



“An Analysis of Freedom of Speech and Expression Under Indian Constitution”

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ABSTRACT

Freedom of speech and expression is a fundamental human right. It is the bulwark of democratic government. It is also essential for the proper functioning of the democratic process. 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. Every person has the right to freedom of speech and expression. Speech is essential because it helps a human being to convey his thoughts, sentiments and feelings to others. Thus, it is a natural right as a human being acquires it on birth. Therefore, it is a basic right and it should not be taken away from the Citizens.

Freedom of speech encompasses right to express oneself as well as right to access information. Liberty to express ideas and opinions without hindrance plays an important role in the development of a particular society. Freedom of speech is guaranteed not only by Constitution but also by various International conventions. It is one of the most basic elements for a healthy and open-minded democracy. It allows people to freely participate in the social and political happenings of their country. This article deals with meaning, scope, origin and significance of right to freedom of speech and expression guaranteed under Article 19(1)(a) of the constitution. This study also highlights protection of free speech and different aspects of freedom of speech and expression. It also deals with grounds of restriction imposed under Article 19(2) of the Constitution. In this article, the researcher has tried to discuss briefly about the right to freedom of speech and expression.

“If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.” — George Washington

Keyword:freedomof speech and expression, Article 19, democracy, freedom of press, UDHR, ICCPR



Introduction:

Speech is God's gift to mankind. Through speech and expression a human being conveys his thoughts, sentiments and feeling to others. Freedom of speech and expression is thus a natural right, which a human being acquires on birth. It is, therefore, a basic right. The freedom of speech and expression is regarded as the 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 other liberties. Freedom of speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's ideas through any communicable medium or visible representation, such as, gesture, sighs and the like. In modern time it is widely accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all time. The first principle of a free society is an untrammelled flow of words in an open forum.

Throughout India's freedom struggle there was a persistent demand for a written Bill of Rights for the people of India which included guarantee of free speech. Understandably, the Founding Fathers of the Indian Constitution attached great importance to freedom of speech and expression. Their experience of waves of repressive measures during British rule convinced them of the immense value of this right in the sovereign democratic republic which India was to under its Constitution. They believed that freedom of expression is indispensable to the operation of a democratic system. They knew that when avenues of expression are closed, government by consent of the governed will soon be foreclosed. In their hearts and minds was imprinted the message of Mahatma Gandhi, that evolution of democracy is not possible if one is not prepared to hear the other side. They endorsed the thinking of Jawaharlal Nehru who said, "I would rather have a completely free speech and expression with all dangers involved in the wrong use of that freedom than a suppressed of regulated speech and expression

The law in the current form finds its root in the Hate Speech Law Section 295(A) enacted by the British Administration in India. This act was brought about in the backdrop of a series of murders of Arya Samaj leaders who polemicized against Islam. This started in 1897 with the murder of Pandit Lekhram by a Muslim because he had written a book



criticizing Islam. Koenraad Elst argues that "Section 295b was not instituted by Hindu society, but against it. It was imposed by the British on the Hindus in order to shield Islam from criticism" The murder series caught lime-light in December, 1926 after the murder of Swami Shraddhananda for the protection he gave to a family of converts from Islam to Hinduism in addition to writing Hindu Sangathan, Saviour of the Dying Race in 1926.

Precedence to this law started even before this as in a case against Arya Samaj preacher Dharm Bir in 1915, ten Muslims were sentenced for rioting, but Dharm Bir was also charged under section 298 for "using offensive phrases and gestures with the deliberate intention of wounding the religious feelings" of another community; and under Section 153, for "wantonly provoking the riot which subsequently occurred" and "a judge was brought in who could assure conviction".

Origin of freedom of speech and expression

The idea of freedom of speech had originated a long time ago. It was first introduced by the Greeks. They used the term "Parrhesia" which means free speech or to speak frankly. This term first appeared in the fifth-century B.C. Countries such as England and France have taken a lot of time to adopt this freedom as a right. The English Bill of Rights, 1689 adopted freedom of speech as a constitutional right and it is still in effect. Similarly, at the time of the French revolution in 1789, the French had adopted the Declaration of the Rights of Man and of Citizens.

The UN General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948 under Article 19 which recognised the freedom of speech and expression as one of the human rights.

Importance of criticism in a democracy

The importance of criticism cannot be stressed enough in a society such as ours, because of the diverse conditions we live and the laws that we are bound by. The society before civilization had no system that would conduct the behaviour of human beings. But as society progressed there were slight improvements in the way people behaved.

Finally, society evolved by something known as a Social Contract Theory. The theory legitimized the control of the ruling power over any individual. It propounded that certain



freedoms may be surrendered by the citizens in exchange for the assurance of protection against evils and some basic rights for healthy survival. The citizens had surrendered their freedom in return for the expectation of certain rights which would ensure their survival with dignity. Therefore, when it comes to talking about the guarantee of basic rights such as the right to speak and criticize freely, the social contract theory comes into question.

In a country such as ours, the freedom of speech and expression must be granted with very limited barriers because it forms the basis for our fourth pillar of democracy, which is the media. Media forms the most important bridge between the public and the government. It acts as a translator of expression between the public and the government.

Expressions may include all kinds of appreciation, suggestions and criticism. Among these, criticism is the expression that must reach the government in order to bring a change in policies if it is not suitable for the public. Even Prime Minister Narendra Modi has emphasized that criticism is the key to democracy. Therefore, being a part of a system which gives respect to public opinion, we must grant the citizens to criticize freely.

