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# A Study on Interpretation of Right to Freedom from a Judicial Perspective

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## ABSTRACT

*The constitution is the living document which provides for the basic rights of an individual, one of these important rights is the Right to Freedom. Right to Freedom can be the Right to freedom of speech and expression, freedom to peaceful assembly, freedom to an association, freedom to move freely in India or to settle in any part of the country. Judiciary from time to time have interpreted these rights to meet the current need of the society and protected the rights of the citizens of India. This situation arises when either any enactment or any executive action abridges or violates the fundamental rights embodied in the constitution. The judiciary, to protect the citizens from these encroachments which affect their fundamental freedom interpreted and construed these rights of freedom as per the need of the time. This paper will analyze the right to the freedom given to citizens of India and also emphasize how the judiciary has interpreted these rights to protect the rights given to people. This paper will further analyze the interpretation of restrictions imposed upon fundamental freedom.*

**Keywords:** Freedom, Judiciary, Indian Constitution.

## I. INTRODUCTION

Freedom as per the Oxford Advanced Learner's Dictionary means "*the right to do or say what you want without anyone stopping you*". In the understanding of Max Weber, "*Freedoms is one of the most elemental drives in the human breast*".<sup>2</sup>

Being born as humans we inherit certain basic Human Rights such as the right to equal treatment, right to life and liberty, right to human dignity, protection from inhuman treatment, and basic fundamental freedoms such as the right to free speech and expression, right to form an association, right to move freely in the respective territory as well as resettle and reside and right to choose the occupation of one's choice.

Merely incorporation of these words or sentences in statutes or constitutions is not enough. There is always a need for enforcement of these rights. While enforcement the difficulty may arise as to the interpretation of these rights. To illustrate, the right to life once per the honourable

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<sup>2</sup> The Max Weber Dictionary, Stanford University Press, (2<sup>nd</sup> ed., 2020).

Supreme Court has interpreted as a mere animal existence but later on, as per the need for protection of the right to life the same court interpreted it as the right to life including the right to live with human dignity including all facets of life necessary for human survival.

The right to freedom which is currently incorporated in Article 19 was Article 13 in the draft of the Constitution of India. This article provided for certain rights and restrictions. Members mainly focused on the restrictions which should be placed upon these articles. Members contended that rights cannot be absolute and there must be some restrictions imposed upon these. Most of the amendments which were proposed in this article were related to restrictions. *Pandit Thakur Dass Bhargava* a member of the Constituent Assembly proposed that the term “reasonable restrictions” should be used. Which was later on accepted by *B.R. Ambedkar* and assembly members.<sup>3</sup>

## II. FREEDOM: INTERPRETED IN JUDICIAL EYE’S

The Indian Judiciary has more power in the interpretation of the constitution than in any law for Interpretation<sup>4</sup>. Society evolves from time to time and therefore the court is under no duty to accept the meaning of the constitution according to what understating of the legislature in the making of the law<sup>5</sup>. This article was introduced in the constitution to protect all the citizens and give them the liberty of thought and expression. Article 19(1)(a) of the Indian Constitution under freedom of speech and expression was originally understood merely to express one’s perception about something or their opinions freely by using words of mouth, pictures, printing or any other method. But this meaning was very vague and unclear. The word Freedom of speech and expression was found to be ambiguous because it couldn’t include a lot of other rights such as freedom of the press, freedom to remain silent, freedom to get information and so on. To give the words speech and expression and broader meaning and include much other freedom the judges have utilized many rules and other aids to interpret the word. One such rule is the Golden rule by which the court has interpreted the literal meaning of the word speech and expression and given a much more extensive meaning and has included many other freedoms under it for expressing the clear intention of the constituent assembly as to the word speech and expression. The judges use many tools of interpretation like the rules of Interpretation that is the literal interpretation, mischief rule, golden rule, principle of harmonious construction and also the external aids of interpretation and so on.

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<sup>3</sup> Vol. 07, Constituent Assembly of India Debates (Proceedings), 1st December 1948.

<sup>4</sup> HIDAYATULLAH, JUDICIAL METHODS 236 ( National Publication House 1970).

<sup>5</sup> Supreme Court Advocate-on-Record Association v. Union of India, AIR 1994 SC 268

### III. INTERPRETATION OF THE RIGHT TO FREEDOM IN THE INDIAN CONSTITUTION

#### (A) Freedom Of Speech And Expression

Freedom of Speech and Expression can be interpreted as a right to express an individual opinion it can be by speaking, writing, publishing, printing or any other means of communication such as visual, gesture, sign, audio, etc. mode of communication.

Justice Patanjali Shastri<sup>6</sup> emphasizing then the importance of the right to freedom of speech and expression in a democracy construed as per the golden rule and expanding the scope of this as the basis of all democratic institutions and express that

*“for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.”*

Freedom of expression, as the Supreme Court interpreted<sup>7</sup> as per the need of the society and respecting the dignity of individual and gave four social purposes firstly, Freedom of expression lead a person to gain “*self-fulfillment*”, secondly, helps in the ascertainment of truth, and thirdly, build the strength of individual to engaging in the decision making process and lastly, create a balance in social change and stability.

