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The concept of freedom of speech and expression under the Indian Constitution.

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ABSTRACT

This project aims at delineation on concept of freedom of speech and expression ensured under the Indian constitution. Freedom of speech and expression is a fundamental and foundational right, and is a paramount for democracy. Freedom of speech and expression gives freedom to citizen of India to express their opinion through means of words in verbal or written, printing, films, movies etc. It also takes into consideration the landmark cases which have protected rights of citizens of India, freedom of press, freedom to fly national flag and pre censorship of films. It is a fundamental liberties guaranteed against state suppression or regulation.

Keywords- *Liberty, Fundamental Rights, Public Opinion, Reasonableness, Restrictions*

1. INTRODUCTION

The freedom of speech and expression is regarded as 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 the other liberties. In modern time it is widely accepted that the right to freedom of speech is the essence in the society and it must be safeguarded all the time. The first principle of a free society is an untrammelled 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 the particular society and
ultimately for the state. It is one of the most important fundamental liberties guaranteed against state suppre ssion or regulation.

The freedom of speech and expression is a very important fundamental right under the Constitution. It is indispensable for the development of one's own individuality and for the success of parliamentary to 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.

The freedom of speech and expression is not only guaranteed by the Constitution or statutes of various states but also by various international conventions like Universal Declaration of Human Rights, European Convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights etc. These declarations expressly talks about freedom of speech and expression.

The Constitution of India guarantees various fundamental rights to its citizens. One such important right is right to freedom under Article 19. This includes right to freedom of speech and expression, right to assemble peacefully and without arms, freedom to form associations and unions, right to move freely throughout the territory of India, right to reside and settle in any part of the territory of India and right to practice and profession or to carry on any occupation, trade or business.

Freedom of speech and expression means the right to express one's own conviction and opinions freely by means of words of mouth, writing, printing, picture or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representations such as gesture, signs and the like. The expression connotes also publication and thus the freedom of press is included in this category .The Freedom of press is regarded as a species of which the freedom of expression is a genus. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press.

In the Preamble to the Constitution of India, the people of India declared their solemn resolve to secure to all its citizen liberty of thought and expression. The Constitution affirms the right to freedom of expression, which includes the right to voice one's opinion, the right to seek information and ideas, the right to receive information and the right to impart information. The Indian state is under an obligation to create conditions in which all the citizens can effectively and efficiently enjoy aforesaid rights.

Freedom of Speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. Freedom of speech and liberty is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy liberties giving succour and protection to all other liberties. It is the mother of all liberties.

In a democracy, freedom of speech & expression opens up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, economic & political matters. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help the formation of one's opinion & viewpoint & debates on matters of public concern. So long as the expression is confined to nationalism, patriotism & love for the motherland, the use of National flag by the way of expression of those sentiments would be a Fundamental Right.

Freedom of speech and expression is one of the six fundamental freedoms which are guaranteed by the Article 19 of the Indian Constitution and is a fundamental right. The freedom of speech and expression is enshrined in Article 19 (1) (a). The freedoms enumerated in Article 19 (1) are those great and basic rights which are recognised as natural rights inherent in the status of a citizen. But none of the freedoms is absolute or uncontrolled and may be restricted. For any restriction to be constitutionally valid, it must pass through the following two tests:

1. The restriction must be made for the purpose mentioned in clauses (2) to (6) of Article 19.
2. The restrictions must be reasonable.

The Apex Court has laid down the following guidelines for reasonableness:

1. The term 'reasonable restriction' connotes that the limitation imposed on a person in free enjoyment of his right should not be arbitrary or of an excessive nature beyond what is actually required in the interest of public. The word reasonable implies intelligent care and deliberation. Reasonableness has to be determined in an objective manner. Each case is to be judged on its own merit.
2. The expression 'reasonable restriction' seeks to strike a balance between the individual right guaranteed by Art. 19 and social control permitted by Art. 19 (2)-(6). A restriction which is imposed for securing the objects laid down in Directive Principles of State Policy, may be regarded as reasonable.
3. The restriction in the rights can only be imposed by a "law" and not by way of executive and departmental instructions.
4. It is the courts not the legislature which has to judge finally the reasonableness of restriction. A law may be reasonable, but restriction imposed by it on the exercise of freedom may not be reasonable.

Article 19 (1) (a) says that all citizens shall have the right to freedom of speech and expression But this right is subject to limitations imposed under Art. 19(2) which empowers the state to put to reasonable restrictions on the following grounds:

1. Security of the state
2. Friendly relations with foreign states
3. Public order; decency and morality
4. Contempt of court
5. Defamation
6. Incitement to offence
7. Sovereignty and Integrity of the state

2.MAIN BODY

The freedom of expression means the right to express one's convictions, and opinions freely by word of mouth, writing, printing, pictures or any other mode. It also includes the rights to propagate or publish the views of other people, otherwise this freedom would not include the 'freedom of press'.

