



## Freedom of Speech and Expression

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**Abstract:** Speech is God's gift to mankind. Through speech 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. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration Of Human Rights (1948). The people of India declared in the Preamble of the Constitution, which they gave unto themselves their resolve to secure to all the citizens liberty of thought and expression. This resolve is reflected in Article 19(1) (a) which is one of the Articles found in Part III of the Constitution, which enumerates the Fundamental Rights. Man as rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals.

**Key words:-** Man kind, humanbeing, freedom, expression, Man, human rights etc.

***"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties" - John Milton***

**Introduction:** The essence of free speech is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution, restriction, or repression by the government. It is through free speech, people could come together to achieve political influence, to strengthen their morality, and to help others to become moral and enlightened citizens.

The freedom of speech 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. 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.

Freedom of speech is guaranteed not only by the constitution or statutes of various states but also by various international conventions like Universal Declaration of Human Rights, European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights etc. These declarations expressly talk about protection of freedom of speech and expression.

### **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.

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.[i]

### **Need to Protect Freedom of Speech and Expression:-**

Freedom of speech offers human being to express his feelings to other, but this is not the only reason; purpose to protect the freedom of speech. There could be more reasons to protect these essential liberties. There are four important justifications for freedom of speech –

- For the discovery of truth by open discussion – According to it, if restrictions on speech are tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.
- Free speech as an aspect of self-fulfillment and development – freedom of speech is an integral aspect of each individual's right to self-development and self-fulfillment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth. It helps an individual to attain self-fulfillment.
- For expressing belief and political attitudes – freedom of speech provides opportunity to express one's belief and show political attitudes. It ultimately results in the welfare of the society and state. Thus, freedom of speech provides a mechanism by which it would be possible to



establish a reasonable balance between stability and social change.

- For active participation in democracy – democracy is most important feature of today's world. Freedom of speech is there to protect the right of all citizens to understand political issues so that they can participate in smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in decision-making.

Thus we find that protection of freedom of speech is very much essential. Protection of freedom of speech is important for the discovery of truth by open discussion, for self- fulfillment and development, for expressing belief and political attitudes, and for active participation in democracy.

### **Indian Perspective:-**

In India under Article 19(1)(a) of the Constitution of India "all citizens shall have the right to freedom of speech and expression". In the Preamble to the Constitution of India the people of India declared their solemn resolve to secure to all its citizens liberty of thought and expression. The Supreme Court of India held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication, as publication is of little value without circulation.

Article 19(2) of the Constitution of India 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 speech would include both artistic and commercial speech which is required to be protected. Freedom of speech and expression would include artistic speech as it includes the right to paint, sign, dance, write poetry, literature and is covered by Article 19(1)(a) of the Constitution because the common basic characteristic of all these activities is freedom of speech and expression.

Under the Constitution of India an individual as well as corporation can invoke freedom of speech and their fundamental rights. Freedom of Speech is not only protected from unwarranted governmental interference but also when a private party calls upon a Court to enforce rules of law whose effect would be to restrict or penalize expression. Much would depend on the issue as to whether the reference to the trade mark involved has been used in the trade mark sense, for example, as envisaged in Section 2(2) (a), (b) and (c) of the Trade Marks Act, 1999. There is dearth of case law of how free speech interests are involved in trade mark litigation. In a given case a party could challenge an act or omission on the part of the Registrar of Trade Marks on the ground that it infringes the fundamental right of a citizen.

**Freedom of speech enjoys special position as far India is concerned. The importance of freedom of expression and speech can be easily understand by the fact that preamble of constitution itself ensures to all citizens inter alia, liberty of thought, expression, belief, faith and worship. The constitutional significance of the freedom**



of speech consists in the Preamble of Constitution and is transformed as fundamental and human right in Article 19(1) (a) as “freedom of speech and expression”.

### **The guarantee of freedom of speech under following heads.**

#### **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 famous case *Express Newspapers (Bombay) (P) Ltd. v. Union of India* 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.”

The above statement of the Supreme Court illustrates that the freedom of press is essential for the proper functioning of the democratic process. Democracy means Government of the

people, by the people and for 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. This explains the constitutional viewpoint of the freedom of press in India.

**Obscenity:** Freedom of speech, though guaranteed, is not absolute in India. Unlike the U.S. Constitution, the text of India’s Constitution clearly sets out restrictions on free speech. The freedom of speech guarantee under Article 19(1) (a) can be subject to reasonable state restriction in the interest of decency or morality. Obscenity in India is defined as “offensive to modesty or decency; lewd, filthy and repulsive.” It stated that the test of obscenity is whether the publication, read as a whole, has a tendency to deprave and corrupt those whose minds are open to such immoral influences, and therefore each work must be examined by itself.

