



Indian Constitution and Human Rights perspective of freedom of speech and expression - An over view

Dr. K. Pallavi, Assistant Professor (C), Dr. B.R. Ambedkar College of Law,
Andhra University, Visakhapatnam

Abstract:

The right to freedom of expression is recognized as a human right under article 19 of the Universal Declaration of Human Rights and recognized in international human rights law in the International Covenant on Civil and Political Rights. The Constitution of India the supreme law of the land, guarantees freedom of speech and expression under Article 19, which deals with "Protection of certain rights regarding freedom of speech, etc". The right to express opinions freely is critical in a democracy. Freedom of speech and expression includes freedom of circulation, to the extent that the ability to propagate one's expression is inherent in that freedom. Hence, even a right to enforce a fundamental right by moving the Supreme Court is guaranteed under Article 32 of the Constitution as a fundamental right. Freedom of speech and expression may bring to the control over the state authorities exercised by the society and to the maintenance of the self-controlled society, which is the demand of democracy. And the society can do this in case it is informed in aggregate with the open exchange of opinions. Hence mass media as an instrument for the exercising of freedom of speech and expression gains importance for a democratic society.

Key words: girl child, foeticide, gender discrimination

1. Introduction

Human Rights are generally defined as the rights which every human being is entitled to enjoy and to have protected. Human rights are commonly understood as "inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being." Human Rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts. On 22nd January 1947, the Constituent Assembly of India adopted the resolution of India' Charter of Freedoms. Concept of freedom of speech can be found in early human rights documents. England's Bill of Rights 1689 legally established the constitutional right of 'freedom of speech in Parliament' which is still in effect. The Declaration of the

Right of Man and of the Citizen, adopted during the French Revolution in 1789. During the last decades the emphasis on fundamental rights reached its climax with the formation of the UNO after the Second World War and the subsequent drafting of the Universal Declaration of Human Rights. The United Nations Charter which came in to effect on 24th October 1945, reflected the aspirations of the peoples who affirmed faith in 'fundamental human rights' and 'in the dignity and worth of the human person'.

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General



Assembly resolution as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. Article 19 of the Universal Declaration of Human Rights states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the United Nations, between them making the rights contained in the UDHR binding on all states that have signed this treaty, creating human-rights law. Human rights are thus conceived as universal and egalitarian. These rights may exist as natural rights or as legal rights, in both national and international law. The struggle for the recognition of human rights and the struggle against political, economic, social and cultural oppression, against injustice and inequalities, have been an integral part of the history of all human societies. Based on John Milton's arguments, freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects:

1. The Right to Seek information and Ideas;

¹, therefore it is not enforceable in a court of law. However, the Supreme Court of India has, in the Kesavananda Bharati² case, recognized that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. In the 1995 case of Union

2. The Right to Receive Information and Ideas;

3. The Right to Impart Information and Ideas.

Today, International, regional and national standards also recognize that freedom of speech, as the freedom of expression, includes any medium, be it orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression.

2. Human rights and The Indian Constitution

Human Rights in Indian Constitution can be found in the Preamble of the Constitution of India, Part III of the Constitution on Fundamental Rights and Part IV of the Constitution on Directive Principles, which together have been described as forming the core of the Constitution which together reflect the basic principles of the Universal Declaration of Human Rights and the Covenants on Civil and Political Rights, Economic, Social and Cultural Rights, and Part IVA of the Constitution on Fundamental Duties.

a) Preamble

The Preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document. The preamble is not an integral part of the Indian constitution was first decided upon by the Supreme Court of India in the Beru Bari case

Government Vs LIC of India also the Supreme Court has once again held that the Preamble is an integral part of the Constitution.

b) The Fundamental Rights

The Fundamental rights are defined as basic human freedoms which every Indian citizen has the right to



enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, color or Gender. They are enforceable by the courts, subject to certain restrictions

The six fundamental rights recognized by the constitution. One of them is the right to equality. It is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. It is also the principal foundation of all other rights and liberties. Article 14 of the constitution guarantees that all citizens shall be equally protected by the laws of the country. It means that the State cannot discriminate any of the Indian citizens on the basis of their caste, creed, colour, sex, gender, religion or place of birth. Social equality and equal access to public areas under Article 15 of the constitution states that no person shall be discriminated on the basis of caste, colour, language etc. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. Equality in matters of public employment: Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law. Article 18 of the constitution prohibits the State from conferring any titles. Citizens of India cannot accept titles from a foreign State. However, Military and academic distinctions can be conferred on the citizens of India. The awards of Bharat Ratna and Padma Vibhushan cannot be used by the recipient as a title.

