



Freedom Of Speech & Expression With Reasonable Restrictions

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ABSTRACT: Freedom of speech and expression is the root of all liberties. It is one of the fundamental natural right of human being. This freedom has various facets like freedom of press, information, commercial advertisement etc. There are various leading cases which have been analysed by this essay as “Law is what the judges declare , that statutes, precedents, the opinions of learned experts, customs and morality are the sources of law.” Researcher discusses this concept with reasonable restriction in order to maintain the integrity of its constitutional system along with harmony in society ,the government must protect both equality and free expression.

Introduction

“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”

The essence of free speech is the ability to think and speak freely and to obtain information from others through publication and public discourse without fear of retribution, restriction or repression by the government. It is through free speech people could come together to achieve political influence to strengthen their morality , and to help other to become moral and enlightened citizen.

Freedom of speech and expression is mother of all liberties. It plays an important role in the formation of public opinion & discussion.¹

Article 19(1)(a) of India constitution guarantees the right of freedom of speech and expression subject to the limitations contained in article 19(2). Not only in Indian constitution but other International conventions like Universal Declaration of Human Right , European Convention on Human Rights and Fundamental freedom , International Covenant on Civil and Political Rights etc expressly talk about protection of freedom of speech and expression.²

Freedom of speech and expression – Meaning and Scope

¹ S.R.BHANSALI, THE CONSTITUTION OF INDIA 303(Universal Law Publication co, New Delhi, 2nd ed.2010)

² <http://www.indialawjournal.com/vol.3/issue4/article/by Dheerajendra.html>(last visited 22 March, 2017)

Article 19(1) (a) of constitution guarantees the right of freedom of speech and expression. The law states that “all the citizen shall have the right to freedom of speech and expressions.”

In keeping with the spirit of Universal Declaration of Human Rights , 1948 the Preamble of the constitution embodies a solemn resolve of its people to secure to its citizens liberty of thought and expression. In the modern times it is widely accepted that this right is essence of state .The first principles of free society is an untrammled flow of the words in open forum. Liberty to express opinions and ideas without fear of punishment plays significant role in the development of the society and ultimately the state.

The freedom of speech under Art19(1)(a) includes right to express one’s views and opinions though any medium example by the word of mouth , writing, printing, picture, film, etc. Freedom of speech is a fundamental right that contributes towards a healthy democracy as it allows the citizens to participate fully and effectively in the political process of the country .This right gives greater scope to citizenship of person uplifting his basic existence to give the person a political and social life .³

But absolute right are not guaranteed by the modern state . In the case of **A.K Gopalan v. State of Madras** the Hon’ble Court observed “man as a rational being desire to do many things ,but in a civil society his desire have to be controlled , regulated and reconciled with the exercise of similar right by other individual ”.⁴Thus the right is subjected to some reasonable restriction being imposed under act 19(2) by the constitution itself. They are -

(1)**Security of state** - It only refers to serious and aggravated forms of public disorder eg - rebellion , waging war against state , unlawful assembly,riot, affray are not included.

(2)**Friendly relation with foreign state**

The objective behind this restriction is to prohibit unrestrained malicious propaganda against friendly state and to maintain good relations.

(3) **Public order**

It is synonymous with the public peace safety and tranquility . Anything that distributes tranquility or public peace disturbs public order.

Thus , demonstration or picketing which are visible manifestation of one’s ideas & infact a form of speech and expression.

(4) **Decency or Morality**- The way to express something should be decent and must not affect the morality of the society. Section 292 to 294 of IPC provides restrictions in this behalf.

(5) **Contempt of Court** – In case of Calcutta H.C Judge Justice C.S Karnan who continuously levelled allegatory statement against former sitting judges leading to the contempt of court so here it could be made out that exercise of freedom of speech and expression is restricted if it causes contempt of the court .It is of 2 types- Criminal and Civil.

³ <http://www.lawoctopus.com/academike/freedom> of speech and expression(last visited 22March,2017)

⁴A.K.Gopalan v. State of Madras,(1951)S.C.C.21



(6) **Defamation**- A statement which injures a man reputation amounts to defamation. Defamation consists in exposing a man to hatred , ridicule or contempt.

(7) **Incitement to an offence**- Freedom of speech and expression cannot confer a right to incite people to commit an offence .

8.Sovereignty and integrity of India:Freedom of speech and expression can be restricted so as not to permit anyone to preach something which will result in threat to integrity of country.

FREEDOM OF PRESS

Freedom of speech and expression includes right to communicate, print and advertise the information. Freedom of press finds its roots in the 1st Amendment of U.S constitution. In India constitution Freedom of press is implied in freedom of speech and expression.

