

## Democracy and Freedom of Speech & Expression

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### **Abstract**

*Freedom of expression is the spirit and soul of democracy in the world and it forms the basis of democratic rights and freedoms. Democracy and Freedom are often used interchangeably and without Freedom, democracy cannot exist. Democracy in no way can ever be detached from the term Freedom and it is a fact that the first pre required for declaring a state as a democratic, is its status of Freedom, whether its subjects are sufficient free to use their basic unchallengeable human rights or not. Consequently, it has been correctly said that, Freedom of expression is the inseparable element of a democratic society. Whether the society is democratic or not can be by the factor of independent press and mass media. Freedom of speech and expression is no doubt significant for any self-governing society. Expression is a substance of freedom and right. The liberty of deliberation and right to know are the sources of expression. Free Speech is live lead of the democratic system. Freedom of expression is fundamental to the development and fulfilment of individual personality. Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. Iver Jennings said, without freedom of speech, the plea to reason which is the basis of democracy cannot be made.*

*The freedom of expression has been measured as obligatory stipulation for a democratic polity. According to Kant, The fundamental postulate of liberty is that, no man can be used as a means as man is an end to him as well as to the others. Free speech is interchange in crucial service namely ideas. Hocking has said that if an idea was born in a man, it was not an item of capital stock. He has a whim to give it away, to spread it everywhere in the knowledge that what he gives he keeps. According to Hocking, "The destiny of private consideration is to expand power and outcome through determining public behaviour or public performance. Nothing could more describe a human failure than a man physically prolific whose ideas should count for nothing to his group or his time. A suppression of speech, in its more painful consequence, would be the mental sterilisation of the community.*

**Key Words:** freedom of speech & Expression; Democracy; Constitution; legislative privilege

### **INTRODUCTION**

#### **OBJECTIVES**

The objectives are the fundamentals of every research without which a research cannot be performed. The main objective of this research is to draw the attention of

1. To find out the impotence in freedom of Speech and Expression Democracy System.
2. To study the risk of pre-judiced by unrestricted and unregulated use of

freedom of Speech & Expression by media.

3. To analyze the contours and the dynamics of the right of speech of the press.

**HYPOTHESIS-** Hypothesis is a tentative statement which indicates the relationship between two or more variables. A hypothesis deals with specific testable prediction of the results of study of a researcher.

The hypothesis of this research paper follows

1. Excessive use of Freedom of Speech and Expression.
2. Violation of freedom of speech and Expression

#### **METHODOLOGY –**

As a legal research academic the researcher has undertaken doctrinal legal research in which as a rule he has taken some legal propositions, principles of law, rules or doctrines to start and focus his study like the presumption of innocence, guilt without reasonable doubt, sub-judice rule and rule of law etc. Researcher studied these rules, principles or doctrines in various statutory instruments like judicial decisions, legal treaties and textbooks, commentaries on law, legal periodicals, encyclopaedias and debates as well. Later on the researcher had studied these rules and doctrines in holistic manner and analyzed these rules and doctrines to draw the conclusions and convert them into the write up of his study.

#### **DEMOCRACY RIGHT TO FREEDOM OF EXPRESSION: INTER-RELIANT**

Freedom of expression is a basic right that goes to the very spirit of individual character and communal interface.

The right to freedom of speech as one of the indispensable individual rights is enshrined in main global human rights documents. Freedom of speech is the indissoluble component of a self-governing society. Whether the society is democratic or not can be defined by the factor of self-regulating press and mass media. Freedom of speech and expression may carry to the control over the state establishment exercised by the society and to the protection of the measured society, which is the demand of democracy. The definition of a self-controlled society means that it itself shall make own decisions. And the society can do this in case it is well-versed in collective with the open exchange of opinions.

Abraham Lincoln, generally, expressed this conception as follows: “Let the people be aware of the facts, and the country will be calm”. Hence, mass media as an instrument for the exercising of freedom of speech and expression gains importance for a democratic society.

#### **CONSTITUTIONAL PROVISIONS:**

The people of India gave to themselves, the Constitution of India, by way of a vision of make it independent, Democratic, Socialistic, Secular and democracy. In our democratic society, self-importance to place has been provided to freedom of speech and expression, which is tend of all liberties. One of the main objectives of the Indian Constitution as envisages in the Preamble, is to secure freedom of thought and expression to all the citizens. Freedom of Expression is among the foremost of human rights. It is the communication and practical application of individual freedom of thought. Irrespective of the system of administration, various constitutions make a mention of the freedom of expression. While freedom of thought is a personal freedom; freedom of expression is a collective freedom, whose character becomes more and more pronounced as the technical methods of their diffusion multiply and improve.

