

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 2

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Part of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaints**, please contact Mr. Gyan Prakash Kesharwani, Founding CEO of VidhiAagaz at Gyan@vidhiaagaz.com.

To submit your manuscript for publication at **International Journal of Law Management & Humanities**, kindly email your manuscript at editor.ijlmh@gmail.com.

Right to Speech – A Pillar of Democracy

DR. ASHU DHIMAN¹ AND MR. PARAMJEET SINGH²

ABSTRACT

Major milestone in providing right to speech and expression was achieved on 10th December 1948, when in Paris the United Nations proclaimed the Universal Declaration of Human Rights and whose Article 19 provides for, “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 India, there was no right to speech and expression up until the departure of British and birth of Constitution of India in 1949, the provision Article 19(1)(a) provides for, “All citizens shall have the right to freedom of speech and expression”. Freedom of speech and expression comes under purview of rule of law and works as a hallmark for the democracy. Without having the power to criticize the government or their policies, the main objective of democracy is violated. To ensure the survival of democracy and for the sake of all human beings to live a life worth living, each country in this world needs to provide its citizen with basic right to speech and expression.

In this paper, the researcher’s main focus would be on the provisions provided under national and international law on implementation of Right to speech and expression.

Keywords: Government, Article, Constitution, Proclamation, Charter, Democracy.

I. INTRODUCTION

“The Constitution is not an instrument for the Government to restrain the people, it is an instrument for the people to restrain the Government.”

Patrick Henry (1736 – 1799)³

Patrick Henry was one of the founding fathers of the world’s first democracy and was of the view that constitution is supreme and is the way through which people can become the master

¹ Assistant Professor, Centre for Legal Studies, Gitarattan International Business School, Rohini, Delhi

² Student, Centre for Legal Studies, Gitarattan International Business School, Rohini, Delhi

³ Patrick Henry was an American attorney, planter, and orator best known for his declaration to the Second Virginia Convention: "Give me liberty, or give me death!" A Founding Father, he served as the first and sixth post-colonial Governor of Virginia, from 1776 to 1779 and from 1784 to 1786

of the government and to ensure the rule of law over a state, there is a dire need of Fundamental basic human rights which ensures that every citizen get liberty to criticize the elected government and can remove the government for a better one, by the procedure established by law.

Speech is considered as a divine gift to human beings, hence a basic right. Speech is what distinguishes animals from the humans, speech helps us in communicating and in working as a society or community, our ability to speak and express ourselves helped us to innovate or invent and achieve. Speech is the way through which a person conveys his thoughts.

Earlier, human beings enjoyed rights within families or communities they were part of, and not through state. Initially, Civil rights or fundamental rights was introduced in the Cyrus cylinder, it was a clay tablet written in 539 BC, Cyrus the great freed all the slave he took when he conquered the city of Babylon and gave right to his people to choose whichever religion they want. *Cyrus cylinder* was the world's first human right declaration in the history⁴.

After *Cyrus cylinder*, in 1215AD King John of England signed off a promised order to avoid a civil war and which order later come to known as *Magna Carta* order. It provided certain promises of the king which later came to known as Human rights.

After *Cyrus cylinder* and *magna carta*, people started getting aware that the state cannot always do whatever it pleases and hence much more human rights declarations such as, the *Petition of Right*⁵ 1628, *The United States Declaration of Independence 1776*⁶, *The declarations of the right of the man and of the citizen 1789*⁷ and last but not the least *Universal Declaration of the Human Rights 1948*⁸.

After facing the vicious atrocities of the both world wars, the international community pledged to ensure that every human being should be vested with fundamental rights and the crimes against humanity which are committed by the state, needed to be stopped.