#### (B) Freedom Of Press

Freedom of the press has been included as a fundamental right under the right of speech and expression as it plays an important role in the political liberty of the citizens as well as in maintaining the functioning of the Indian democracy. This right has been included in the Indian constitution but it is an indirect right which is given to its citizens and does not expressly state the liberty of the press under Article 19(1)(a)<sup>8</sup>, as the judiciary felt that the legislature has given a very narrow meaning to the freedom of speech and expression and thus the judiciary uses the golden rule and modifies the meaning of the word freedom of speech and expression. As the freedom of the press is contemplated as the fourth organ of Indian democracy as it gives out one’s viewpoint more than that of others. Freedom of the Press is interpreted by the judiciary in several cases by using various tools of interpretation.

In *Indian Express Newspapers Vs Union of India*<sup>9</sup>, the court had found mischief in the freedom of the press wherein it said that the authorities cannot interfere with the Freedom of the press only in the name of interest of the public as the objective of the press is to advance the

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<sup>6</sup> Romesh Thapar v. the State of Madras, AIR 1950 SC 124.

<sup>7</sup> Indian Express Newspapers v. Union of India, (1985) 1 SCC 641.

<sup>8</sup> INDIA CONST. art. 19, § 1, cl. a.

<sup>9</sup> 1985 1 SCC 641

public and their interests by publishing facts without which it would take away the right of the Democratic electorate to make reasonable decisions. Therefore mischief rule had been applied to avoid the vague meaning of the word press and construe it in a way to protect the freedom of the press of the citizens.

<sup>10</sup>The case also takes into consideration the external aid of parliamentary debate wherein the supreme court had also used the golden rule to modify the previous view that the speech which is given by the minister or the parliamentary members is not aid to remove the ambiguity. These parliamentary debates and speeches are important only when the provision is ambiguous and therefore the court needs to arrive at the true intention of the legislature.

In the case of ***R. Rajagopal Vs State of Tamil Nadu*** <sup>11</sup>The Supreme Court applied the principle of harmonious construction by harmonizing Article 19 and Article 21 of the Indian constitution. The case was related to publishing the autobiography of a prisoner Auto Shanker wherein he had revealed that there were many public officials, IAS and IPS officers who were involved in several murders with him. The Supreme Court held that the authorities do not have the right to impose restrictions before even the autobiography was published. Only if it is published the officials shall have the right to restraint and can get a remedy only after the publication. Although the citizens have the right to privacy under Article 21 of the Indian constitution, if the publication is based on public records and contains facts then the right to privacy no longer exists and the press will have a legitimate right to comment on that matter.

Therefore harmonious construction of Article 19 and Article 21 is used as a statutory interpretation wherein if the two provisions of a statute are conflicting, then the judiciary should interpret them in such a manner to harmonious them to make them operative and effective.

### **(C) Freedom Of Commercial Speech**

Advertisement of anything is considered to be a form of speech but not all advertisement is a form of speech or expression. Although the advertisement is not a form of speech as it does not propagate the social, economic or political objective and thus it is not protected under Section 19(1)(a) of the Indian constitution. It is instead a part of trade and commerce.

In ***People's Union for Civil Liberties Vs Union of India*** <sup>12</sup>, the petitioner who was a volunteer in the People's Union for Civil Liberties Organization filed a case under Article 32 of the Indian Constitution wherein it was contended that Section 5(2) of the Indian Telegraph Act of 1885

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<sup>10</sup> D. N. MATHUR, INTERPRETATION OF STATUTES 316 (Central Law Publications 2018).

<sup>11</sup> 1994 6 SCC 632

<sup>12</sup> AIR 1997 SC 568.

<sup>13</sup>was invalid and therefore be removed. The section was said to be violative of Article 19(1)(a)<sup>14</sup> as section 5(2) reads that telephone tapping shall be used only in case of public emergency and for the interest of the safety of the public. The court tried to harmonize section 5(2) and Article 19(1)(a) and held that since there is no just and fair procedure for regulating the power which is to be exercised under section 5(2), it is not possible to guarantee the rights under Article 19 relating to freedom of speech.

The court by applying harmonious construction held that protection under Article 19 will be given only if it is following Section 5(2) of the Act.

In *Hamdard Dawakhana Vs Union of India*<sup>15</sup> The petitioner challenged the Drug and Magic Remedies ( Objectionable Advertisement) Act on the ground that the advertisement of drugs in a few cases was strictly prohibited as it was under reasonable restrictions under Article 19. The Supreme Court held that an advertisement is a form of freedom of speech although it promotes trade and therefore should be dealt with under freedom of trade.