DEMOCRACY AND FREE SPEECH:

Many arguments for the right to free speech center on its special significance for democracy (Cohen 1993; Heinze 2016; Heyman 2009; Sunstein 1993; Weinstein 2011; Post 1991, 2009, 2011). It is possible to defend free speech on the noninstrumental ground that it is necessary to respect agents as democratic citizens. To restrict citizens' speech is to disrespect their status as free and equal moral agents, who have a moral right to debate and decide the law for themselves (Rawls 2005).

Alternatively (or additionally), one can defend free speech on the instrumental ground that free speech promotes democracy, or whatever values democracy is meant to serve. So, for example, suppose the purpose of democracy is the republican one of establishing a state of non-domination between relationally egalitarian citizens; free speech can be defended as promoting that relation (Whitten 2022; Bonotti&Seglow 2022). Or suppose that democracy is valuable because of its role in promoting just outcomes (Arneson 2009) or tending to track those outcomes in a manner than is publicly justifiable (Estlund 2008) or is otherwise epistemically valuable (Landemore 2013).



Perhaps free speech doesn't merely respect or promote democracy; another framing is that it is constitutive of it (Meiklejohn 1948, 1960; Heinze 2016). As Rawls says: "to restrict or suppress free political speech...always implies at least a partial suspension of democracy" (2005: 254). On this view, to be committed to democracy just is, in part, to be committed to free speech. Deliberative democrats famously contend that voting merely punctuates a larger process defined by a commitment to open deliberation among free and equal citizens (Gutmann & Thompson 2008). Such an unrestricted discussion is marked not by considerations of instrumental rationality and market forces, but rather, as Habermas puts it, "the unforced force of the better argument" (1992 [1996: 37]). One crucial way in which free speech might be constitutive of democracy is if it serves as a legitimation condition. On this view, without a process of open public discourse, the outcomes of the democratic decision-making process lack legitimacy (Dworkin 2009, Brettschneider 2012: 75–78, Cohen 1997, and Heinze 2016).

Those who justify free speech on democratic grounds may view this as a special application of a more general insight. For example, Scanlon's listener theory (discussed above) contends that the state must always respect its citizens as capable of making up their own minds (1972)—a position with clear democratic implications. Likewise, Baker is adamant that both free speech and democracy are justified by the same underlying value of autonomy (2009). And while Rawls sees the democratic role of free speech as worthy of emphasis, he is clear that free speech is one of several basic liberties that enable the development and exercise of our moral powers: our capacities for a sense of justice and for the rational pursuit a lifeplan (2005). In this way, many theorists see the continuity between free speech and our broader interests as moral agents as a virtue, not a drawback (e.g., Kendrick 2017).

Even so, some democracy theorists hold that democracy has a special role in a theory of free speech, such that political speech in particular merits special protection (for an overview, see Barendt 2005: 154ff). One consequence of such views is that contributions to public discourse on political questions merit greater protection under the law (Sunstein 1993; cf. Cohen 1993: 227; Alexander 2005: 137–8). For some scholars, this may reflect instrumental anxieties about the special danger that the state will restrict the political speech



of opponents and dissenters. But for others, an emphasis on political speech seems to reflect a normative claim that such speech is genuinely of greater significance, meriting greater protection, than other kinds of speech.

Freedom of press

“Our liberty depends on the freedom of the press, and that cannot be limited without being lost” is stated by Thomas Jefferson to define the importance of freedom of the press. To preserve the democratic way of life it is necessary that people should have the freedom to express their feelings and to make their views known to people at large. Freedom of speech includes propagation of one’s views through print media or any other communication channels like radio and television, subject to reasonable restrictions imposed under Article 19(2) of the Indian constitution. Although freedom of the press is not mentioned in Article 19 of the Indian Constitution, yet it has been a part of freedom of speech and expression as considered by judges of the Supreme Court through decided cases. In the leading case of *Romesh Thapar v. The State of Madras*, [5] it has been decided by the supreme court that freedom of the press is an intrinsic part of freedom of speech and expression.

CONCLUSION:

It can be concluded that the value of the freedom of speech and expression is determined by the extent to which the citizens are able to enjoy such freedom. Freedom of speech and expression is a fundamental human right. It is the bulwark of democratic government. It is also essential for the proper functioning of the democratic process. 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. Every person has the right to freedom of speech and expression. Speech is essential because it helps a human being to convey his thoughts, sentiments and feelings to others. Thus, it is a natural right as a human being acquires it on birth. Therefore, it is a basic right and it should not be taken away from the Citizens.



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2. A.K. Gopalan v. State of Madras, AIR 1950 SC 27. Also see Collector of Malabar v. Erimal Ebrahim Hajee, AIR 1957 SC 688.
3. Indian Express Newspaper v. Union of India, (1985) 1 SCC 641; Reliance Petro-chemicals limited v. Indian Newspapers (Bombay) Pvt. Ltd., AIR 1989 SC 190.
4. Bimal Gurung v. Union of India, AIR 2018 SC 1459 pp. 1470, 1472
5. Om Prakash v. Emperor, AIR 1948 Nag 199.
6. Noor Mohammad v. Rex, AIR 1949 All 120
7. Article 14 of the Constitution of India reads as: “Equality before law.- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”
8. Municipal Corpn. v. Jan Mohd. Usmanbhai, (1986) 3 SCC 20.