

RIGHT TO FREEDOM OF SPEECH AND EXPRESSION WITH SPECIAL REFERENCE TO RIGH TO PRIVACY

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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.

The debate of privacy basically had ignited in the 21st century with the need for data privacy laws and civil rights of privacy of every individual, irrespective of their sexual preference. Privacy is an important facet to life and liberty and an inherent part of the fundamental rights enshrined in the Constitution. It exists equally in all individuals, irrespective of class, strata, gender or orientation. It plays a significant role in the development of one's personality, integrity, and dignity. However, the fact the privacy is not an absolute right, but an invasion must be based on legality, need and proportionality for safeguarding this cherished right and such an invasion must be justified by law.

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INTRODUCTION

Freedom of speech is the bulwark of democratic government. This freedom is essential for the proper functioning of democratic process. The freedom of speech and speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It has been truly said that it is the mother of all liberties.³

In a democracy, freedom of speech and expression opens up channels of free discussion of issues. Freedom of speech plays a crucial role in formation of public opinion on social, political and economic matters. Freedom of speech and expression, just as equality clause and guarantee of life and liberty has been very broadly construed by the Supreme Court right from 1950s. It has been variously described as a “basic human right”, “a natural right”.

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. 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. Liberty to express opinions and ideas without hindrance, and especially without fear of punishment plays significant role in the development of that particular society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

In *Maneka Gandhi v UOI*⁴, Bhagwati J, has emphasized on the significance of the freedom of speech and expression in these words:

Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democracy set up. If democracy means government of 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 to absolutely essential.

³ Report of the Second Press Comm, Vol 1, 34-35

⁴ AIR 1978 SC 597: (1978) 1 SCC 248

In 1927, *Whitney v California*⁵, Louis Brandeis J, made a classic statement of freedom of speech in the context of US Constitution:

Those who won our independence believed that the final end of the state was to make men free to develop their faculties. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that the freedom to think as you will and to speak as you think are indispensable to the discovery and spread of political truth- that without free speech and assembly and discussion would be futile... that public discussion is a political duty and i.e. should be a fundamental principle of the American government.

Talking about the first amendment to the US Constitution which guarantees freedom of speech in USA. The US Supreme Court has observed:

*“it is the purpose of the first amendment to preserve an uninhibited market place of ideas in which truth which ultimately prevail rather than to countenance monopolization of that market whether it be by the government itself or a private licensee.”*⁶

OBJECTIVE

1. To understand the concept of freedom of speech and expression in India under Indian Constitution.
2. Restrictions on freedom of freedom of speech and expression.
3. Parliamentary privileges and freedom of speech.

Freedom of Speech and Expression- Meaning & Scope

Article 19(1) (a) of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, “all citizens shall have the right to freedom of speech and expression”. Under Article 19(2) “reasonable restrictions can be imposed on the exercise of this right for certain purposes. Any limitation on the exercise of the right under Article 19(1) (a) not falling within the four corners of Article 19(2) cannot be valid.

⁵ 247 US 214

⁶ Associated Press v US, 326 US 1

The freedom of speech under Article 19(1) (a) includes the right to express one's views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc. It thus includes the freedom of communication and the right to propagate or publish opinion. But this right is subject to reasonable restrictions being imposed under Article 19(2). Free expression cannot be equated or confused with a license to make unfounded and irresponsible allegations against the judiciary.⁷

“Freedom of Speech and of Press is 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 Government, is possible.”

However Article 19(2) of the Constitution provides that this right is not absolute and ‘reasonable restrictions’ may be imposed on the exercise of this right for certain purposes. The right to freedom of expression includes the right to express ones views and opinions on any issue and through any medium whether it is in writing or by word of mouth.

ARTICLE 19(1)(a) OF INDIAN CONSTITUTION

Out of the several rights enumerated in clause (1) of Article 19, the right in sub clause (a) is not merely a freedom of speech and expression but a right of freedom and expression. The enumeration of other rights is not by reference to freedom.⁸

Article 19(1)(a) guarantees to all citizens ‘freedom of speech and expression’. Under article 19(2), ‘reasonable restrictions can be imposed on the exercise of this right for certain purposes. Any limitation on the exercise of the right under Article 19(1)(a) not falling within the four corners of Article 19(2) cannot be valid.