2.1 FREEDOM OF PRESS

Unlike the American Constitution, Art. 19(1) (g) does not expressly mention the liberty of press i.e. the freedom to print and publish what one pleases without previous permission. But it is settled law that the right to freedom of speech and expression includes the liberty of the press. Press is supposed to guard public interest by bringing to fore the misdeeds, failings and lapses of the government and other bodies existing governing power. Rightly, it has been described as the Fourth Estate.

In *Bennett Coleman's*[1]case, held that the freedom of newspapers to publish any number of pages or to circulate it to any number of persons and to fix price is each an integral part of the freedom to speech and expression. Freedom of press and is both qualitative and quantitative. Freedom lies both in circulation and its content (news and views).

In *Sakal Paper's*[2]case held that the freedom of speech could not be restricted for the purpose of regulating the commercial aspects of activities to the newspapers.

In *Express Newspaper V. Union of India*[3] held that a law imposes pre-censorship (censorship prior to publication) or prevent newspapers from being started or require them to seek government aid in order to survive was violative of Art. 19(1) (a).

In *Express Newspaper's*[4]case held that the press industry is not free from taxation, but tax should be within reasonable limits and does not impede freedom of expression i.e. circulation.

In *Rajagopal V. State of T.N*[5].held that the press have the right to have publish an unauthorized account of citizen's life (autobiography of a convict accused of several murders case) in so far as it is based upon public records. Freedom of the press, the court said, means absence of interference by the State except insofar as it is authorized by the Constitution and by-laws.

[1]AIR 1973 SC 106
[2] AIR 1962 SC 305
[3] AIR 1958 SC 578
[4] Ibid
[5] (1994) 6 SCC 632

In *Ajay Goswami V. UOI*[6] the freedom of press was in issue. The court recognized the right of adults to entertainment within the acceptable level of decency on the ground that it may not be appropriate for children. "Fertile imagination" of minors should not be a matter that should be agitated in court of law. The court considered the applicability of American test of "clear and present danger".

2.2 ADVERTISEMENT, DEMONSTRATION AND FILMS: WHETHER PROTECTED UNDER ARTICLE 19(1) (a)?

Advertisement is undoubtedly a form of speech. But every form of ad is not a form of speech or expression of ideas e.g. social, political, literary etc. An ad of a commercial nature is not protected under Art. 19(1) (a). Such ad has an element of trade and commerce. Professional like doctors, lawyers C.A. are legally forbidden to advertise their services.

In *Tata Press V. M.T.N.L*[7], the court declared that the right to 'Commercial Speech' or advertisement is part of freedom of speech guaranteed by Art.19 (1) (a). A private agency like Tata Press is, therefore, entitled to bring out yellow pages comprising advertisement, the annual buyer's guide for Bombay.

Demonstration or picketing are visible manifestation of one's idea and in effect a form of speech and expression. They are protected under Art. 19(1) (a) provided they are not violent and disorderly. 'Right to Strike' is not included within the ambit of freedom of speech. In *T.K. Rangarajan V. State of T.N.*[8]held that Government servants have no legal or statutory right to go on strike. In the year 2002, the government of Tamil Nadu terminated the services of 2 lakh employees under the T.N. Essential Service Maintenance Act, 2002; the government employees had gone for strike for their demands. The court said that "Government employees cannot hold society to ransom going on strike. The trade unions have a right of collective bargaining on behalf of employees, but they have no fundamental right to strike.

In *Harish Uppal V. UOI*[9]a constitutional bench of Supreme Court categorically pronounced that the lawyers had no right to go on strike or give a call for boycott, not even a token strike. It has been suggested that the advocates can get redressal of their grievances by passing resolutions, making representations and taking out silent processions, holding dharnas or to resort to relay fast, having discussion by giving T.V. interviews and press statements.

[6] AIR 2007 SC 493
[7] (1995) 5 SCC 139
[8] AIR 2003 SC 3032
[9] AIR 2003 SC 739

In *James Martin V. State of Kerala*[10], it was held that no person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same

2.3 FREEDOM TO FLY THE NATIONAL FLAG

In *Union of India V. Navin Jindal*[11]the apex court made certain observations in respect of the flying of the National Flag:

1. Right to fly the national flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Art. 19(1) (a) being an expression and manifestation of his allegiance and feelings and sentiments of pride for the nation.
2. Flag code although is not a law within the meaning of Art 13(3) of the Constitution of India, for the purpose of Art. 19(2) it would not restrictively regulate the free exercise of the right of flying the national flag.