James Madison was the founding father of the world's first democracy and wrote that, "*it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits.*"⁹

⁴ Antoine Simonin, The Cyrus Cylinder, *Ancient History Encyclopedia*, 18/01/2012, available at <https://www.ancient.eu/article/166/the-cyrus-cylinder/> (Last visited on 14/04/2020)

⁵ The Petition of Rights (1628)

⁶ The United States Declaration of Independence (1776)

⁷ The Declaration of the right of the man and of the citizen (1789)

⁸ Universal Declaration of the Human rights (1948)

⁹ Stephen D. Solomon, Madison's Powerful Defense of Free Speech, *STEPHEN D. SOLOMON*, 2016, available at <http://www.stephensolomon.com/madisons-freedom/> (Last visited on 15/04/20)

It won't be entirely farfetched to say that the Freedom of speech and expression is the most important liberty a state can give to its citizen as right to speak freely and express one's thoughts is being considered as mother of all liberties. For example, If the citizens of a state do not have right to speak freely against state, how can they possibly ask for any other right.

In India there was no concept of freedom of speech until India got independence from the British and a constitution of its own was implemented, which provides for certain fundamental rights which are enforceable against the state among which the right to speech and expression¹⁰ is also enshrined.

II. UNIVERSAL DECLARATION OF HUMAN RIGHTS

Universal declaration of human right provides standards or guidelines which a member state may adopt to provide its citizen with basic human rights. The main aim of the proclamation is to ensure the benefit of every member of the human family. The said declaration was adopted by General Assembly of the United Nations on 10th December 1948 in Geneva, it was the first time that international communities have agreed on inalienable human rights.

Article 19 of the *Universal Declaration of Human Rights*¹¹ provides for, "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." It narrates all the member states or signatories of the said proclamation to make appropriate provisions for their citizens to ensure this basic right of speech and expression, where one can have freedom of having opinions and can share them through media if the person wants, without any interference from the side of state.

Influence of Universal Declaration of Human Rights on India

The Universal Declaration of Human Rights was a non-binding document but Part III and Part IV of the Constitution of India 1949, are highly influenced by the UDHR. The makers of the Constitution had a huge impact from ideology of the said declaration. India sent the delegation to the United Nations to help in drafting the said document.

Most of the rights incorporated in the Constitution of India are somewhat similar to that of Universal Declaration of Human Rights; we can find them in two parts¹².

¹⁰ The Constitution of India, art. 19(1)(a)

¹¹ Universal Declaration of Human Rights, art. 19.

¹² Government of India Archives, available on https://archive.india.gov.in/spotlight/spotlight_archive.php?id=73#mf2 (Last visited on)

- a) Article 2 to Article 21 of Universal Declaration of Human rights can be found in between Part III Fundamental Rights which are Article 12 to Article 35 of the Constitution of India.
- b) Article 22 to Article 28 of Universal Declaration of Human rights can be found in between Part IV Directive Principles of State Policy which are Article 36 to Article 51 of Constitution of India

In case of *Charan Lal Sahu vs Union of India*¹³, the apex court reviewed the articles of Universal declaration of Human rights on the topic of Bhopal Gas leak. In another case of *The Chairman, Railway Board & Ors vs Mrs. Chandrima Das*¹⁴, the court was of view that the International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those Rights. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence.

III. INDIAN PERSPECTIVE

Constitution of India 1949, provides under Article 19(1)(a) that all citizens have the right to freedom of speech and expression. This liberty is available only to the citizen¹⁵ of the India and not to any person.

The legacy of right to speech and expression is being carrying forward by many judgements as in case of *Ramesh Thappar vs State of Madras*¹⁶, it was held that “*Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible.*”

The Right to speech & Expression is not an absolute right; article 19(2) of the Indian constitution empowers the state to put some reasonable restrictions on it. It provides the grounds on which the said reasonable restriction can be put and they are integrity or the security of the state, defamation, morality, friendly relations to foreign states, incitement to commit an offence, public order etc. The word “*reasonable restriction*” put discretionary powers in the hands of the state.

¹³ Charan Lal Sahu vs Union of India 1990 AIR 1480

¹⁴ The Chairman, Railway Board & Ors vs Mrs. Chandrima Das (2000) 2 SCC 465.

¹⁵ The Constitution of India 1949, art. 5.

¹⁶ Ramesh Thappar vs State of Madras (1950) SCR 594

But in another case of *State of MP vs Bharat Singh*¹⁷, it was held that to impose the reasonable restriction on the right of speech and expression, the state needs authority of law to do so, without authority of law, no restriction can be imposed on the right and if any restriction is imposed, it shall be deemed unconstitutional.

