

EMERGING TRENDS IN RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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ABSTRACT

Freedom of speech and expression is the life line of democracy. It has been recognized as a fundamental right under the Indian Constitution. This freedom is available to Indian citizens only and casts a restriction on the state not to unnecessarily meddle with this vital freedom, except the imposition of reasonable restrictions mentioned under the Constitution. The judiciary in India, particularly the apex court, has interpreted this freedom giving it a wider connotation by covering various facets of this basic freedom. The objective of the present paper is, therefore, to analyze the various interpretations of freedom of speech and expression given by the highest court. An attempt has also been made to examine the expansionist approach of the Supreme Court towards this freedom, during previous decades, commencing since the adoption of Indian Constitution, by studying important case laws. The present study is doctrinal in nature and is based on secondary data gathered from various sources such as books, journals, reports etc.

Keywords: *Speech, Expression, Freedom, Constitution.*

INTRODUCTION

Freedom of speech and expression is the cornerstone of the Indian Constitution. It is the basic and the fundamental principle which lay at the very root of all the democracies in the world. Free speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is

regarded as first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succor and protection to all other liberties. It has been truly said that it is the mother of all other liberties.ⁱ Soon after the inauguration of the Constitution, India added its name to the long list of democracies whose institutional ideals were tested against the government of the day's perception of national needs.ⁱⁱ Our Constitution followed the United States precedent and enacted fundamental rights in the Constitution itself.ⁱⁱⁱ Article 19 of the Constitution guarantees to the citizens of India, six fundamental rights which are exercisable by them throughout and in all parts of the territory of India. The rights enumerated in article 19(1) are those great and basic rights which are recognized as natural rights inherent in the status of the citizens.^{iv} According to article 19(1)(a) all citizens shall have the right to freedom of speech and expression. A non-citizen cannot claim this right which is available only against the state as defined in article 12 of the Indian Constitution.^v

NECESSITY OF FREEDOM OF SPEECH AND EXPRESSION

Fundamental rights enumerated under article 19 are not necessarily and in all circumstances mutually supportive, although taken together, they weave a fabric of a free and equal democratic society.^{vi} In a democracy, freedom of speech and expression opens up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Freedom of speech and expression, just as equality clause and the guarantee of life and liberty, has been very broadly construed by the Supreme Court, right from the 1950s. It has been variously described as “basic human right”, “a natural right” and the like. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help formation of one's opinion and view point and debates on the matter of public concern.^{vii} In **Romesh Thappar v. State of Madras**,^{viii} C.J. Patanjali Sastri observed 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.” In **Maneka Gandhi v. Union of India**,^{ix} J. Bhagwati has emphasized on the significance of the freedom of speech and expression and stated that, “Democracy is based essentially on free debate and open discussion, for that is the only corrective of government

action in democratic set up. If democracy means government of the people, 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.”

MEANING

Article 19(1)(a) guarantees two rights – (a) freedom of speech and (b) freedom of expression. Freedom of speech means to express one’s views or ideas or convictions or feelings or emotions to others freely by oral utterances. Freedom of expression means to express one’s views fully to others by writing, painting, by signs or any other visible mode. It also includes freedom of press. A democratic government attaches great significance to this freedom because without freedom of speech, appeal to reason, which is the basis of democracy, cannot be made. It leads to the creation of new ideas and knowledge, finding of truth, building tolerance and receptivity and is essential for self rule.^x It does not mean, right to say whatever, whenever and wherever one likes. This freedom is subject to reasonable restrictions which may be imposed by the state under article 19(2).

EARLIER INTERPRETATION OF ARTICLE 19(1)(A) BY JUDICIARY

The Supreme Court of India has interpreted the expression freedom of speech and expression in a broader sense since 1950s, but its ambit has been really widened by the apex court only after 1980s by adopting expansionist approach, covering various aspects and giving new dimensions to this vital freedom. Earlier interpretation of this freedom by Supreme Court is as follows:

PRE-CENSORSHIP OF JOURNAL INVALID

In the case of **Brij Bhushan v. Delhi**,^{xi} the Supreme Court held that, “There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by article 19(1)(a).”

FREEDOM OF PRESS INCLUDES FREEDOM OF CIRCULATION

In **Romesh Thappar v. Madras**,^{xii} the apex court held that, “... there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation, the publication would be of little value.”

COMMERCIAL ADVERTISEMENTS ARE NOT PART OF ARTICLE 19(1)(A)

In the case of **Hamdard Dawakhana v. Union of India**,^{xiii} Supreme Court held that an advertisement promoting drugs and commodities, the sale of which is not in public interest, could not be regarded as propagating any idea and, as such, could not claim the protection of article 19(1)(a).

PEACEFUL DEMONSTRATION PERMITTED, BUT STRIKE PROHIBITED UNDER ARTICLE 19(1)(A)

In **Kameshwar Prasad v. State of Bihar**,^{xiv} Supreme Court held that orderly demonstration is within the freedom of speech and expression guaranteed by article 19(1)(a), but those forms of demonstrations which might lead to a breach of public tranquility does not come within article 19(1)(a). Restriction on every type of demonstration whether violent or peaceful, is violative of the freedom of speech and expression. However, the court stated that there was no fundamental right to resort to strike.

FILM CENSORSHIP IS VALID

In the case of **K.A. Abbas v. Union of India**,^{xv} the Supreme Court has upheld censorship of films under article 19(1)(a) on the ground that films have to be treated separately from other forms of art and expression because a motion picture is able to stir up emotions more deeply than any other product of art. A film can, therefore, be censored on grounds

mentioned in article 19(2).