Right to receive information:

The expression “**freedom of speech and expression**” in Article 19(1) (a) has been held to include the right to acquire information and disseminate the same. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large population in the country as well as abroad as is possible to reach.

⁷ Radha Mohan Lal v. Rajasthan High Court, (2003) 3 SCC 427

⁸ Dharam Dutt v UOI, (2004) 1 SCC : AIR 2004 SC 1295

Right to information is not absolute and is restricted to certain restrictions under Article 19(2) and is further limited by right to privacy under Article 21(though right to privacy is not so absolute).⁹

But the right does not carry unrestricted rights to gather information. A reasonable restriction on the exercise of the right to know or right to information is always permissible in the interest of the security of the State. Generally, the exemptions/exemption under the laws referred to in Article 19 (2) entitled the government to withhold information relating to the following matters:

- i. International relations;
- ii. National security (including defense) and public safety;
- iii. Investigation, detection and prevention of crime;
- iv. Internal deliberations of the government;
- v. Information received in confidence from a source outside the government;
- vi. Information, which is disclosed, would violate the privacy of the individual;
- vii. Information of an economic nature, (including trade secrets) which, if disclosed, would confer an unfair advantage on some persons or concern, or, subject some person or government to an unfair disadvantage;
- viii. Information about scientific discoveries;¹⁰

Right to Silence:

The right to speech implies the right to silence. It implies freedom, not to listen and not to be forced to listen. The right comprehends the freedom to be free from what one desires to be free from. A loudspeaker forces a person to hear what he wishes not hear. The use of speaker may be incidental to the exercise of the right but, its use is not a matter of right, or part of the rights guaranteed by Article (1).¹¹

Freedom of Press:

Although Article 19 does not express provision for freedom of press but the fundamental right of the freedom of press implicit in the right the freedom of speech and expression. In the

⁹ Thalappalam Ser Cooperative Bank Limited v State of Kerala, (2013) 16 SCC 82 : 2013 (12) SCALE 527

¹⁰ Peoples' Union for Civil Liberties v UOI, (2004) 2 SCC 476 : AIR 2004 SC 1442

¹¹ Re Noise Pollution(V), (2005) 5 SCC 733 : AIR 2005 SC 3136

famous case *Express Newspapers (Bombay) (P) Ltd. v. Union of India*¹² court observed the importance of press very aptly. Court held in this case that “In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

Some other aspects of Freedom of Press:

In *M Hasan v State of Andhra Pradesh*,¹³ the Andhra Pradesh High Court has held that denial of permission to a press reporter to interview a willing condemned prisoner on a ground not falling within Article 19(2) is not valid. “*Any such denial is deprivation of a citizen’s Fundamental Right of freedom of speech and expression.*” Voting at an election is a form of expression.¹⁴ A citizen as a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favor of a candidate who satisfies his criterion of being elected as an MP or MLA.

PARLIAMENTARY PRIVILEGES AND FREEDOM OF SPEECH

The essence of parliamentary democracy is a free, frank and fearless discussion in Parliament. For a deliberative body like House of Parliament, freedom of speech within the House is of utmost significance. To enable members to express themselves freely in the House, it is essential to immunize them from any fear that they can be penalised for anything said by them within the

¹² (1985) 1 SCC 641

¹³ AIR 1998 AP 35

¹⁴ PUCL v UOI, (2003) 4 SCC 399 : AIR 2003 SC 2363

House. The rule of freedom of speech and debate in Parliament became established in Britain in the 17th century in famous case of *Sir John Eliot*.¹⁵

In India, the freedom of speech in Parliament has been expressly safeguarded by articles 105(1) and (2). Article 105(1) says “subject to provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.” The Rajya Sabha held in its XII report that a parliament member cannot be questioned in any court or any place outside the parliament for any disclosure he made since it will amount to interference with the freedom of speech. Subsequently Lok Sabha has also held that it will amount to contempt of court or breach of privilege if any suit is filed in court for what is said on the floor of the house.