It is clear from various judicial pronouncements that judiciary is always in favour of upholding the right to speech and expression and helps in enforcing the right and act as a safeguard against the state whenever the right is violated. The state however uses the charges of sedition against any out of the sync voice in the society because there is very thin line between sedition and right to speech. If used arbitrarily, sedition law would violate the right to freedom of speech and expression guaranteed by the Constitution.

IV. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

On 19th December 1966, the General Assembly at United Nations adopted *International covenant on civil and political rights*¹⁸ and gives legal force to Universal Declaration of Human rights. Both declaration and covenant combined are known as International Bill of Rights.

Just like Universal Declaration of Human rights, International Covenant on Civil and political rights also provides for specific provisions for ensuring the freedom of speech and expression which is enshrined under Article 19¹⁹ which says :-

- 1) *“Everyone shall have the right to hold opinions without interference.*
- 2) *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”*

Furthermore, clause iii of the said article provides for grounds on which the state can put restrictions on exercise of this right and such grounds are:

- a) *“For respect of the rights or reputations of others*
- b) *For the protection of national security or of public order (ordre public), or of public health or morals.”*

¹⁷ State of M.P. vs. Bharat Singh (1967) 2 SCR 454.

¹⁸ International Covenant on Civil and Political Rights (1966)

¹⁹ International Covenant on Civil and Political Rights, art. 19.

Implementation of International Covenant on Civil and Political Rights

The Universal Declaration of Human Rights was not binding in the nature and thus being enforceable it was not able to do any good, as the maxim says *ibi jus ibi remedium* that there should be a remedy available whenever the right of citizens are being violated by the state as Universal Declaration of Human rights failed to provide for any remedies and United States realized there mistake after two decades when they adopted this covenant.

This covenant makes its binding on the member states who is signatory to this covenant and those who ratified it. Article 2 of the said covenant directs the state to implement its policies and to provide remedies in case of violation of any basic human right.

India is not mere signatory for International Covenant on civil and political rights but India has also ratified the covenant²⁰ on 10th April 1979, which means the International Covenant on civil and political rights are enforceable in India (due to effects of ratification)²¹.

V. REGIONAL CHARTERS

There are some international yet regional charters which provide for basic human rights for human beings among which, freedom of speech and expression also holds important place. These regional charters have next to none influence on India or any type of legal obligation etc. Some of these charters are:-

- ***African Charter on Human and People's Rights***

The charter was adopted by Organisation of African Unity on 27th June 1981; the African commission on human and people's rights was tasked with three main things to do;

- 1) *Protection of Human and people's rights*
- 2) *Promotion of Human and people's rights Interpretation of the African Charter of Human and People's rights*²².

Article 9 of African charter on human and people's rights provides for the right to speech and expression, it says: -

- 1) *Every individual shall have the right to receive information.*

²⁰ Human Rights Committee, *Declarations and Reservations (Unless otherwise indicated, the declaration and reservations were made upon ratification, accession or succession. For objection thereto and declarations recognizing the competence of the Human Rights Committee under Article 41)*, Resolution No. 14668, Adoption date: 16 Dec 1966, Entry into force on: 23 March 1976.

²¹ UNICEF, *Implementing and monitoring the Convention on the Rights of the Child*, UNICEF/UN0237314, available at <https://www.unicef.org/child-rights-convention/implementing-monitoring> (Last visited on 15/04/2020)

²² African Commission on Human and People's Rights (1987)

2) *Every individual shall have the right to express and disseminate his opinions within the law.*

- ***American Convention on Human Rights***

American convention on human rights²³ become effective from 18th July 1978, this document was signed by 24 countries of western hemisphere. The main motive of the convention was to ensure the liberties of the man. Just like African Charter, American charter has no influence or any legal binding authority over India.

Under Article 13²⁴ of the said convention provides for freedom of speech and expression which says, “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice”.

- ***Arab Charter on Human Rights***

On 22nd May 2004, The League of Arab States adopted the *Arab Charter on Human Rights*²⁵, it contains the principles of Universal Declaration of Human right as well as of International Covenant on Civil and Political rights.