LATEST INTERPRETATION OF ARTICLE 19(1)(A)

1. No excessive taxes on press

In **Indian Express Newspapers (Bombay) Pvt. Ltd. V. Union of India**,^{xvi} the Supreme Court emphasized that the government should be more cautious while levying taxes on matters concerning newspaper industry, than, while levying taxes on other matters. The court held that the newspaper had not been granted exemption from taxation. However, the exercise of power to tax should be subject to scrutiny by the courts. The imposition of a tax like the customs duty on newsprint, the court said, was an imposition of tax on knowledge and would virtually amount to a burden imposed on a man being literate and for being conscious of his duty as a citizen to inform himself of the world around him.

2. Freedom of speech include the right not to speak

In **Bijoe Emmanuel v. State of Kerala**,^{xvii} the Supreme Court held that no person could be compelled to sing the National Anthem if he has genuine conscientious objections based on his religious belief. The court further observed that the children did not commit any offence under the Prevention of Insults to National Honour Act, 1971 because they stood up respectfully when the national anthem was being sung at their school. It may, thus, be stated that freedom of expression includes the right not to express.

3. Commercial advertisements are included in article 19(1)(a)

In **Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd.**,^{xviii} Supreme Court held that 'commercial speech' is part of freedom of speech and expression guaranteed by article 19(1)(a) and the protection of the said article cannot be denied merely because it is issued by the businessman. The court made it clear that the public at large has a right to receive the commercial speech. With reference to the ruling of the Supreme Court in Hamdard Dawakhana

case of 1960, the ruling was limited to obnoxious advertisement.

4. No right to call or enforce bandh, hartals and blockades

The Supreme Court in **Communist Party of India v. Bharat Kumar**,^{xi} have laid down that there was no right to call or enforce bandh which interfered with the exercise of fundamental freedoms of other citizens, in addition, causing national loss in many ways. No political party or organization can claim that it is entitled to paralyze the industry and commerce in the entire state or nation.

5. Right of the voters to know the antecedents of the candidates at election

In **Union of India v. Association for Democratic Reforms**,^{xx} the Supreme Court held that the voter had the right to get material information, with respect to a candidate contesting election for a post, which was of utmost importance in a democracy, was implied in the freedom of speech guaranteed by article 19(1)(a).

6. Right to fly the National Flag

Supreme Court in **Union of India v. Naveen Jindal**,^{xxi} held that the right to fly national flag freely with respect and dignity is included in article 19(1)(a). So long as the expression is confined to nationalism, patriotism and love for motherland, the use of national flag by way of expression of those sentiments would be a fundamental right. It cannot be used for commercial purpose or otherwise.

7. Right of the examinee to have access to evaluated scripts

In **Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das**,^{xxii} the apex court ruled that the courts should not normally direct the production of answer scripts, to be inspected by the examinees, unless a case was made out to show that either some questions had not been evaluated or that the evaluation had been done contrary to the norms fixed by the

examining body.

8. *Article 19(1)(a) and trial by media*

In **Sidhartha Vashisht v. State (NCT of Delhi)**,^{xxiii} the Supreme Court has observed that every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informatics media should always be maintained. Trial by media should be avoided particularly at a stage when the suspect is entitled to the constitutional protection. Trial by media not only hampered fair investigation but also amounted to travesty of justice, the court said.

CONCLUSION

Freedom of speech and expression is the very basic and fundamental freedom for the Indian democratic set-up. If any attempt is made to stifle or gag this freedom, it will amount to death knell of democracy, as democracy cannot thrive without this freedom. The Supreme Court of India has adopted an expansionist approach regarding freedom of speech and expression and has widened its scope manifold by extensively covering various aspects regarding it, to really give meaningful interpretation to this vital right. It is essential to the rule of law and liberty of citizens. But it has to be borne in mind that this freedom is not absolute and can be curtailed by the state by imposing reasonable restrictions that too, only on the grounds mentioned under article 19(2).

ENDNOTES

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- ⁱ M.P. Jain, *Indian Constitutional Law*, Lexis Nexis, Haryana, 6thedn., 2013, p. 1078.
 - ⁱⁱ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience*, Oxford University Press, New Delhi, 2012, p. 38.
 - ⁱⁱⁱ H.M. Seervai, *Constitutional Law of India*, Universal Law Publishing Co. Pvt. Ltd., New Delhi, Vol. 1, 4thedn., 2013, p. 349.
 - ^{iv} Mahendra P. Singh, *Constitution of India*, Eastern Book Company, Lucknow, 11thedn., 2012, p. 118.
 - ^v Kailash Rai, *The Constitutional Law of India*, Central Law Publications, Allahabad, 11thedn., 2013, p. 219.

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- vi Durga Das Basu, *Shorter Constitution of India*, Lexis Nexis Butterworths Wadhwa, Nagpur, Vol. 1, 14thedn., 2012, p. 247.
- vii *Supra* note 1.
- viii AIR 1950 SC 124 at 128.
- ix AIR 1978 SC 597.
- x *Supra* note 4 at p. 124.
- xi 1950 SCR 605 at 608.
- xii 1950 SCR 594 at 597.
- xiii AIR 1960 SC 554.
- xiv AIR 1962 SC 1166.
- xv AIR 1971 SC 481.
- xvi AIR 1986 SC 515.
- xvii AIR 1987 SC 748.
- xviii AIR 1995 SC 2438.
- xix AIR 1998 SC 184.
- xx AIR 2002 SC 2112.
- xxi AIR 2004 SC 1559.
- xxii AIR 2007 SC 3098.
- xxiii AIR 2010 SC 2352.
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