The courts have no say in the matter and should really have none. In a much publicized matter involving former Prime Minister, several ministers, Members of Parliament and others a divided Court, in *P.V. Narsimha Rao v. State (JMM Bribery Case)*¹⁶ has held that “*the privilege of immunity from courts proceedings in Article 105 (2) extends even to bribes taken by the Members of Parliament for the purpose of voting in a particular manner in Parliament*”. The majority (3 judges) of the Apex Court did not agree with the minority (2 judges) and explained that expression “in respect of” in Article 105(2) must be given a wide meaning so as to comprehend an act having a nexus or connection with the speech made or a vote given by a member in parliament or any committee thereof. So interpreted, it would include within its ambit, acceptance of bribe by a member in order to make a speech or to cast his vote in parliament or any committee thereof in a particular manner. Therefore, the bribe taker MPs, who had voted in parliament against no-confidence motion was held entitled to protection of Article 105(2) and was not answerable in a court of law for alleged conspiracy and agreement. The court further held that the bribe taker MP, who did not vote on the no- confidence motion, was not entitled to protection under Article 105(2). To the bribe giver MPs it was held, the protection under Article 105(2) was not available. The court further ruled that the Lok Sabha could take action for breach of privileges or contempt against the alleged bribe givers and against the alleged bribe takers, whether or not they were members of parliament. The court was however

¹⁵ 3 State Trials, 294

¹⁶ AIR 1998 SC 2120

unanimous that the members of Parliament who gave bribes, or who took bribes but did not participate in the voting could not claim immunity from court proceeding's under Article 105(2). The decision has invoked so much controversy and dissatisfaction that a review petition is pending in the court.

Constitutional Regulation of Freedom of Expression

It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some curbs on this freedom for the maintenance of social order. No freedom can be absolute or completely unrestricted. Accordingly, under Article 19(2) 358 and 359, the state may make a law imposing restrictions on the exercise of the right to freedom of speech and expression „in the interest of“ the security of state.

(i) During Normal Times: Reasonable Restrictions

During normal times freedom of expression can be restricted, under Article 19(2), only in the interest of security of the State, friendly relations with foreign States, public order, decency or morality, in relation to contempt of court defamation or incitement as an offence. These restrictions intend to strike a proper balance between the liberty guaranteed under Article 19(1) (a) and the social interest specified under Article 19(2). The court's commitment to the freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. It is settled law that the anticipated danger should not be remote, conjectural or far-fetched. It should have a direct nexus with expression. It should be intrinsically dangerous to the public interest. There is a heavy burden in the State to prove that the restriction is reasonable. Of these restrictions, the one most habitually

The hypocrisy of the State is exposed when they allow dances in movies that are viewed by a huge audience, but shun same dances in bars performed in front of a restricted adult audience, and when the State allows movie posters or fashion shows with women wearing skimpy clothes but shuns paintings of art that depict nudity or sexuality on the grounds of religion, morality and obscenity. The pertinent question is that how and who decides what is vulgar

indecent, lewd, obscene and not acceptable by society, thereby justifying a „reasonable democracy?¹⁷

The eight grounds of restriction which are mentioned in clause (2) of Article 19 are:

- a. Security of the State
- b. Friendly Relations with Foreign State.
- c. Public Order.
- d. Decency or Morality.
- e. Contempt of Court.
- f. Defamation.
- g. Incitement of an offence.
- h. Sovereignty and integrity of India.

“**Security of the State**” means ‘the absence of serious and aggravated forms of public disorder’, as distinguished from ordinary breach of ‘public safety’ or ‘public order’ which may not involve

any danger to the State itself. Thus, security of the state is endangered by crime of violence intended to overthrow the government.¹⁸

“**Friendly relations with foreign states**” the object of this expression to the freedom of speech and expression is to prevent libels against foreign states in the interest of maintaining friendly relations with them.