This charter also provides for right for freedom of speech and expression under Article 26²⁶ of the said charter, it says that everyone has a guaranteed right to freedom of belief, thought and opinion. Under this charter, the right provided is without any restriction on any grounds such as public order, security of state, defamation etc.

The Arab charter on Human rights also has no influence or legal authority over India.

- ***European Convention on Human Rights***

Council of Europe drafted European convention on Human Rights²⁷ in 1950 and it became active in 1953. Russia was also a part of this convention and the important thing under this convention is that this convention is binding on the member state and they have to be obliged by the judgement given by the European Court of Human Rights²⁸.

²³ American Convention on Human Rights “Pact of San Jose, Costa Rica” 1969.

²⁴ American Convention on Human Rights “Pact of San Jose, Costa Rica” 1969, art. 13.

²⁵ Arab Charter on Human Rights 2004.

²⁶ Arab Charter on Human Rights 2004, art. 26.

²⁷ European Convention on Human Rights 1950.

²⁸ European Convention on Human Rights, art. 19

This convention provides for right to freedom of speech and expression under Article 10²⁹ of the said convention which provides for, “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

The said exception was included when there was used to be less frequencies available and not all but majority of state members had overall control over the economy of broadcasting, but with progress and innovation in technology, the decisions of the courts started to come with view that mere justification of less frequencies cannot be taken as defence.

VI. RIGHT TO PROTEST UNDER INDIAN LAW

Protesting is a mere form of registering of grievance of the public to the state where public shows the elected government that they are not happy or satisfied by their policies. As in Democracies, the government is being selected by the people and the people are the master of the government. If the masters can't hold their servants accountable or ask them questions, then is there really a democracy? No Person's first choice is going on protesting against the government but it surely is there last chance, when public goes on protesting it's because they are fed up and have nothing else do.

Organized and non-violent protests were one of the most contributing factors which helped us in gaining independence from Britishers. India is a country of 1.3 billion persons and some grievances on part of state is inevitable and thus protests of public keeps state informed and helps state in making their future policies with consideration of need of society. Protests are a way of keeping check and balance on the state by the people.

Right to protest comes under scope of Article 19³⁰ alongside with right to speech. Provisions such as Article 19(1)(a) Right to Speech and Expression, Article 19(1)(b) Right to Assembly, Article 19(1)(c) Right to form Association or Unions; when constitutes together, makes the Right to peaceful protest without any arms.

In *Anita Thakur and Ors. vs State of Jammu & Kashmir*³¹, the divisional bench of Supreme Court said, “*It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-*

²⁹ European Convention on Human Rights, art. 10

³⁰ The Constitution of India 1949, art. 19.

³¹ Anita Thakur & Ors. Vs State of Jammu and Kashmir, Writ Petition (Criminal) No. 118 of 2007

violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognized as a fundamental right in the constitution”

VII. CONCLUSION

Expression through speech is one of the basic rights provided by a civilised society. It has been observed, that freedom to speech and expression is essential for a democratic process to function properly. Such freedom is regarded as first condition of liberty. Every democratic society, in order to work successfully, has to provide for this right as it has been proved to be a lifeline of democracy.

In this paper, the authors wanted to shed the light on the measures taken by various international organizations to ensure the survival of democracy by securing basic human rights of speech and expression through various instruments from time to time like, Universal Declaration of Human Rights then International covenant on Civil and Political rights.

The Authors observes that all this international charters or declarations were made in the era commonly known as “cold war”. It won’t be farfetched to say that cold war had no influence on the said declarations. As we all know that cold war between west and east was just a war between capitalism and communism, in other words this was the war between democratic countries of the west vs socialist countries of the east. So the said declarations and international charters were created by influential west to ensure the victory of democracy by giving basic right to citizens such as giving them right to speak freely through which the citizens could make their voices heard at a national or an international level if the state is exploiting the basic rights of a citizen.

Regardless of the motive behind the declaration of human rights or international charters or even regional charters for such matter, they all helped in bringing basic right to every member of human species and it was implied that every live matters.

As discussed earlier, India through its constitution ensures the right to freedom of speech n expression and also emphasize restrictions on the rights which are reasonable in nature. The objective behind imposing such restrictions is to maintain public order, peace, morality & justice in the society.
