

Freedom of Speech and Expression in 21st Century

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Abstract

A right set out in Article 10 of the (European conventions on Human Rights) and the Human Right acts 1998. In the key case *Handy side vs. UK (1976) 1 EHRR737*, the European court of human rights declared that :”freedom of speech and expression” constitutes one of the essential foundation of a democratic society , one of the basic conditions for its progress and for the development of every manit is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference , but also not those that offend shock or disturb.... such are the demands of that pluralism , tolerance and broad mindedness without which there is in democratic society. Convention jurisprudence gives different weight to different kinds of expression .The most important expression -Political speech-therefore is likely to be protected to a much greater extent than the least important- Commercial speech. Freedom of speech and expression is a qualified right. The modern Indian constitution declares certain fundamental rights for individuals under Part III, Article 12 to 35. Some of these rights are only for the citizens where as others are available equally to the non-citizens also. These fundamental rights are inviolable subject to the qualification defined in the constitution itself. It establishes that no laws ordinance, custom usage or administration order can abridge or take away a fundamental right, these rights are binding upon both legislative and the executive and any law which violates the fundamental right, is void. A fundamental right cannot be taken away by a constitutional amendment if it forms the basic structure of the constitution. Article 19 (1) (a) secures to every citizens the freedom of speech and expression. The freedom of speech and expression means the right to express once conviction and opinions freely by word of mouth, writing printing, picture or any other mode. Freedom of speech is 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 the channels of free discussion of issues and plays a crucial role in public opinion on social, political and economic matters. The honourable supreme court has interpreted the phrase, “Speech and expression” of having a wide connotation and thus many rights not expressly found under the articles plain words has been recognized. Thus in this paper an attempt is made to find out as to how relevant and effective has been such dynamic interpretation of the right.

Key Words:-Pluralism, Jurisprudence, Ordinance, Conviction, Bulwark

Introduction

The Right to Freedom of Speech and Expression as per the Indian Constitution-

means the right to express one's own conviction and opinions freely.

1) The word "freely" means the freedom of a citizen to express his views and opinion in any conceivable means including by words of mouth, writing, printing, banners, and signs and even by way of silence.

2) The Supreme Court of India has held that the participation in sports in an expression of one's self and thus it is a form of freedom of speech

3) The Supreme Court has also held that hoisting the National Flag by citizens is a form of freedom of speech and expression (see *Union of India vs Naveen Jindal & Anr* on 23 January, 2004).

4) Freedom of Press is an inferred right implicit under Article 19(1) (a).

5) The Right to Information (RTI) emerges as a fundamental right under article 19(1) (a) as freedom of speech and expression are meaningless without access to information.

6) The right to political dissent.

Restrictions- under Article 19(2) of the Constitution of India, the State may make a law imposing "reasonable restriction" on the exercise of the right freedom of speech and expression "in the interest of" the public on the following grounds:

- Security of State
- Friendly relation with foreign states
- Public Order
- Decency or morality
- Contempt of court
- Defamation

- Incitement to an offense
- Sovereignty and integrity of India.

As regards the point on Defamation- there have been a few cases that have tried- most recently when a group of lawyers filed a defamation suit against Shahrukh Khan (dt 20/8/2007) which was subsequently quashed by the court). The summary of the cases are as under. Defamation cases are not easy to win (extremely tough to be precise), but still can be used as a potent weapon on those without resources (as in- we have work to do- we can't be maneuvering the courts day in and day out –unless you have resources or you are a politician) - did I just make the statement that politician have resources and no work to do? Therefore in my opinion- this particular curtailment is actually against the poor /the common man and aptly suitable for a public interest litigation suit.

Historical Development

Concepts of freedom of speech can be found in early human rights documents. England's Bill of Rights 1689 granted 'freedom of speech in Parliament' and is still in effect. The Declaration of the Rights of Man and of the citizen, adopted during the French Revolution in 1789. Specifically affirmed freedom of speech as an unalienable right. The Declaration provides for freedom of expression in Article 11 which states that:

"The free communication of ideas and opinion is one of the most precious of the right of man. Every citizen may, accordingly speak, write and print with freedom but shall be responsible for such abuses of this freedom, but shall be responsible for such abuses of this freedom as shall be defined by law".

Article 19 of the Universal Declaration of Human Rights, adopted in 1948 states that:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek receive and impart information and ideas through any media and regardless of frontiers.”

Today freedom of speech or the freedom of expression is recognized in international and regional human right law. The right is enshrined in Article 19 of the International Convent on Civil and Political Rights Article 10 of the European Convention on Human Right Article 13 of the American Convention on Human Rights and Article 9 of the African charter on human and people’s rights. Based on John Milton’s argument, freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects:

1. The right seeks information and ideas;
2. The right to receive information and ideas;
3. The right to impart information and ideas;

International, regional and national standards also recognize that freedom of speech and expression includes any medium, be it orally, in written in print, through the Internet or through art forms .This means that the protection of freedom of speech as a right includes not only one content but also the means of expression.