In the R.C. Cooper V. Union of India

The Supreme Court said that there was no need of specific mention of freedom of press separately as it is included in the guarantee of freedom of expression. The freedom of speech and expression includes the liberty to propagate not only one's views but also the right to print matters which have either been borrowed from someone else or printed under the direction of person, and also includes the liberty of publication and circulation.⁵

In Indian Express Newspaper Bombay Pvt. Ltd. V. Union of India

The Hon'ble Court held that the purpose of press is to advance public interest by publishing facts and opinions without which a democratic electorate cannot make a responsible judgment. Freedom of press is heart of social and political intercourse.⁶

Romesh Thappar v. State of Madras the court held that “Freedom of speech and of the press lay at the foundation of all democratic organizations , for without free political discussion no public education , so essential for the proper functioning of the process of popular government is possible.”⁷

The print medium is powerful tool for dissemination and receipt of information for any citizen it has 4 broad purposes to serve:

- (1)It helps individuals to attain self fulfillment
- (2)It assists in discovery of truth
- (3) It strengthens capacity of individuals of decision making
- (4)It provides mechanism which establishes balance between stability and social change.⁸

Facets of Freedom of speech and expression

⁵ R.C.Cooper v. Union of India,A.I.R 1970 SC 1318

⁶ Indian Express Newspaper Bombay Pvt. Ltd v. Union of India,(1965)S.C.C 6419

⁷ Romesh Thappar v. State of Madras A.I.R 1950 S.C.124

⁸ ANIL DIXIT,MASS MEDIA LAW OF EXPRESSION 60(Aman Publication,Jhansi,1st ed.2015)

Freedom of speech and expression under Art 19(1) (a) is a concept with diverse facets both with regard to the content of the speech and expression and in the means through which communication takes place. It includes

- Right to circulate as held in **Sakal Papers v. Union of India** that the state cannot make laws that directly affect circulation of newspaper that would amount to violation of freedom of speech.
- Right to dissent - Acceptance by government of a dissident press is the maturity of the nation. It means it also covers the right to criticize the govt which is prerequisite of a healthy democracy.

Some other examples of speech and expression are Right to portray social evils, Right to receive information due to which R.T.I Act, 2005 came into existence, Right to entertain, Right to vote etc. In the present context the scope of Article 19 (1) (a) has been very exhaustive.

Thus, freedom of speech and expression has been most cherished right and is cornerstone of functioning of democracy.⁹

Freedom of speech and Expression with reference to Sedition

Sedition is defined under section 124-A of Indian Penal code and was introduced by British government in 1870. The recent spate in instances of invoking sedition laws against journalist, human right activists, intellectual people have raised undemocratic nature of these laws. These act as effective means to restrict free speech by contemporary governments.

The **Kanhaiya kumar case** was a torchbearer in this regard. Kanhaiya Kumar was arrested on charges of sedition and criminal conspiracy after alleged “anti national” slogans raised in JNU campus on February 9 to protest the hanging of convict of Parliament attack Afzal Guru. Taking a strict view against “anti national slogan” Delhi High Court granted 6 month bail to JNUSU President kumar with condition that he would not actively or passively participate in such activities again. The Bench of Justice held that “thoughts reflected in slogans raised by some of students of JNU in that programme cannot be claimed to be protected as fundamental right of speech and expression”¹⁰

New dimension of freedom of speech and expression

(1)Government has no monopoly on electronic media

In a historic judgement in **Secretary, Ministry of I & B v. Cricket Association of Bengal**. The Supreme Court said government has no monopoly on electronic media and a citizen has under Article 19(1)(a), a right to telecast and broadcast to viewers through electronic media, television

⁹ MADHVI GOVADIA DIWAN, FACETS OF MEDIA LAW 10(Eastern Book co, 2nd ed. 2013)

¹⁰ <http://www.google.co.in/amp/indian-express.com/article/india/india-news/Kanhaiya-Kumar-bail-high-court-lite> (last visited 24 March, 2017)



and radio any information . The government can impose restrictions only on ground mentioned in the Art 19(2).¹¹

(2) Commercial Advertisement

In Hamdard Dawakhana v. Union of India the validity of drug and magic remedies (Objectionable advertisement) Act was challenged as it prohibited advertisement of certain drugs having magic qualities for curing disease . The Court said advertisement is also a form of freedom of speech and expression but all advertisement do not deal with expression of ideas. The advertisements which are deceptive and misleading can be regulated by government.¹²