The court also held that section 3(d) of the Drugs and Magic Remedies ( Objectionable Advertisement) of 1954 imposed power on the Central government to also make rules to prohibit the advertisement of drugs relating to venereal diseases that were considered to be suffering from excessive delegation under constitutional limits.

The court had used one of the basic principles of interpretation which are *ex visceribus actus* which says that the statute must be read as a whole and therefore the court has to look into both freedom of speech and expression as well as freedom of trade to decide as to which commercial advertisement comes under which freedom.

#### **(D) Freedom Of Right To Information**

The Freedom of speech and expression covers many aspects and therefore it not only includes rights such as to express or publish or communicate information but also to receive information from the citizens based on public interest. The Supreme Court in its various judgements have mentioned the right to information to the citizens in the context of giving useful information such as the right to vote or know about the election candidates<sup>16</sup>

Right to Information Act of 2005, gives the right to information to the citizens relating to information which is controlled by the public officials and imposes an obligation to give

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<sup>13</sup> Indian Telegraph Act, 1885, § 5(2), No. 13, Acts of Parliament, 1885 (India).

<sup>14</sup> INDIA CONST. art 9, § 1, cl.a.

<sup>15</sup> AIR 1960 SC 554.

<sup>16</sup> DR. J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA 196 (Central Law Agency 2017).

information as well as maintain the records present with them. Although this Right to information is considered to be ambiguous as it restricts the government to provide information from the government to individuals, the justification is given as to protect from spying. Nevertheless, it forms many hurdles in achieving the object of fundamental rights.

Therefore the Act is ambiguous and therefore the judiciary should make sure to give the right of information to the individuals which will affect their interest by taking into consideration the intent of the legislature and therefore object with which the Act was formulated.

In the case of *Union of India vs Association for Democratic Reforms*<sup>17</sup>, the supreme court had said that although the right to vote is not considered to be a fundamental right after the citizens have exercised their right to vote they have a right to freedom of speech and expression under Article 19(1)(a) wherein they also have the right to information about the record of the candidates. The court had used the external aid of constitution acts under later political developments where the statute always speaks in variety and should be interpreted in the light of the legal framework of today.

#### **(E) Freedom Of Speech Includes To Remain Silent**

In the case of *Bijoe Emmanuel Vs. State of Kerala*<sup>18</sup> The court in this case held that merely not singing the National Anthem but respectfully standing up when the national anthem is sung does not mean that the students are disrespecting the National Anthem. The Supreme Court also held that there was no law made in India which could take away the fundamental right under Article 19(1)(a) and therefore this right cannot be curtailed. Therefore it was held that the explosion of students from the school amounts to a violation of fundamental rights under Article 19(1)(a) and therefore by using the golden rule of interpretation the court had also included the right to freedom of silence and had given a wider interpretation to the word freedom of speech and expression.

Freedom of speech and expression does not merely mean to talk or express it in language, for that reason the court had also included the freedom of silence to remove the ambiguity of the word freedom of speech and expression and give it a wider interpretation.

#### **IV. INTERPRETATION OF REASONABLE RESTRICTION**

The rights guaranteed under Article 19(1)(a) of the Indian Constitution are not given; there are a few restrictions imposed on them under Article 19(2). The restrictions are made to not give

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<sup>17</sup> AIR 2002 SC 2112 : (2002) 5 SCC 294.

<sup>18</sup> 1986 3 SCC 615

any person any freedom to be exercised entirely or arbitrarily as that would go against the state and therefore the restriction is imposed if it is against the sovereignty of the state, affecting the security of the state, affecting the friendly relations of the state with the foreign states or if its against public order, morality or decency. Therefore the court has to interpret Freedom of speech and expression in line with the restrictions imposed under Article 19(2) for the supremacy of the state and betterment of the society.

The court should read the whole Article to derive a conclusion, for example when the court is construing any provision it has to look into the other sub-sections of the provision as both the provisions are interdependent and should throw right on one another. The two sections should be read as a whole and construe them to reconcile them and avoid any kind of repugnancy<sup>19</sup>.

## **V. CONCLUSION**

In Conclusion, the words which are written in the constitution can never be misjudged as the words as well as the language of the statutes plays an important role in the interpretation of statutes. The significance of the freedom of speech and expression was recognized by the makers and the drafters and was duly protected by the constitution. The judiciary has included much freedom under Article 19 of the Indian Constitution by the virtue of interpreting the word freedom of speech and expression. The court has interpreted the freedom of speech and expression not only as words spoken or expressed but also much other freedom one of which is the freedom to remain silent. The judiciary has applied all the basic principles, and rules of interpretation and also utilized many aids of interpretation to clear ambiguity. The word speech and expression has been modified and given a broader meaning by using the golden rule as well as wherever there is any mischief that the court needs to interpret to make the provision effective and operative.

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<sup>19</sup> JUSTICE J. P. SINGH, PRINCIPLES OF STATUTORY INTERPRETATION 31( Wadhwa and Company Nagpur 2005