

# FREE SPEECH V. NATIONAL SECURITY

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## FREE SPEECH

Free speech in a democracy is not just a need, but a virtue, a virtue which ought not to be deflected. Free speech is not just about expressing and exploring ideas, but it also includes criticism, be it may a constructive criticism or be it may a criticism of any sought. Its' a right, perpetuation of which lets the exploration of ideas and which makes the democracy vibrant!

Political philosophers have argued for liberty of opinion and discussion, or for a free speech principle under which speech is entitled to a greater degree of immunity from regulation than other forms of conduct which cause similar harm or offence.<sup>1</sup>

## CONSTITUTION OF INDIA

Art. 19(1)(a) of the Constitution guarantees freedom of speech & expression. It is also guaranteed under the Liberty clause to the preamble.

In **Ram Singh v St. of Delhi**,<sup>2</sup> *Vivian Bose J.* observed that it is the rights that are fundamental under part III and not the restrictions.

## INTERNATIONAL CHARTERS

The major international & regional instruments on civil & political rights—the International Covenant on Civil & Political Rights (ICCPR), the European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR), & African Charter on Human & People's Right (ACHPR) – all protect “freedom of expression”.

<sup>1</sup> (See J. S. Mill's classic essay, 'Of The Liberty Of Thought And Discussion').

<sup>2</sup> 1951 AIR 270.

## INDIA'S INTERNATIONAL OBLIGATION

Art. 51(c), says, to foster respect for international law & treaty obligations in the dealings of organised peoples' with one another. By virtue of Arts. 246 & 253 r/w VII<sup>th</sup> schedule of the Constitution, international treaties must be incorporated by the G.O.I. (& co-extensively by the legislature) in order to form part of domestic law. However, with regard to human rights treaties, India's International commitment may be derived from similar rights enshrined in the Constitution.

**Law Commission of India in its 183<sup>rd</sup> Report** on "A continuum on the General Clauses Act, 1897" has stated that wherever necessary, the Indian Courts may look into International Convention as an external aid for construction of national legislation.

In **Kesavananda Bharti v. St. of Kerala**,<sup>3</sup> relying on Art. 51 of Indian Constitution, *Sikri J.* observed, "It seems to me that in view of Article 51 of the directive principles this Court must interpret language of the Constitution if not intractable which is after all an intractable law, in the light of the United Nations Charter and the solemn declaration subscribed by India."

## COURTS OBLIGATION

The Supreme Court relied on International Conventions to construct domestic law in **Visakha v. St. of Rajasthan**,<sup>4</sup> where the court held, 'Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into those provisions to enlarge the meaning and content thereof, to promise the object of the Constitutional guarantee.'

The Court in the above case applied the "Doctrine of Incorporation" under which international law becomes a part of municipal law if they are not at odds.

Art. 141 of the Constitution says that, the Law declared by the Supreme Court shall be binding on all the Courts within the territory of India. However the same is not binding on the Supreme Court, but in this regard "Doctrine of Judicial Discipline" needs to be taken into consideration

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<sup>3</sup> AIR 1973 SC 1461.

<sup>4</sup> AIR 1977 SC 3011.

which says that the judgement delivered by the bench is binding on the subsequent bench of the same strength & the lesser strength.

Art. 144 says, all authorities, civil & judicial, in the territory of India shall act in aid of the Supreme Court.

### **EXECUTIVE OBLIGATION**

Art. 141, 144 (Part V, Ch. IV) and 256, 261 (Part XI, Ch. II) of the constitution of India makes the executive or any other authority as defined under the concerned provisions obliged to come true on the mandate given to them by the Courts and any existing laws.

### **FREE SPEECH V NATIONAL SECURITY**

The interest of free speech is paramount and so is the national security! But then the question is, can in the name of national interest people be booked for merely having expressed their free speech? The answer to this question is fairly and squarely in negative.

### **LAWS**

India has various national security laws. viz. National Security Act of 1980, Unlawful Activities Prevention Act (UAPA), 1967, The Indian Penal Code, 1860, The Criminal Procedure Code, 1973 etc. AFPSA, 1958 & AFPSA, 1990 for the north-east and the J&K for checking insurgency.

State legislatures have also enacted laws intended to address organised crime and militancy. These laws include the MCOCA, applicable in Maharashtra and Delhi, the Karnataka Control of Organised Crime Act, 2000 ('KCOCA'), and the Chhattisgarh Vishesh Jan Suraksha Adhinyam, 2005 [Chhattisgarh Special Public Safety Act] ('CVJSA') etc.

The arrest of the activities are done under Unlawful Activities Prevention Act, 1967. It is triggered in cases of;

- (a) Terrorist acts;
- (b) Membership of terrorist organisation;
- (c) Funding, support and recruitment for terrorist organisation.

The arrest of the activists are done merely to cull their voices and their valuable speech.

The Supreme Court of India answered this question in the following way;

In **Romila Thapar & Ors. v Union of India & Ors.**,<sup>5</sup> the Supreme Court stayed the arrest of five activists and ordered them to be kept under house arrest at their own homes.

Interestingly, *Chandrachud J.* in the same case, observed that “Dissent is a safety valve of democracy. If you don’t allow dissent, the pressure valve of democracy will burst”.

In the writ petition of similar kind in **Romila Thapar and Ors. v Union of India and Ors.**,<sup>6</sup> in which the Supreme Court, in a majority judgment authored by *Khanwilkar J.* on behalf of *Dipak Misra C.J.* and himself, declined the prayer for a SIT probe into the Bhima-Koregaon violence and the chain of events leading to it.

However, *Chandrachud J.* while dissenting observed, that the arrests were without any basis and Maharashtra police was biased and cannot be trusted. Therefore, he held that a court monitored investigation by SIT was necessary. “Court has to be vigilant to ensure the liberty of those who take up unpopular causes. Voices of opposition cannot be muzzled because it is a dissent”.

## **DISAPPOINTING DIRECTIVES**

What is the democracy, where there is no dissent! If dissents are being punished, then certainly it will bring chill to the democracy and the very edifice and the vibrance which should exist in a democracy will turn upside down. Democracy which don’t let their people enjoy the free speech is certainly heading towards the bad time! Free speech ought not to be culled, rather it should be let to flourish at times or in-fact all the times! If the arrest is done for settling scores and culling the precious speech, then it is a disappointment!

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<sup>5</sup> (Writ Petition (Criminal) Diary No. 32319/2018).

<sup>6</sup> (Writ Petition (Criminal) No. 260 of 2018).