(3) Voters have right to know about their candidates

In landmark judgement in Union of India v. Association for Democratic Reforms A 3 judge bench held that the amended electoral reforms law passed by the parliament is unconstitutional being violative of citizen's right to know under Art 19(1)(a).¹³

(4) Telephone tapping : Invasion on right to privacy

In People Union of Civil Liberties v. Union of India The petition was filed highlighting incidence of telephone tapping . The Supreme Court held that telephone tapping violates Article 19 (1)(a) unless it is covered within restrictions under Article 19(2).¹⁴

(5) Right to information

The right to know is to receive and to impart information has been recognized within the right to freedom of speech and expression . A citizen has the fundamental right to use the best means of imparting and receiving information and to access of telecasting for propose . However it does not extend to Official Secret Act ,1923.¹⁵

(6) Freedom of Silence

Freedom of speech and expression includes freedom of silence .

In Bijoe Emmanuel v, State of Kerala AIR (1986)3 SCC 615 The Court held that no person shall be compelled to sing the national anthem "if he has genuine conscientious objections based on religious faith" . Expulsion of children from school was violation of their fundamental right under article 19(1)(a) which also includes freedom of silence.¹⁶

Judicial approach regarding freedom of speech and expression

The present position of the application of Art 19(1)(a) of the constitution to various categories of person may be stated in form of propositions as under :-

¹¹ Secretary, Ministry of I&B V. Cricket Association of Bengal, (1995)2S.C.C..161

¹² Hamdard Dawakhana v. Union of India, (1960)S.C.C.554

¹³ Union of India V. Association for Democratic Reforms ,A.I.R 2002 S.C. 2112

¹⁴ Peoples Union for Civil Liberties v. Union of India, A.I.R 1997S.C.568

¹⁵ S.P.SATHE, R.T.I. LAW IN INDIA 90 (Lexis Nexis Butterworths, ed 2005)

¹⁶ Bijoe Emmanuel v. State of Kerala AIR (1986)3SCC615

(1) Article 19(1)(a) of the constitution is available only to the Indian citizen and not to foreign nationals as held in **Anwar v. State of Jammu & Kashmir**¹⁷

(2) A corporation cannot claim citizenship and thus cannot claim any right under Art 19(1)(a) as held in case of **Barium Chemicals v. Company Law Board**¹⁸

(3) The shareholder of the company can challenge the constitutional validity of a law on the ground of infringement of Art 19 if their own rights are infringed as held in case of **R.C. Cooper v. Union of India**¹⁹ and in such proceeding company may be joined as a party as held in **Benett Coleman v. Union of India**²⁰

Importance of Privileges of Freedom of speech and expression

Freedom of speech in the legislature “is keystone of arch of parliamentary privilege, the one without which all other privileges would be valueless. It is in fact a natural & necessary adjunct of any popular assembly”.

In its barest form privilege of freedom of speech denotes-

(1) The right of exemption from punishment for words spoken in debate in the house

(2) The widest possible range of subject allowable for the house to discuss.

Hate Speech and Freedom of Expression

Hate speech is a speech perceived to disparage a person or group of people on the basis of their social or ethnic group such as race, gender, ethnicity, nationality, religion, sexual orientation, social class etc. The term covers written as well as oral communication and some form of behaviours in public setting.

Hate speech nowadays has become a fashion and a shortcut to get publicity, posing a vexing and complex problem for contemporary constitutional right of freedom of speech and expression.

Conclusion

Thus, freedom of speech and expression is the protector of democratic government and is regarded as first condition of liberty. It was held in the case of **Maneka Gandhi v. Union of India** that democracy is based essentially on free debate and open discussion for that is the only corrective of government action in a democratic setup. If democracy means the government of the people, for the people and 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.²¹

There is no democracy in the world that can survive until and unless its citizens possess the basic fundamental human rights. But no right in the world can be absolute as absolutism leads to despotic tendencies i.e. the reasonable restrictions are imposed under Art 19(2).

¹⁷ Anwar V. State of Jammu & Kashmir, (1971) S.C.C. 337, 338

¹⁸ Barium Chemicals V. Company Law Board A.I.R. 1967 SC 295

¹⁹ R.C. Cooper V. Union of India, (1970) 3 SC 530

²⁰ Benett Coleman V. Union of India A.I.R. (1973) 2 SC 106

²¹ Maneka Gandhi V. Union of India, (1978) S.C.C. 248



It is said by an eminent jurist "Law is the command of sovereign backed by a sanction" thus reasonable restriction are those sanctions with whose non existence it would impossible to control hatred and public order taking birth with soul of the society.