

Understanding “Freedom of Speech and Expression” in insinuation with Indian Cases

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Abstract:

In the words of Sormen Kierkegaard,

“People demand freedom of speech as a compensation for the freedom of thought which they seldom use.”

“Freedom” is a very important term for all of us and we Indians are being awarded with this right by our Constitution framers. Our visionary Constitution framers had actually imagined that the people of this democracy really need the gift of freedom and liberty. While drafting the Constitution they observed the feature of American Constitution (Bill of Rights) and took inspiration from it and awarded us with all major freedom under article 12-35. They ensured that every realm of the society gets covered under this one umbrella and this country rejoices every bit of it.

Article 19(1)(a) explains that every individual has a right to express himself and can have his own opinions of thought. They can support any opinion, any belief of their own choice and Constitution gives them this right but at the same time Constitution mentions about Article 19(2) which states that freedom also has restrictions on it. Reasonable restrictions can be imposed on the grounds of sovereignty, integrity, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence. (source: Indian Polity by M Laxmikanth). This paper is trying to understand freedom of speech and expression in special light of Indian cases and various instances will be discussed in this learning.

Key Words: Freedom, Speech, Expression, Cases, Article 19(1) a, 19(2)

1. Introduction

For solicitation of resilient democratic freedom in the society it is imperative for people to have strong sense of freedom to express themselves. India is a strong egalitarianism where freedom of speech and expression has been broadly understood as the conception that every individual has their birth right to freely express themselves. If we deeply understand the concept of freedom of speech and expression in India so, we can say that it is an intricate right, freedom of speech and expression is not an absolute right. It means that restrictions are also implied with Article 19(1) A. Law has given birthright of freedom of speech and expression to every Indian citizen but with certain restrictions are also imposed. (Tiwari & Ghosh, 2014)

According to International Covenant on Civil and Political Rights, 1966, “Everyone could have their own opinions and freedom to express themselves freely. This right should also include freedom to pursue, obtain and communicate information and thoughts of all kinds.” (Tiwari & Ghosh, 2014)

John Milton very rightly said, “Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties”. (Amrit)

Ancient and modern times have always desired of freedom of expression for humanity. As it gives the basic independence to humankind to express the way they feel, their contemplations, their philosophies, their belief system and to give voice to their soul. Similarly, restrictions or constraints are also primeval and universal phenomenon. This has auxiliary progressed with reformist rulings of Indian Judicial System. The freedom of expression cannot be absolute in a systematic culture and society and this elevates critical matters of the permissible limits of restrictions on freedom of expression. (Amrit)

Such subjects include thoughtfulness of the nature of the restriction, its possibility and magnitude, its extent and the presence or absence of an effectual corrective machinery to encounter the restriction.

Usually it is the judicial system which accomplishes the task of reconciling freedom of expression with definite essentials of public interest such as public order, public health, national security, individual rights (such as the right of privacy and the right to reputation) or morals. So, in short it is also important to understand that whether censorship is reasonable or if it is reasonable so, in what circumstances.

Indian Judiciary has always taken enormous pains to maintain the balance between Article 19(1) A and 19(B). It has made several landmark judgments regarding the same.

According to Article 19(1)a of the Indian Constitution, it is the fundamental right of an individual, born in Indian motherland to freely express themselves, without any fear or without any distress. Article 19(1) (A) defines freedom of speech as the right to express one's opinions and sentiments spontaneously by word of mouth, inscription, printing, depictions or any other approach. It embraces the right to promulgate or dispense the interpretations of other people.

The term 'liberty of discourse and expression' includes any act of dogging, receipting and collaborating information or notions, irrespective of the platform used. According to John Milton's opinion, autonomy of language and expression is not only a multi-faceted veracious which gives you the right not only to express oneself or propagate information but it also includes the right to search, accept and divulge information and concepts. The conception of liberty of speech and expression is warmly concomitant to the formation of egalitarianism.