“**Public order**” this ground was added by the Constitution (1st Amendment) Act, 1951, in order to meet the situation arising from the Supreme Court’s decision in Romesh Thapper’s case.¹⁹ In this case, it was held that ordinary or local branches of public order were no grounds for imposing restriction on the freedom of speech and expression guaranteed by the Constitution. The Supreme Court said that ‘public order’ is an expression of wide connotation and signifies “that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established.”

“**Decency and morality**” the words “morality and decency” are words of wide meaning. The word “obscenity” of English law is identical with the word “indecent” under the Indian

¹⁷ Ibid p.93

¹⁸ Santosh Singh v. Delhi Administration, AIR 1973 SC 1093

¹⁹ AIR 1950 SC 124

Constitution. The test of obscenity is “whether the tendency of matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences” and into those hands a publication of this sort is likely to fall. Thus a publication is obscene if it tends to produce lascivious thoughts and arouses lustful desire in the minds of substantial numbers of that public into whose hands the book is likely to fall. This test was laid down in an English case of *R. v. Hicklin*.²⁰

Section 292 to 294 of Indian Penal Code provides instances of restrictions on the freedom of speech and expression in the interest of decency and morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. But the Indian Penal Code does not lay down any test to determine obscenity. In *Ranjit D. Udeshi v. State of Maharashtra*,²¹ accepted the test laid down in English case of *R. v. Hicklin* to judge the obscenity of a matter. In *P.K. Somnath v. State of Kerala* it was held that even a nude body, whether male or female, cannot be regarded as an object of obscenity without something more. That ‘something more’ is in facial expression or the pose in which it is photographed. It is to the subjective tastes of the viewer and does not base it on an objective criteria or an artful depiction or just as an expression. The word ‘morality’ too has not been defined. The conception of morality differs from place to place and time to time. Therefore, it is imperative that the freedom of speech and liberty should not be curtailed unless it causes harm to others only that should be prevented by law. The law should aim to establish minimum and not maximum standards of behavior, showing respect for tolerance and privacy.

(ii). **During Emergency**

Article 358 and 359 make provision for the suspension of fundamental right during declaration of emergency. Marginal note of Article 358 is “suspension of provision Article 19 during emergencies”. As soon as a Proclamation of Emergency has been issued under Article 352 and so long as it lasts, Article 19 is suspended [subject to new clause (2)] and the power to the legislatures as well as the executive is to that extent made wider. The suspension of article 19 during the pendency of proclamation of emergency removes the fetters created on the legislative and executive powers by article 19 and if the legislature enactments passed and the executive

²⁰ LR 3 QB 360

²¹ AIR 1965 SC 881

actions taken during the course of the said emergency shall be inoperative to the extent to which they conflict with the rights guaranteed under article 19 because as soon as the emergency is lifted, article 19 which was suspended by the emergency is automatically revived and begins to operate. In other words, the suspension of article 19 is complete during the period in question and legislative and executive actions which contravene Article 19 cannot be questioned after the emergency is over.

CONCLUSION

Over the decades there have been many more amendments to the Constitution, not all of which have great historical significance. However, one thing is certain that every period of conflict in the history of India can almost be mapped alongside a history of moves to amend the Constitution, the constitutional history during the Emergency being a classic case. The first amendment, however, retains a significant space in this history, not merely because it was the first amendment but because in many ways it also signaled the kinds of battles that would take place between the projects of nation building and the sphere of the media. Marked the rather premature end of the vision of a seamless web, with the promotion of national security and sovereignty being prioritized over the promotion of democratic institutions.

As with any project of state imagination, the impact of the first amendment is also fraught with contradictions and internal conflicts. While introducing the discourse of public order into constitutional restrictions on freedom of speech and expression, it also introduced the idea of reasonable restriction, and, as Nehru rightly predicted, *“it proved to be the basis for future conflicts over the media, the Constitution and state formative practices.”* The contradictions that arose between the three strands of the seamless web of the Constitution were seen as the disintegration of the whole, rather than as the inevitable process through which fragments work their way into monumentalist imaginations.