Freedom of press has been originated from Article 19 (1) (a) of the Indian Constitution under the fundamental right of freedom of speech and expression. It provides the right to express one’s own convictions and opinions freely by verbal of mouth, writings, and cinema or by any other mode. It includes the expression of one’s own ideas by any transmissible medium or observable symbol like secret verbal communication, gestures etc. In *Romesh Thappar v. State of Madras* Hon’ble Supreme Court upheld that, the freedom of promulgation of facts is an essential part to the freedom of speech and expression.

The strength of a democratic group relies on the freedom of press. It is an inalienable right of everyone to remark freely upon any matter of public importance. Freedom of press provides one of the pillars of individual liberty. However, this freedom is not absolute and unlimited at all and subjected to the restrictions contained in Article 19 (2) of the Indian Constitution. As Hon'ble Supreme Court upheld that it must be so because unrestricted freedom of speech and expression which includes the freedom of press, amounts to unrestrained certificate which would lead to chaos and lawlessness and it would be unsafe to disregard the vital importance of our social and national interest in public order and security of the state, "turn-off now to the virtues, there can be no doubt that freedom of speech and expression includes freedom of promulgation of ideas, and that freedom is ensured by the freedom of spread. "Freedom of circulation is as necessary to that freedom as the liberty of publication. Indeed, without circulation the publication would be of small worth." In *Indian Express News Papers v. Union of India*, a three Judge Bench of the Hon'ble Apex Court emphasised the importance of freedom of press in a democratic society and the role of Courts. This Hon'ble Court observed that: "In today's free world freedom of press is the heart of social and political interaction. The press has now supposed the position of public instructor making formal and non- formal education probable in a huge range predominantly in the developing world; where television and other kinds of modern communications are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgement." Here it is measure to bring up the explanation made by Justice A.P. Sen in *Express News*

*Papers v. Union of India*, that: "I would like to stress that the freedom of press are not only precious freedoms in themselves but are basic to a self-governing form of administration which proceeds on the presumption that effort of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. It is necessary to highlight and one must not overlook that the vital importance of freedom of speech and expression involves the freedom to disagree to a free democracy like ours. Democracy relies on the freedom of the press. It is the unchallengeable right of everyone to comment freely upon any matter of public importance. This right is one of the pillars of individual liberty.

The Courts have at all times consistently protected the freedom of speech. Freedom of speech is under Article 19(1) (a), this freedom is not unconditional and unlimited at all times and under all conditions but is subjected to the limitations restricted in Article 19 (2). That must be so because unrestricted freedom of speech and expression which includes the freedom of press and is wholly from restraints, sum to abandoned authorization which would lead to disarray and lawlessness and it would be perilous to ignore the vital importance of our social and national interest in public order and security of the state."

In a democratic setup, there has to be a lively and intellectual contribution of the people in all spheres and interaction of their community as well as the state. It is their right to be reserved knowledgeable about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the government and its functionaries. To achieve

this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and view-points on such matters and issues and select their further course of action. The primary function, thereof, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change.

### **DEMOCRATIC VALUE**

Freedom of speech is the embankment of democratic Government. This freedom is essential for the appropriate implementation of the democratic process. It is regarded as the first condition of liberty. It occupies a favoured position in the hierarchy of liberties giving succor and protection to all other liberties. It has been truly said that it is mother of all other liberties. In a democracy, freedom of speech and expression open up channels of free discussion of issues. Freedom of speech plays a crucial role in the structure of public opinion on social, political and economic matters

### **MEDIA AS A MECHANISM OF EXPRESSION**

Put into effect of freedom of expression is important to converse the opinion, views, information, beliefs and performance. The statement keeps society together and cohabitate. For a well development of educated world, the free stream of information and ideas is essential. Every human being is a medium of expression. An individual interacts through the media to reach other individuals and institutions. The right to freedom of speech though belongs to every individual, organization and administration it becomes imperatively compulsory in the media world. Media world serves as the best conversationalist of

information and the best implement of expression. Exercise of right of freedom of expression is the professional duty and character work of media, whether it is print or electronic media. The media gets as a mass communicator. It has to enjoy this freedom for promoting public good and for informing the people in general as to the state of affairs in every sphere of life and activity.

### **INTERNATIONAL PERCEPTION OF FREEDOM OF EXPRESSION**

Freedom of Expression under Constitutions of Different Countries Freedom of Speech and expression is guaranteed by several Constitutions in the World. They are:

The First and Fourteenth Amendments to the Constitution of United States, the common Law of England,

1. Section 18 (1) (e) (f)(g) of the Constitution of Sri Lanka, 1972.
2. Section 298 of the Government of India Act, 1935.
3. The First Amendment to the Constitution of USA provides,

“Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people to assemble peaceably and to petition the Government for a redress of grievance.