According to Alexander Meiklejohn, argues about democracy says that "democracy means self-governance by the people and for proper functioning of it, an informed electorate is requisite, which means that there should be no restraint on free flow of information and ideas. Democracy cannot remain intact if the one's in power influence the system and by concealment of information and by stifling criticism, use the system for establishment of their power."

Richard Moon deliberated the significance of freedom of speech and expression and advocated its pedigrees within social interactions. He believes that when we interact with society, there also we need freedom to be ourselves in our expressions and thought whether, we are in family, friends, and religious processions or at any place. Community interaction also needs freedom and liberty of thoughts.

In Indian Constitution, fundamental rights are enshrined in Part III of the Constitution from Articles 12 to 35. Inspiration of Indian Constitution is derived from the American Constitution (i.e. Bill of Rights).

Independence of speech and expression is considered as one of the stoutest pillar of consensus, freedom of speech and expression strengthens the understandings of democracy in society. Now for better understanding, we could say that it is considered as the embankment of democracy and is critically needed for its proper operative function.

All citizens in India are guaranteed with six supreme freedom which includes freedom of speech and expression, to assemble peacefully and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practice any profession, or to carry on any occupation, trade or business. (Pathak, 2017)

By the 44th amendment, Right to property was omitted and shifted in legal rights category. As per Article 19(1)(a), all citizens of India shall have the right to freedom of speech and expression and Article 19(2) imposes reasonable restrictions on the exercise of the right if it interferes with the sovereignty of the nation, integrity of the nation, security of the nation, friendly relations with foreign states, public order, defamation or incitement to an offence, morality or decency or in relation to contempt of court.

Following are the cases which are correlated with freedom of speech and expression in India. These cases have played an important role in elucidation and progress of this fundamental right in the nation.

Case 1:

In 1950 Romesh Thapar v. State of Madras case primarily dispensed with the constitutionality of definite provisions of the Madras Maintenance of Public Order Act, 1949. The Act authorized the government to enforce constraints on civic assemblies and demonstrations in the concern of public order and security.

The foremost concern afore the Supreme Court was whether the provisions of the Madras Maintenance of Public Order Act, 1949 desecrated the fundamental right to freedom of speech and expression assured under Article 19(1)(a) of the Indian Constitution.

The Court, in its ruling, held that the provisions of the Act were unlawful as they enforced perverse limitations on the right to freedom of speech and expression. The Court accentuated that the freedom of speech and expression is a fundamental right crucial for the working of a democratic society. It acknowledged that public order and safety are reasonable concerns, but any precincts on fundamental rights must be equitable and essential.

The ruling in *Thapar v. State of Madras* restated the significance of freedom of speech and expression and recognized that the government cannot enforce capricious or disproportionate constraints on this right. The Court set an example for forthcoming cases concerning the harmonizing of free speech privileges and the maintenance of public order, highlighting the necessity for a judicious and balanced approach. Though this case had not directly contributed in the address of freedom of speech and expression but inferences lengthen to the fortification of this fundamental right. The ruling undoubtedly strengthened free speech and made it clear that any constraint on free speech must meet the test of rationality and inevitability, safeguarding that individuals have the freedom to express themselves without the interference from the state.

Case 2:

The case *Maneka Gandhi v. Union of India* -1978, mainly fixated on the understanding of Article 21 of the Indian Constitution which assurances of the right to life and personal liberty. She is a social activist and journalist by profile, her passport was confiscated by the government, without giving her the opportunity to be heard. She tested and challenged the government's decision by mentioning that this action of the government violated her fundamental rights including Article 19(1)(a)(Freedom of speech and expression).