2.4 PRE-CENSORSHIP OF FILMS

Pre-Censorship of films justified under Article 19(2) on the ground that films have to be treated separately from other forms of art and expression because a motion picture was able to stir up emotions more deeply.

In *K.A. Abbas V. Union of India*[12] it was held that classification of films into 'A' and 'U' categories were held to be valid.

In *Odyssey Communications Pvt. Ltd. V. Lokvidayan Sangathan*[13] it was held by the apex court that right of citizens to exhibit films on doordarshan subject to the terms and conditions imposed by doordarshan is a part of the fundamental right of freedom of expression.

In *Union of India V. Motion Pictures Association*[14] it was held that the compulsion for the cinema owners to show scientific/educational films do not infringe their freedom of speech and expression. 'Compelled speech' often known as must carry provision in a statute, rule or regulation can be an infringement to the right of free speech, except to the extent which is permitted.

[10] (2004) 2 SCC 203
[11] (2004) 2 SCC 410
[12] AIR 1971 SC 481
[13] AIR 1988 SC 1642
[14] AIR 1999 SC 2334

In *LIC V. Manubhai D. Shah*[15], the apex court held that the freedom of speech and expression includes the freedom of circulation and propagation of ideas and therefore the rights extends to the citizen to "*use the media to answer the criticism levelled against his views"*[16]. A right to reply (by a dissonant note) is implied in the system of freedom and expression.

The *Secretary, Ministry of I &B V. Cricket Association, Bengal with Cricket Association, Bengal V. Union of India*[17] is a landmark judgment as is recognises the right to information as part of fundamental right to speech and expression under Art. 19(1) (a). The court observed that a citizen has a fundamental right to use the best means of imparting and receiving information through electronic media. Albeit with a caveat: the airwaves are a public resource and must, therefore, be regulated in the public interest. The court ruled that the freedom and expression includes the "*right to educate, inform and entertain. Sport is an expression of self."*[18] The government can impose restriction on such a right only on the grounds specified in Art.19 (2). State monopoly on electronic media is not mentioned in Art.19 (2).

In *Union of India V. Association for Democratic Reforms*[19]it was held that the voter's right to know antecedents including the criminal past of a candidate to membership of parliament of legislative assembly is a fundamental right covered under Art.19(1)(a). The apex court observed: "*The right to get information is recognized all throughout and it is a natural right flowing from the concept of democracy. The people of the country have a right to know every public act, everything that is done in a public way by the public functionaries"*[20]. MP's and MLA's are undoubtedly public functionaries.

In *Radha Mohan Lal V. Rajasthan High Court*[21] the right to freedom and expression does not entitle a person to commit contempt of court. In *Narmada Bachao Andolan V. UOI*[22] it was held by the Honourable Supreme Court that the law relating to Contempt of Court imposes reasonable restrictions on the freedom and within the ambit of Article 19(2).

3. CONCLUSION

[15] (1992) 3 SCC 637
[16] Supra Note 15.
[17] AIR 1995 SC 1236
[18] Ibid
[19] AIR 2002 SC 2112
[20] Ibid
[21] AIR 2003 SC 1467; *In Re Arundhati Roy* (AIR 2002 SC 1375)
[22] AIR 1999 SC 3345

The right of freedom of speech and expression is a fundamental right which is guaranteed by the Constitution of India. This right is available to citizens of India only. Though the right speaks about the citizens of freedom of speech and expression but this right is not an absolute right. This right comes with certain restrictions which have been imposed by the constitution itself. The state can put these reasonable restriction to curtail these rights but the reasonableness has also been discusses and through various precedents guidelines have been given by the apex court to decide the ambit of reasonableness. As discussed by way of this assignment the apex court in many ambiguous situations have made clear that what will be under the ambit of freedom of speech and expression. The apex court is a watchdog with regards to the right of freedom of speech and expression and has been harsh where the reasonable restrictions have not been followed and when the right of freedom of speech and expression is used as an absolute right.

As last I would like to conclude that the right of freedom and expression is although a fundamental right which is guaranteed by the Indian Constitution to its citizens but this right is not an absolute right as certain reasonable restrictions needs to be followed while exercising this right of freedom of speech and expression. And the Supreme Court is acting as a watchdog that this right of freedom of speech and expression is not exercised in an absolute manner and checks and balances are required to be maintained while exercising this right of freedom of speech and expression.

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