The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, No one can be awarded punishment which is more than what the law of the land prescribes at that time. Moreover, no person accused of any offence shall be compelled to be a witness against himself. The other principle enshrined in this article is no person can be convicted twice for the same offence. Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. Article 21(A) makes a fundamental right of every child to get free and compulsory education. Rights of a person arrested under ordinary circumstances are laid down in the right to life and personal liberty. Article 22 no one can be arrested without being told the grounds for his arrest. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours. The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency. Child labor and Begar is prohibited under Right against exploitation. The right against exploitation, given in Articles 23 and 24, provides for two



provisions, Article 23 the abolition of trafficking in human beings and Begar (forced labor), Article 24 abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision

Right to freedom of religion, covered in Articles 23, 24, 25, 26, 27 and 28. Cultural and educational rights under Articles 29 and 30 are there to protect the rights of the minorities. All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution.

c) The Directive Principles of State Policy

The Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the State to guide the establishment of an economic and social democracy, as proposed by the Preamble. The State is expected to keep these principles in mind while framing laws and policies, even though they are non-justifiable in nature. The Directive Principles may be classified under the following categories: ideals that the State ought to strive towards achieving; directions for the exercise of legislative and executive power; and rights of the citizens which the State must aim towards securing.

d) Fundamental Duties

Article 51 deals with the Fundamental Duties of the Citizens. It, inter alia, postulates that it shall be the duty of every citizen of India to abide by

the Constitution, to promote harmony and the spirit of common brotherhood, to safe guard public property and to abjure violence.

3. Legislative Protection of Human Rights in India.

A number of National statutes to promote and protect the human Rights have been made in India. Some of the Following notable legislations concerning the protection of Human Rights are:

- The practice of sati was formally abolished by Governor General William Bentick after years of campaigning by Hindu reform movements such as the Brahmo Samaj of Ram Mohan Roy against this orthodox Hindu funeral custom of self-immolation of widows after the death of their husbands in the year 1829.
- Criminal Tribes Act 1871, was repealed by the government in 1952 and replaced by Habitual Offenders Act (HOA) in the year 1952.
- Workmen's Compensation Act, in the year 1923.
- Child Marriage Restraint Act, prohibiting marriage of minors less than 14 years of age is passed in the year 1929.
- Protection of Civil Rights Act, 1955 in the year 1955.
- Immoral Traffic Act in the year 1956.
- Dowry Prohibition Act. This is an Act to prohibit the evil practice of giving and taking of dowry in the year 1961.
- Bonded Labor (System) Abolition Act –The Act provides for the abolition of bonded labor system to prevent the economic and physical exploitation of the weaker sections of the people in the year 1976.
- The Shah Bano case, where the Supreme Court recognized the Muslim woman's right to



- maintenance upon divorce, to nullify the decision of the Supreme Court, the Rajiv Gandhi government enacted The Muslim Women (Protection of Rights on Divorce) Act 1986.
- Environmental Protection Act in the year 1986.
 - Juvenile Justice Act in the year 1986.
 - Child Labor (Prohibition and Regulation) Act in the year 1986.
 - Indecent Representation of Women (Prohibition) Act. This Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures, or in any other manner in the year 1986.
 - National Commission for Scheduled Castes and Scheduled Tribes. Article 338 of the Constitution requires constitution of the National Commission for SC's and ST's for better protection of the rights of the members of the Scheduled Castes and Scheduled Tribes in the year 1987.
 - Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, is passed in the year 1989.
 - National Commission for Women Act, 1990. An Act to constitute a National Commission for Women for better protection of the rights of women in the year 1990.
 - National Commission for Minorities Act, 1992 An Act to constitute a National Commission for Minorities for better protection of the rights of the minorities in the year 1992.
 - National Human Rights Commission is established under the Protection of Human Rights Act in the year 1993.
 - A powerful Right to Information Act is passed to give citizen's access to information held by public authorities in the year 2005.
 - National Rural Employment Guarantee Act (NREGA) guarantees universal right to employment in the year 2005.
 - The Right of children to Free and Compulsory Education Act came into force. This is a historic day for the people of India as from this day the right to education will be accorded the same legal status as the right to life as provided by Article 21A of the Indian Constitution. Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighborhood in the year 2010.
 - The National Food Security Act, 2013. Human Rights are the rights which entitle mankind a decent, civilized life in which the inherent dignity of each human being will receive respect and protection. It rather means those conditions of life which allow mankind to develop and use their human qualities of intelligence and conscience and to satisfy their spiritual needs. All these human rights are fundamental to our nature. In the absence of these rights we cannot live as human beings.

