

FREEDOM OF EXPRESSION

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Abstract

“The new freedom of expression brought by the internet goes far beyond politics. People relate to each other in new ways, posing questions about them is what we have learned through a medium that permits all kinds of anonymity and deception.”

Peter Singer

Freedom of expression is a fundamental human right. It also underpins most other rights and allows them to flourish. The right to speak your mind freely on important issues in society, access information and hold the powers that be to account, plays a vital role in the healthy development process of any society. Here in this paper it is mention that how freedom of speech and expression is regarded as the first condition of liberty in the present society. Freedom of expression as a fundamental right embodied in constitution of India under article 19 the state is under an obligation not to infringe upon the rights of the individual. Similarly, the individual is obliged to contribute to the social welfare. History behind this freedom reflects not only Indian approach but approaches for the rights in different countries of world too. The meaning of this freedom in itself describes the depth up to which it can be interpreted in favor of Citizens at a time scope to apply it is very wide when it runs with democracy. Though its being a constitutional provisions it not static but is ever changing and ever evolving.

As the every coin has two sides the fundamental rights even have reasonable restrictions, though reasonableness were not defined anywhere and it differs from case to case. The ‘reasonable’ implies intelligent care and deliberation. I.e. the choice of a course, which reason dictates. Some leading cases in the reference throw more light on aspect of ‘free press’ as a part of freedom to express. Thus fundamental right has a vast scope subject to the permitted restrictions where necessary.

Keywords : Right, Expression, Restrictions, Interpretation, Society

INTRODUCTION

The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred and important position in the hierarchy of the liberty, it is truly said about the freedom of speech that it is the mother of all other liberties. In modern time it is widely accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all time. The first principle of a free society is an untrammled flow of words in an open forum. Liberty to express opinions and ideas without hindrance, and especially without fear of punishment plays significant role in the development of that particular society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

The rights conferred under Article 19 of the Constitution are the rights of free man. These are natural law or common law rights and not created by a statute. As such every citizen is entitled to exercise such rights provided conditions to be imposed whenever so required by the State.

The freedom of speech and expression benefits more the hearer than the speaker. The hearer and the speaker suffer as violation of their spiritual liberty if they are denied access to the ideas of each other. This freedom is also essential for pursuit of truth.

The freedom of speech and expression is a very important fundamental right. It is indispensable for the development of one's own individuality and for the success of parliamentary democracy. It is said that in a democracy the right to free expression is not only the right of an individual but rather a right of the community to hear and be informed.

Our Constitution is based on the principle of checks and balances. The Preamble expresses two ideas which complement each other, namely:

1. Rights of the individual which correspond to the duties of the State towards the individual, and
2. Duties of the individual towards the State which correspond to the rights of the society against the individual.

The State is under an obligation not to infringe upon the rights of the individual. Similarly, the individual is obliged to contribute to the social welfare. So, every attempt needs to be made so that this reasonable means does not get disturbed. We are given the freedom of speech, we can express ourselves. But, the beauty of the freedom lies in its limits in the interest of the society.

HISTORICAL BACKGROUND OF FREEDOM OF SPEECH & EXPRESSION

Freedom to express and disseminate one's opinion is a demand of the European enlightenment on the State which took its root initially in England within the framework of common law precedents.⁷ At the end of the 18th century, freedom of expression of opinion expanded through the first basic rights proclamations. In the context of English legal position, section 12 of the Virginia Bill of Rights, 1776, declared that the freedom of the press is one of the great bulwarks of liberty and can never be restrained by despotic Governments. Contrary to the English tradition of Parliamentary supremacy, the 1st Amendment of the Constitution of United States binds Parliament also. The Congress shall make no law abridging the freedom of speech or of the press. in Article II of the French Declaration of the Rights of Man and of the Citizen, 1789, in the sense of enlightenment, the freedom of opinion was proclaimed as a human right "the unrestrained communication of thoughts or opinions being one of the most precious right of man. Every citizen may speak, write and publish freely, provided he be responsible for the abuse of this liberty, in the cases determined by law. In the 19th century, the German States guaranteed freedom of opinion in their constitutions within the framework of general criminal laws mostly by express prohibition of subjecting the press to censor.⁸ The Federal Constitutional Court has held that for a free democratic State the basic right to freedom of expression of opinion is an "essential constituent because only it enables permanent intellectual discussion, i.e. combat of opinions which are its life breath."

According to Abraham Lincoln,¹⁰ the democracy is Government by the people, for the people and of the people. But there can be no Government by the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. Thus, it is the people who are the sovereign in a democracy.