**Right to Information:** Right to know, to information is other facet of freedom of speech. The right to know, to receive and to impart information has been recognized within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. The right to know has, however, not yet extended to the extent of invalidating Section 5 of the Official Secrets Act, 1923 which prohibits disclosure of certain official documents. Even, Right to Information Act-2005, which specially talks about peoples’ right to ask information from Government



official, prohibits disclosure of certain documents under u/s 8 of the Act. These exceptions are generally the grounds of reasonable restrictions over freedom of speech and expression under Article 19(1) of Constitution of India. One can conclude that 'right to information is nothing but one small limb of right of speech and expression.

### **Voters Have Right to Know About their Candidates**

In a landmark judgment in *Union of India v. Association for Democratic Reforms*<sup>4</sup>, a three judge bench held that the amended Electoral Reforms Law passed by Parliament is unconstitutional as being violative of citizen's right to know under Art. 19(1)(g).

### **The 'Freedom of Speech and Expression' Is Indeed A Very High One:**

In recent judgment of the Supreme Court in *Khushboo v. Kanniammal*<sup>6</sup> upholds the right to freedom of speech and expression. Khushboo's right to freedom of speech was violated by the institution of multiple criminal cases against her in various courts across the country and consequent harassment that she suffered.

### **Grounds of Restrictions:-**

It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some restrictions on this freedom for the maintenance of social order, because no freedom can be absolute or completely unrestricted. Accordingly, under Article 19(2) of the Constitution of India, the

State may make a law imposing "reasonable restrictions" on the exercise of the right to freedom of speech and expression "in the interest of" the public on the following grounds: Clause (2) of Article 19 of Indian constitution contains the grounds on which restrictions on the freedom of speech and expression can be imposed:-

1) Security of State: Security of state is of vital importance and a government must have power to impose restriction on the activity affecting it. Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of State. However the term "security" is very crucial one. The term "security of state" refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State.

2) Friendly relations with foreign states: In the present global world, a country has to maintain good and friendly relationship with other countries. Something which has potential to affect such relationship should be checked by government. Keeping this thing in mind, this ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India, and that state.



3) No similar provision is present in any other Constitution of the world. In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government. However it is interesting to note that member of the commonwealth including Pakistan is not a "foreign state" for the purposes of this Constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.

4) Public Order: Next restriction prescribed by constitution is to maintain public order. This ground was added by the Constitution (First Amendment) Act. '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."

5) Decency or morality: The way to express something or to say something should be decent one. It should not affect the morality of the society adversely. Our constitution has taken care of this view and inserted decency and morality as a ground. The words 'morality or decency' are words of wide meaning. Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fix standard is laid down till now as to what is moral and indecent. The standard of morality varies

from time to time and from place to place.

6) Contempt of Court: In a democratic country Judiciary plays very important role. In such situation it becomes essential to respect such institution and its order. Thus, restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. According to the Section 2 'Contempt of court' may be either 'civil contempt' or 'criminal contempt.' But now, Indian contempt law was amended in 2006 to make "truth" a defence. However, even after such amendment a person can be punished for the statement unless they were made in public interest. Again in Indirect Tax Practitioners Assn. vs R.K.Jain, it was held by court that, "Truth based on the facts should be allowed as a valid defence if courts are asked to decide contempt proceedings relating to contempt proceeding relating to a speech or an editorial or article". The qualification is that such defence should not cover-up to escape from the consequences of a deliberate effort to scandalize the court.

7) Defamation: Ones' freedom, be it of any type, must not affect the reputation or status another person. A person is known by his reputation more than his wealth or any thing else. Constitution considers it as ground to put restriction on freedom of speech. Basically, a statement, which injures a man's reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. The civil law in relating to defamation is still uncodified in India and subject to certain exceptions.



8) Incitement to an offence: This ground was also added by the constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offence. The word 'offence' is defined as any act or omission made punishable by law for the time being in force.

9) Sovereignty and integrity of India- To maintain sovereignty and integrity of a state is prime duty of government. Taking into it into account, freedom of speech and expression can be restricted so as not to permit any one to challenge sovereignty or to permit any one to preach something which will result in threat to integrity of the country.

**Conclusion:** From above analysis, it is evident that Grounds contained in Article 19(2) show that they are all concerned with the national interest or in the interest of the society. The first set of grounds i.e. the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest, whereas, the second set of grounds i.e. decency, morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society. Expression through speech is one of the basic guarantees provided by civil society. However in modern world Right to freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information,

freedom of press etc. It is a right to express and self realization.

#### References:-

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12. [State of Bihar v. Shailabala Devi](#), AIR 1952 SC 329.
13. Om Prakash v. Emperor, AIR 1948 Nag, 199.
14. Raj Bahadur Gond v. State of Hyderabad