### **RIGHT TO EXPRESSION UNDER INTERNATIONAL CONVENTIONS**

Right to expression under Constitution of different countries has close similarity with different International Conventions.

1. Articles 13, 20, 23, 29 of the Universal Declaration of Human Rights, 1948.
2. Article 22 of the International Covenant of Civil and political Rights, 1966.
3. Article 11 of the European Convention on Human Rights, 1950.



4. Articles 6, 12 of the International Covenant on Economic, Social and Cultural Rights, 1966.
5. Article 19 of the Universal Declaration of Human Rights, 1948 declares the freedom of press and so does Article 19 of the International Covenant on Civil and Political Rights, 1966.
6. Article 10 of the European Convention on Human Rights, 1950 provides that

Every person has the right to freedom of expression. This right shall contain freedom to hold opinion, to receive and impart information and ideas without interference by the public authority and regardless of the frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprise. (2) The exercise of this freedom, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by the law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of the disorder or crime, for the protection of health and morals, for the protection of reputation or rights of the others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

#### **SOCIETAL MEDIA AND ARTICLE 19 OF INDIAN CONSTITUTION**

The beginning of societal media has given many people a worldwide podium to right to be heard their opinions, comments, approval or to share their likes, dislikes openly. In the present day, the social networking sites like Face book, Twitter, Instagram etc. have extended the range of public to express and speak, in other words, 'Democracy in India'.

In India, our constitution has assured 'Freedom of expression and speech' under Article 19(1)

(a) subject to certain restrictions. The current circumstances are that there are criminal laws in provision that put little restraint on this right in order to maintain public order and individual, national privacy. These laws are compulsory by the constitution under Article 19(2) but only on print media or electronic media. Interestingly, social Media is presently out of any regulatory scope of any such related provisions.

#### **EXPLOITATION OF RIGHT OF FREEDOM OF SPEECH ON SOCIAL NETWORKING SITES**

Definitely, Social Media is not hurdle to any limitations and is free from all kinds of restrictions. This practical theory supplies limitless personal information as well as data in digital form and gives open access or visibility to everyone. Currently, it has turn into a part of daily routine of people to interact, share or get aware. Nevertheless, it comes with both merits and demerits. It's time to envisage the impact of its positive effect or negative impact on the society as a whole.

Unquestionably, it opens the door of consciousness and boundary, where people get the possibility to study deep about the cultures, traditions, aura, attributes, and lifestyle of others. Moreover, social media sites allow everyone to voice their thoughts and discuss openly. It can unite the perceptions and perspective of people at one hand, where on other hand; it gives open privilege to devious minds to supposedly post offensive substance of one or another.

People unpredictably or reliably make use of social media by way of tweeting, video-sharing, blogging or interacting. In most democratic countries like India, such posts/interactions are often scrutinized with an intention to ensure that right to freedom of speech, expression is not illicitly used. Also, that it doesn't violate the individual right to privacy and data protection.

Another perspective is, that, such new face of interaction is restrained by several internet regulations and thus, strangles the constitutional right of Indian democracy, freedom of speech.

### **EXCLUSION OF FREE SPEECH.**

Freedom of speech & Jawaharlal Nehru University is there really any difference between sedition and irreverence. Going against any form of nationalism is a big deal and, just like religion, is a matter of public morality. In fact, in the JNU case, all the leftists groups at the Jawaharlal Nehru University have strongly criticised the anti-Indian slogans shouted on the campus to express harmony with Kashmiris.

The question here, of course, is whether a laissez-faire state should be in the business of outlawing speech just because people's feelings are hurt. India's subversion law itself has been read down and is fairly liberal on paper now, given that only speech that directly incites violence against the government is liable to be prosecuted as seditious. Nevertheless, as is rather obvious from the mass media as well as the Bharatiya Janata Party's government's reaction to the JNU incident, such a view does not have much popular purchase. And that is troubling for the admittedly small number of people who hold dear free speech and liberalism.

### **CONCLUSION:**

In ending, I would like to say that "Right to freedom of expression" is an indissoluble component of "Democracy" and it is compulsory to make certain the basic rights of every person enshrined in the constitution and international Instruments for the survival of democracy. Democratic Nations stay dedicated to the principles of Human Rights and show forbearance even in the toughest and challenging times of their history. At the end it would like to urge that Let us be Democratic about Democracy so that every individual will

enjoy the "Right to life" in all its manifestations be in the form of Right to freedom of expression or other rights. Let the researcher end the discussion with this saying

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