In India, the Preamble of the Constitution is not like Preamble of other enactments but it is the gist of intention of the Constituent Assembly. While interpreting any provision of it, Preamble should be considered an integral part of the Constitution and should be treated as guidelines for the interpretation of the Constitution, where there is ambiguity. The Preamble of the Constitution also shows that in democracy it is the people who are supreme. The true democracy is governed by five words enshrined in the beginning of the Preamble of the Constitution of India i.e. WE, THE PEOPLE OF INDIA and ending with five words i.e. GIVE TO OURSELVES THIS CONSTITUTION. Broadly speaking the people of India are largely living in the darker side of the governance of the country and are often uninformed about the public affairs and are dominated by those who wheel power in the executive, legislative and judicative spheres. The jurisprudence of democracy is envisaged in Articles 23 and 25 of the Universal Declaration of Human Rights of the year 1948 and in Part III and Part IV of the Constitution of India which guarantees some rights like right to life, liberty, dignity and decent conditions of life and development. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament, where laws to bind his liberty

and property may be enacted. Thus, in a democracy it is the primary right, without it an effective rule of law is not possible. Justice K.K. Mathew has observed as follows:

“As the freedom of expression concerning public affairs is indispensable to the operation of the democratic system, it is a necessary implication from the provisions of the Constitution establishing it”.

MEANING OF FREEDOM OF SPEECH & EXPRESSION

The Constitution of India guarantees various fundamental rights to its citizens. One such important right is right to freedoms under Article 19. This includes right to freedom of speech and expression¹⁷, right to assemble peacefully and without arms¹⁸, freedom to form associations and unions¹⁹, right to move freely throughout the territory of India²⁰, right to reside and settle in any part of the territory of India²¹ and right to practice any profession or to carry on any occupation, trade or business²². Before 44th amendment, there was also a right to acquire, hold and dispose off property under Article 19(f), but the same was omitted by this amendment in 1978. In 44th Amendment, an Article was added as Article 300A to the effect that no person shall be deprived off his property saved by Authority of Law. The effect of this amendment is that now the right to property is no longer a fundamental right under the Indian Constitution.

Article 19(1)(a) of the Consitution of India. Article 19(1)(a) guarantees that all citizens shall have the right to freedom of speech and expression. This right is available only to every citizen of India and not available to any person who is not a citizen of India i.e. foreign nationals. The freedom of speech and expression has been held to be basic and indivisible for a democratic polity. The freedom of speech and expression means the right to express one’s conviction and opinions freely by words of mouth, writing, printing, pictures, photographs, cartoons or any other mode. It means freedom of speech and expression is to express one’s convictions and opinions or ideas freely, through any communicable medium or visible representation, such as gesture, signs and the like.²⁴ It means to freely propogate, communicate or circulate one’s opinion or views. In other words, freedom of speech and expression to lay what sentiments, a free citizen pleases, before the public. Freedom of speech is the bulwark of a democratic Government and it attaches great importance to this freedom, because without the freedom of speech appeal to reason, which is the basis of democracy, cannot be made. Freedom of speech opens up channels of free discussions of issues and play a crucial role in public opinion on social, political and economic matters. In, one of the earliest judgments, **RomeshThappar v. State of Madras** Chief Justice PatanjaliSastri observed that:

“... (The freedom) lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits.”

SCOPE OF FREEDOM OF SPEECH AND EXPRESSION

The judiciary has been enlarging the area covered by the fundamental right to freedom of speech and expression. Freedom of speech and expression is a vital feature that a democracy runs with. For any democracy to thrive, people must be given the liberty to express their feeling without restriction. This very important feature of the freedom of speech and expression is enshrined to the Indian citizens by Article 19(1)(a) of the Constitution of India. It provides that all citizens irrespective of colour, creed and religion have the right to raise their voice in matters of importance or otherwise without any restriction within or without. This freedom comes in for the assumption that rationality of men comes above everything else, and every individual, by his/her own discretion and wisdom knows what is good or bad.

A constitutional provision is never static; it is ever evolving and ever changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. The constitution makers employed a broad phraseology while drafting the fundamental rights so that they may be able to cater to the needs of a changing society. Therefore, constitutional provisions in general and fundamental rights in particular must be broadly construed unless the context otherwise requires. The scope and ambit of such provisions, in particular the fundamental rights, should not be cut down by too astute or too restricted an approach.

While discussing the scope of freedom of speech and expression the Supreme Court at many times 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. 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. The Court held that these rights are great and basic rights which are recognised and guaranteed as the natural rights and inherent in the status of a citizen in a free country.

REASONABLE RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION

In modern State, it has been realised that freedoms cannot be guaranteed in absolute terms and cannot be uncontrolled. For, an organised society it is a pre-condition for civil liberties. While absolute power results in tyranny, absolute freedoms lead to ruin and anarchy. Justice Patanjali Shastri observed that:

“Man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals.”