Aims and Objectives

Freedom of speech enjoys special position as far India is concerned. The importance of freedom of expression and speech can be easily understand by the fact that preamble of constitution itself ensures to all citizens inter alia, liberty of thought, expression, belief, faith and worship. The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as fundamental and human right in Article 19(1) (a) “freedom of speech and expression”. Explaining the scope of freedom of speech and expression Supreme Court 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 audiovisual instrumentalities. Freedom of Speech and expression means the right to express one’s own convictions and opinion freely by words of mouth, writing, printing, pictures, or any other mode. It thus includes the expression of one’s idea through any communicable medium or visible representation, such as gesture, signs, and the like.

Moreover, it is important to note that liberty of one must not offend the liberty of others. Patanjali Shastri, J. in A.K. Gopalan case observed, “man as a rational being desires to do many things but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals”. 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. Every citizen of this country therefore has the right to air his or their views through the

printing and or the electronic media subject of course to permissible restriction imposed under Article 19(2) of the constitution. In sum the fundamental principle involved here is the people's right to know. Freedom of speech and expression should therefore receive generous support from all those who believe in the participation of the people in the administration. We can see the guarantee of freedom of speech under following heads.

Freedom of Speech

Freedom of speech and expression is the most basic of all freedoms granted to the citizens of India. J Patanjali Shastri has said in the case of Romesh Thapper vs State of Madras AIR 1950 SC that freedom of speech and that of the press lay at the foundation of a democratic society, for without free political discussions, no public education is possible, which is so important for the proper functioning of the govt.

It allows us to freely express our ideas and thoughts through any medium such as print, visual, and voice. One can use any communication medium of visual representation such as signs, pictures, or movies. Freedom of speech would amount to nothing if it were not possible to propagate the ideas. Thus, the freedom of publication is also covered under freedom of speech. Freedom of speech serves purposes

- Allows an individual to attain self fulfillment.
- Assists in the discovery of truth.
- It strengthens the capacity of a person to make decisions.
- It facilitates a balance between stability and social change.

This right is not only about communicating your ideas to others but also about being able to publish and propagate other people's views as well. Thus, freedom of speech and expression is linked to the people's right to know. Freedom of speech and expression is a broad term and encompasses several things. The following are important cases that have determined the extent of this right from time to time.

Right to Know

Prabhu Datt vs Union of India SC AIR 1982: SC held that right to know news and information about the functioning of the govt. is included in the freedom of press.

Union of India vs Association for Democratic Reforms SC AIR 2002: SC held that people have right to know about the candidate before voting. Thus, the law preventing the Election Commission from asking for a candidate's wealth, assets, liabilities, education and other such information, is invalid.

Right to Tell and Propagate

LIC vs Manubhai D Shah SC AIR 1992: In this case, Manubhai wrote an article in LIC's magazine about the problems with LIC that affected policy holders. LIC published a response to that but did not give a chance to public a rejoinder. SC held that LIC being a State as per Art 12, must publish his response. It also held that it does not mean everybody has a right to publish in a magazine and this right should be determined on a case by case basis.

Secretary, Ministry of I & B vs Cricket Association of Bengal SC AIR 1995 : In this historic judgment, SC has held that one has

the right to publicize his expression as well. A game of cricket is an expression and the organizers have a right to propagate it everywhere in the world. So Doordarshan must provide its up linking facilities to cab for transmitting the signals out of country. Art 19 (2) does not allow restrictions on 19 (1) (a) on the grounds of creating monopoly of the govt.

New Dimensions

Although Article 19 does not express provision for freedom of press but the fundamental right of the freedom of press implicit in the right the freedom of speech and expression. In the famous case *Express Newspapers (Bombay) (P) Ltd. V. Union of India* court observed the importance of press very aptly. Court held in this case that “In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication 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 [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

The above statement of the Supreme Court illustrates that the freedom of press is essential for the proper functioning of the

democratic process. Democracy means Government of the people, by the people and for 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. This explains the constitutional viewpoint of the freedom of press in India.

Conclusion

Expression through speech is one of the basic guarantees provided by civil society. However in modern world Right to freedom of speech and expression is not limited to express ones’ view through words but it also includes circulating one’s views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. it is a right to express and self realization. Two big democracies of world i.e. America and India have remarkably protected this right. As far as India is concerned, this important right is mentioned in Article 19(1) (a), which falls in fundamental right category. Indian courts have always placed a board interpretation on the value and content of article 19 [1] [a], making it subjective only to the restrictions permissible under Article 19(2).

The words in the interest of public order, as used in the Article 19 include not only utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. There should be reasonable and proper nexus or relationship between the restriction and

achievement of public order. Initially, the American constitution was not having any provisions directed to protection of freedom of speech and expression. It was inserted in the constitution vide first amendment of the constitution. The first Amendment has been drafted in broad and sweeping terms, and for this reason, the text of the First Amendment does not contain any standard for determining permissible restrictions on freedom of speech. The restrictions that are permissible now are those that have been developed by the Supreme Court in its interpretation of the First Amendment.

The United States has a complex First Amendment jurisprudence that varies the protection offered free speech according to form. Similarly, India developed its own free speech jurisprudence that applies a “reasonable restrictions” test based on eight mentioned restrictions. The real difference in freedom of speech enjoyed in the United States and India is a question of degree. This difference in degree is attributable to the reasonable restrictions provision and the moral standard of the communities.

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