian Parliament introduced the Constitution (First Amendment) Bill which sought to widen the scope of restrictions of freedom of speech under Article 19(2). This would include curbing speech in interests of the security of the state, maintaining friendly relations with foreign states, and public order.[1] In retrospect, this bill was introduced as a domino effect to the challenges posed by the infamous left-wing and right-wing editorials *CrossRoads* and the *Organiser* respectively. Romesh Thoppar fiercely criticised the then Prime Minister

[1] Arundra Burra, Freedom of Speech and Constitutional Nostalgia, Supreme Court Observer, available at: https://www.scobserver.in/75-years-of-sc/freedom-of-speech-and-constitutional-nostalgia/ last viewed on: 14 Sept, 2026, 20:07 PM.

Jawaharlal Nehru for his foreign policy, accusing the government of being “too soft” and “selling out” to the western imperialists, and rebuked India’s choices in alignment, or rather the lack thereof, in the cold war.

Fearing the rhetoric would instigate a wave of dissent, the Madras government banned the paper’s circulation under the Maintenance of Public Order Act, 1949. Then came one of the first cases revolving around the right to freedom of speech and expression under Article 19(1)(a). In historic victory of Thoppar in *Romesh Thappar v. State of Madras*,[2] the Supreme Court struck down the ban, ruling that the restriction under the Act was wider than what was Constitutionally permissible as a restriction on freedom of expression. Post Thoppar v. State, foreign embassies in India lodged formal, indignant notes with the Ministry of External Affairs, dreading uncalled for attacks in the Indian press against the foreign head of state.[3]

During the parliamentary debate to amend the Constitution, Nehru argued that private citizens could not be granted the licence to drag the Republic into international feuds or defame foreign sovereigns with impunity.[4] This amendment came with its own sets of drawbacks as it is considered an unnecessary, dangerous overreach that prioritized foreign executive sensitivities over domestic constitutional liberty. Facing public outrage, Nehru conceded to inserting the word "reasonable" before "restrictions" in Article 19(2), subjecting executive censorship to judicial review.[5] Yet, the fundamental flaw remained: international "friendship" is fluid and highly subjective. Making constitutional rights dependent on dynamic diplomatic ties granted the government arbitrary power to declare speech illegal based on shifting foreign alliances.[6]

In International Law, the concept of friendly relations is embedded in customary law as well as documented in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. A great part of the preamble is dedicated to affirming that the maintenance of international peace and security and the development of friendly relations are fundamental purposes of the

[2] 1950 AIR 124
[3] Granville Austin, *Working a Democratic Constitution: The Indian Experience*, Oxford University Press 1999.
[4] Parliamentary Debates, Lok Sabha Official Report, Vol. XII, Part II, May 16, 1951, cols. 8820–8835
[5] The Constitution (First Amendment) Act, 1951
[6] Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*, Oxword University Press

United Nations.[7] However, the underlying message of this when carefully examined reveals a fundamental mismatch between the concept of 'friendly relations' versus its application under domestic law. In International Law, the UN Friendly Relations Declaration (GA Res 2625) imposes obligations on States to manage their sovereign conduct:

- States must refrain from the threat or use of force.
- States must settle disputes peacefully.
- States must observe non-intervention in the internal affairs of other sovereign States.

Conversely, Article 19(2) of the Indian Constitution weaponizes this concept against individual citizens. It converts a state-level diplomatic principle into an executive power to suppress domestic speech, political advocacy, press reporting, and digital expression. When we look at other international instruments such as International Covenant on Civil and Political Rights, 1996, Article 19 specifically there are specific restrictions under clause 3 to the right of speech & expression guaranteed under clause 1 and 2 which dictate the following:

"The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals."[8]

Critically, the ICCPR does not explicitly list 'friendly relations with foreign states' or shielding foreign governments from domestic criticism as a recognised group to restrict individual expression. Under General Assembly Resolution 2625 (XXV), the UN Friendly Relations Declaration imposes obligations on States to refrain from the threat or use of force, settle disputes peacefully, and respect non-intervention.[9] Article 19(2), conversely, weaponizes a state-level diplomatic duty against individual citizens, converting a state directive into an executive power to censor domestic political advocacy.

[7] Declaration on Principles of International Law concerning Friendly Relations & Co-operation among States in accordance with the Charter of the United Nations (A/8082).
[8] Article 19(3), International Covenant on Civil & Political Rights.
[9] G.A. Res. 2625 (XXV), Annex, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

Under the realist theory in international relations, state survival and strategic autonomy take precedence over internal civil liberties.[10] In 1951, the Nehru government operated under severe geopolitical vulnerability. The "friendly relations" clause served as a realist instrument to prevent private citizens from dragging a militarily weak, economically fragile nation into Cold War proxy feuds. The state treated citizen free speech as an external liability. However, with time the driver has shifted from military survival to geo-economics. Foreign policy is heavily anchored in bilateral trade pacts, cross-border investments, foreign direct investment (FDI), and semiconductor supply chains. Public outrage or citizen-led boycotts against a trading partner can derail multi-billion-dollar deals. Consequently, the state has a financial incentive to invoke "friendly relations" not to prevent war, but to shield lucrative corporate deals and strategic trade partnerships from public scrutiny.

By retaining a constitutional mechanism to restrict speech for foreign sensitivities, India exposes itself to transnational censorship. Authoritarian or economically dominant foreign regimes frequently exert diplomatic pressure on host nations to suppress local dissidents, diaspora activists, or critical media. Article 19(2) effectively turns the domestic constitutional apparatus into an involuntary enforcement arm for foreign regimes seeking to mute global criticism.

In the digital age, diplomacy is no longer restricted to closed-door Ministry of External Affairs meetings. Today, social media enables citizen diplomacy through direct online engagement, regional boycotts, and global activism. When state diplomacy conflicts with populist digital speech, the executive relies on Article 19(2) alongside Section 69A of the IT Act to issue confidential takedown notices.[11]As the Supreme Court affirmed in *Shreya Singhal v. Union of India*,[12] speech can only be restricted if it reaches the threshold of clear incitement, distinguishing it from mere advocacy. Muzzling political commentary to manage foreign optics conflates political advocacy with incitement, undermining democratic accountability.

[10] Tripura University, *Theories of International Relations*, Distance Education Study Material, POLS-804C, https://tripurauniv.ac.in/site/images/pdf/StudyMaterialsDetail/POLS-804C-Theories%20of%20Internationsl%20Relations.pdf.
[11] The Information Technology Act, 2000, S. 69A, No. 21, Acts of Parliament, 2000 (India).
[12] AIR 2015 SC 1523

The “friendly relations with foreign states” exception in Article 19(2) is a Cold War relic that weaponizes state-to-state diplomatic duties under GA Res 2625 against individual citizens.[13] Today, as foreign policy shifts toward geo-economics, the state routinely uses this overbroad exception via confidential digital takedowns and protest bans to shield trade deals and strategic allies from public scrutiny. A constitutional democracy cannot measure its citizens' voices by how softly they land abroad; until Article 19(2) is strictly narrowed, diplomatic expediency will continue to cost citizens their free expression.

[13] Supra note 9