In this case, there was a big question in front of Supreme Court that whether Article 21(Right to life and personal liberty) includes the right to travel abroad and the right to be heard or not. So, in its milestone verdict, Supreme Court lengthened the latitude of Article 21 and documented that it incorporates an extensive array of fundamental rights, including the right to be heard and right to travel abroad. Court also stated that constraint on the right to personal liberty and life must be reasonable, rational and unprejudiced. Court also mentioned that right to be heard is a significant constituent of natural justice and before grudging a person of their fundamental rights, person should be given reasonable chance to be heard.

The judgment of this case fairly reiterated that the right to life and personal liberty cannot be taken away capriciously or deprived of the rational procedure. The ruling clearly recognized that freedom of speech and expression is a fundamental part of personal liberty and it must be protected. This judgment gave the footing to the comprehensive illumination of fundamental rights and their relationship with the right to life and personal liberty.

This judgment principally concentrated on the right to life and personal liberty, its insinuations in the range of protection of freedom of speech and expression. The judgment accentuated on the importance of fair procedures and the right to be heard when fundamentals rights are at pale, safeguarding that individuals have all rights to practice their freedom of speech and expression.

Case 3:

In the case of *Shreya Singhal v Union of India*, the case dispensed with the legality of Section 66A of the Information Technology Act, which outlawed the directing of "offensive" messages online. This case prompted from the arrest of two girls in Mumbai who criticized the shutdown of the city following the death of a political leader in their Facebook comments. The girls were indicted under section 66A.

In this case the main concern of the court was that whether Section 66 A desecrated the fundamental right to freedom of speech and expression guaranteed under Article 19(1) (A) of the constitution. In the judgment, Supreme Court struck down Section 66A as unlawful and illicit. According the court Section 66A was overboard, vague and was not reasonable under Article 19(2) of the Constitution. According to the observation of the court, language used in Section 66A was proficient of different elucidations and could lead to subjective and unwarranted limitations on speech. In its ruling, Court accentuated that freedom of speech and

expression is a fundamental right and foundation of democracy. Ruling acknowledged the importance of internet as a medium of communication and expression in the digital age. The ruling evidently emphasized that there is need for perfect and defined laws that do not arbitrate in freedom of speech and expression and safeguard against abuse of power. This case highlighted the importance of freedom of speech and expression and gave a landmark judgment in the same. This ruling set a limit to the government's power to confine online content and surefire that laws governing speech are closely haggard. The judgment provided clarity on the scope and limitations of online speech regulations and reaffirmed the fundamental right to freedom of speech and expression in India.

Case 4:

In case Kedar Nath vs State of Bihar (1962), the constitutional validity of Section of 124-A of the Indian Penal Code was accessed which covenants with offense of sedition. In a political rally, member of communist party-Kedar Nath Singh addressed the audience and expressed his dissatisfaction towards government. After this he was charged with sedition charges under section 124A. In this case, the foremost concern before the Supreme Court was to see whether Section 124 A was in violation of the fundamental right to freedom of speech and expression assured under Article 19 (1) (A) of the Indian Constitution.

Court in its judgment mentioned that 124A did not infringe upon the fundamental right to freedom of speech and expression but the ruling clarified its interpretation. Court clearly said that the transgression of sedition entails an act that implicates a2ws stimulation to violence or public disorder. Mere criticism of the government or expression of dissent does not amount to sedition unless it incites violence or public disorder.

The Court highlighted that the limitations on freedom of speech and expression must be barely interpreted, and any law imposing such constraints must encounter the assessment of rationality under Article 19(2) of the Constitution. The Court also restated that the right to criticize the government and its policies is an indispensable part of an autonomous society.

This case safeguards the fundamental right to dissent and criticize the government while upholding an equilibrium with the reasonable restrictions essential for the immovability and safekeeping of the nation.

Conclusion

As per the study it is evidently seen that there is a wide range of cases which give ephemeral understanding of freedom of speech and expression. In the landmark judgments and ruling, Supreme Court has explicitly given an understanding of freedom of speech and expression. Different cases have given diverse viewpoints and comprehensive understanding.

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