The fundamental rights of citizens and of human beings in civilized society, based upon co-operation, are not absolute and unconditional. They are defined and limited by the very nature of the social organization, the demand of industry and the needs of mutual co-operation in a widespread division of labour. Freedom is a convenient term to express some of these rights. But absolute freedom, in the sense of freedom to action by undisciplined impulses can only belong to the savage cave dwellers or the beast of the jungle. Rights are coupled with or counter balanced by obligations or duties of citizenship, which need as much to be emphasized as rights.

The Supreme Court while dealing with the question as to how far the above rights can be exercised held that possession and enjoyment of such rights are subject to reasonable restrictions and conditions. As such control is necessary and essential to the safety, health, peace, general order and morale of the community. In a free and democratic society a citizen has right to say what he wishes. However, it is the duty of the Constitution that a balance be struck between individual liberty and social control as explained by the Supreme Court.

It is difficult to give an exact definition of the word 'reasonable'. What is reasonable restriction or whether such a restriction abuses a fundamental right? There is no definite test to adjudicate reasonableness of a restriction. It is the duty of the Court to decide and each case is to be judged on its own merits. In other words, no abstract standard or general pattern of reasonableness is applicable uniformly to all cases. The fundamental rights are allowed to be enjoyed and there shall be great restraint of their interference by executive action and the executive cannot interfere without the sanction of law authorising such act or interference.

The term 'reasonable' implies intelligent care and deliberation, i.e. the choice of a course, which reason dictates. It seeks to strike a balance between the individual right secured by Article 19(1) and social control permitted by Article 19(2) to (6) of the Constitution.⁹⁶ However, this right is not absolute and reasonable restrictions can be imposed in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence. It may be noticed that reasonable restrictions under clause (2) of Article 19 can be imposed only by a duly enacted law and not by executive action unsupported by law.

SOME LEADING CASES

In the case of **Brij Bhushan v. State of Delhi** in pursuance of section 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 an English weekly 'the Organiser' published from Delhi, directing them to submit, for scrutiny in duplicate before publication till further orders, all communal matters and news and views about Pakistan including photographs and cartoons other than those derived from official sources or supplied by the news agencies. The Supreme Court in its majority decision struck down the said order as violative of Article 19(1)(a) of the Constitution.

Again the Supreme Court in **Virendra v. State of Punjab** held that banning of publication in the newspapers of its own views or the views of correspondents about the burning topic of the day. In this case, a petition with regard to the validity of the Punjab Special Powers (Press) Act, 1956.

In series of cases, the Supreme Court struck down the pre-publication ban on newspapers etc. In **Reliance Petrochemical Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.** the Supreme Court ruled

that the pre-publication ban even under a Court injunction could be justified in the interest of justice only when there was a clear and imminent danger to the administration of fair justice and not otherwise.

Thus, a “free press” which is neither directed by the executive nor subjected to censorship, is a vital element in a free State. The success of democracy depends upon free, fair, honest and independent press.

The Supreme Court, in several cases, has laid down the following guidelines for determining the reasonableness of restrictions:

1. It is the Courts and not the Legislature that will decide whether a restriction is reasonable or not.
2. Restriction must not be arbitrary, unbridled and excessive. Moreover, the restriction must not be beyond what is required in public interest and must be consistent with Article 14 of the Constitution.
3. There is no fixed standard for reasonableness. Each case must be decided on its own merits.
4. The restriction must be reasonable from both substantive as well as procedural standpoint and the time and duration of the restriction cannot be unlimited.
5. Restrictions imposed due to implementation of Directive Principles may deem to be reasonable.
6. The test of reasonability must be objective in the sense that it does not matter what a Judge or Court thinks what is reasonable but what a normal reasonable person would think.
7. There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object sought to be achieved and must not be excessive.
8. It is the reasonableness of the restriction which is to be determined by the Court and not the reasonableness of the law authorising the imposition of restriction.
9. Restriction, under certain circumstances, may also amount to prohibition.

CONCLUSION

It can be easily concluded that right to freedom of speech and expression is one of the most important fundamental rights. It includes circulating one's views by words or in writing or through audio-visual instrumentalities, advertisements or through any other communication channel. It also comprises of right to information, freedom of press etc. Thus, this fundamental right has a vast scope. From the above case law analysis, it is evident that the Court has always placed a broad interpretation on the value and contents of Article 19(1)(a), making it subjective only to the restrictions permissible under Article 19(2). Efforts by intolerant authorities to curb or choke this freedom have always been firmly repelled, more so when public authorities have betrayed tyrannical tendencies.

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