4. Free Speech and Expression

Freedom of speech and expression is a fundamental right nationally and it is also considered as Human right internationally like equality and liberty. Free speech is an indispensable tool of self-governance in a democratic society. Indian constitutional



founders were greatly influenced by First Amendment to the Constitution of United States of America. That Amendment says: The Congress shall make no law abridging the freedom of speech or of press. It assures in relatively, absolute terms, freedom of speech and the press. The Constitution of India the supreme law of the land, guarantees freedom of speech and expression under Article 19, which deals with "Protection of certain rights regarding freedom of speech, etc". Clause (1)(a) of Article 19 states: "All citizens shall have the right to freedom of speech and expression." But under the Indian constitution this freedom a lot more qualified Article 19(2) contains a list various grounds that permit the government to impose reasonable restrictions on the freedom. These grounds are India's sovereignty and integrity, state security, foreign relations, public order, decency, morality, contempt of court, defamation and incitement of offences

Freedom of speech and expression includes freedom of circulation and access to Information, to the extent that the ability to propagate one's expression is inherent in that freedom. Hence, even a right to enforce a fundamental right by moving the Supreme Court is guaranteed under Article 32 of the Constitution as a fundamental right. Further, fundamental rights form a part of the 'Basic Structure' of the Constitution and cannot be amended. Freedom of speech and expression may bring to the control over the state authorities exercised by the society and to the maintenance of the self-controlled society, which is the demand of democracy. The definition of a self-

controlled society means that it itself shall make own decisions. And the society can do this in case it is informed in aggregate with the open exchange of opinions. Hence mass media as an instrument for the exercising of freedom of speech and expression gains importance for a democratic society.

5. Interpretation of Indian Judiciary on 'Free Speech' and 'Expression'

The Indian judiciary, and the Supreme Court in particular, has been much extolled for its progressive stance on the implementation of constitutionally guaranteed rights, indeed in comparison with the executive and legislative institutions under the constitution, the judiciary represents the greatest prospect for continuing reform and increase commitment to the protection of civil liberties.

This process of judicial governance is obviously not without controversy or problems as it raises issues relating to the role of judiciary in a democracy and how judiciary as an institution should position itself in promoting human rights and justice. It also raises the systemic question of separation of powers among the three organs of state-Legislative, executive, and judiciary.

When India's Constitution was inaugurated in 1950, freedom of speech was a relatively novel concept. But the courts were quickly filled with cases in which citizens invoked the new freedom. Most actions involved newspapers or magazines. Plaintiffs were usually newspaper publishers or editors, who alleged that the government had restricted what they wanted to print or publish. Unlike the more recent South African Constitution, India's Constitution does not expressly recognize



press or media freedom. But this omission did not stop the supreme court from declaring that freedom of the press is an integral part of Article 19(1)(a).

Romesh Thapar v. Madras,³ was the court's first free speech decision. It arose from a government order forbidding the circulation of a journal, "Crossroads". The order was made under a state law enacted to protect public safety and public order. Thapar, Crossroads's editor and publisher, complained that the order violated his freedom of speech. The Supreme Court, which had barely opened for business, agreed. Writing for the majority, Justice Patanjali Sastri ruled that free speech includes the right to propagate ideas, which is ensured by circulation. Public order was not a constitutional basis to restrict free speech. the law was declared unconstitutional and the order set aside.

Conclusion

Human rights have been recognized to standards of achievement and norms of behavior of all members of a society, in particular of those in

References:

¹ In re Berubari Union, AIR 1960 SC 783.

² Keshavanand Bharti v. State of Kerala, AIR 1973 SC 1441.

³ AIR 1950 SC 124.

4. A.K. Sharma, 'Global Governance Human Rights and Development' Delhi: Swastik Publications (2011)

5. A.N. Sen, 'Human Rights', Faridabad (Haryana): Sri Sai Law Publications (2012).

6. Asha Kiran, 'The History of Human Rights from Ancient Times to Globalization Era', Delhi: Manglam Publications (2011).

authority like the governments or other agencies who have the power to influence the behavior of others. Human rights are expressions of basic freedoms, which require access to and availability of basic necessities for all people to be reached through processes that are built on the notion of 'equity', 'non-discrimination', 'participation', and 'empowerment'. So the human rights based developmental policy has to be equitable and participatory, accountable and non-discriminatory. If development based on the human rights is accepted by the people of India, it will change the whole developmental approach policy in the country.

***Dr. B.R. Ambedkar**, rightly expressed his opinion on Human Community as: "Democracy is not merely a form of Government. It is primarily a mode of associated living, of conjoint communicated experience. It is essentially an attitude of respect and reverence towards our fellow men."*