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Right to Speech: A Boon or Bane

ANNU KUMAR¹ AND AMBER SRIVASTAV²

ABSTRACT

Freedom of speech is one of the most enjoyable right in democratic country. Freedom of speech is also considered as “first generation right” which means it protecting government interference in individual right. India is also democratic country. And freedom of speech and expression granted as fundamental right. Freedom of speech and expression is mentioned in article 19(1)(a) of Indian constitution. Indian judiciary extended its scope time to time such as freedom of press, right to information, right to remain silence etc. While right to speech is not an absolute right, so some reasonable restrictions is also imposed by constitution of India. Article 19(2) of Indian constitution-imposed restrictions on Right to speech. For example, one who work in an office, company or other places can not share secrets (such as customer data or a production process) or arm secrets, there combat plans or other secret plan the government. While it is also mentioned in constitution that at the time of state of emergency or war, the government may impose some restriction on free expression of its citizens. This is Indian judiciary who defined which is restricted or not by its judgement. Some imposable restrictions are Security of state, public order, contempt of Court, defamation etc.

Freedom of speech means freedom is paramount in a democracy. If someone cannot speak freely, it often means that their liberties are being restricted by some powerful people. Enjoying these rights - without any fear or unlawful interference of someone - is central to living in an open and fair society; where people can access justice and enjoy their human rights without any obstruction.

Keyword: Government-govt, High court- HC, Supreme Court-SC, Indian Penal Code-IPC, ASSOCIATION-assn.

I. INTRODUCTION

India is a democratic country where each person has granted some fundamental right. And right to speech is one of them. It means everyone has right to speak. Article 19(1)(a) guarantee Freedom of speech and expression as a fundamental right.

Everyone voices matters in democracy. People have the right to say what they think, share information, and demand a better world. They also have the right to agree or disagree with those

¹ Author is a student at Law College Dehradun, Uttarakhand University, Dehradun, India.

² Author is an Assistant Professor at Law College Dehradun, Uttarakhand University, Dehradun, India.

in power, and to express these opinions in peaceful protests

Protection of certain right regarding freedom of speech, etc., are mentioned in Article (19) of Indian Constitution. It is citizenry right. So, under Article (19)(1) all citizens shall have right:

- To Freedom of speech and expression.
- To Assemble peaceably and without expression
- To Form associations or unions.
- To Move freely throughout the territory of India.
- To reside and settle in any part of the territory of India; and
- To Practice any profession, or to carry on any occupation, trade, or business.

Freedom of speech and expression is given by Article 19(1)(a) of Indian constitution. The concept of Freedom of speech and expression is also provided in Preamble of Indian Constitution. It states that all citizens have liberty of thought, expression, belief, faith, and worship.

While some restrictions are also imposed on this fundamental right that mentioned in Article 19(2) of the Constitution of India.

II. ESSENTIAL ELEMENT OF FREEDOM OF SPEECH AND EXPRESSION

- Freedom of speech and expression given to the only citizen of India and not given to the any foreigner or other nation people.
- It provides someone has right to give his opinion view or criticize governmental policy etc., it could be shared with many ways as press, media, newspaper, internet, social media etc.
- Such given right also followed by some restrictions that imposed by constitution.

(A) Importance Of Freedom Of Speech And Expression In Democracy

There are many reasons as given below:

- It is also fundamental human right: it means people enjoy their right and speak freely without any interference. It covers press, media etc., who give their opinion and circulate news without any fear
- It is important in democratic form of government because government works well only when people have right to give their opinion regarding government policy and have right to criticize the government if it needed.

- The preamble of Indian constitution also states that all citizen of India has liberty of thought, expression, belief, faith and worship.

(B) Objective of freedom of speech and expression

Freedom of speech and expression not only give idea's about give their opinion view or communicate their feelings to other, while it has many broader scopes as follows:

- To help someone in self-realization
- To help in discovery of truth
- To help in understanding the government function and helpful in decision making process

III. SOME LANDMARK JUDGMENT REGARDING FREEDOM OF SPEECH

Judiciary widened the scope of freedom of speech an expression by many aspects as follows:

1. **Freedom of Press:** Media is recognized as the fourth pillar of democracy in India. If media is not free to work independently, then democratic government act like dictatorship in which people don't know about their function and no one will them to criticize the government function if their policy would not for public welfare. A free press is always work on issues that correlates with public interests and make our lives is a key of that block of building where any right deserves respect in society.

In *Romesh Thapar v. State of Madras*³, the apex court held that freedom of press is the part of freedom of speech and expression. The second Chief Justice of India, M Patanjali Shastri has observed, "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 process of Government, is possible."

In *Brij Bhushan v. State of Delhi*⁴, the court rejected the imposition of pre-censorships it violates the liberty of press.

In *Bennet Coleman & Co. v Union of India*⁵, the government brought a Newsprint policy and said every newspaper agency must follow this policy. The court states in this case that freedom of press is essential part of freedom of speech and expression under Article 19(1). Of Indian constitution. In this case government tried to limit the pages of newspaper but Supreme Court said that limiting the pages of newspaper is violation of liberty of press and it also causes

³ Romesh Thapar. V. State of Madras [1950] AIR 124,

⁴ Brij Bhushan v. State of Delhi [1950] AIR 129,

⁵ Bennet Coleman & Com v. Union of India [1973] AIR 106,

downfall in economic and by this way content is also reduced. So, the court held that Newsprint policy was unconstitutional.

2. **Right to Broadcast:** In 21st century people use technology to communicate their view expression opinion etc., or by technology they spread news government policy function etc. So, concept of freedom of speech and expression also related with technology. By print or electronic media, or any other medium of technology they used to convey their expression is also part of freedom of speech and expression.

In *Odyssey Communication Ltd. v. Lokkvidyan*⁶, the court held that to broadcast the films etc. in State channel such as Doordarshan is the right of citizen, and it comes under the scope of freedom of speech and expression under Article 19(1) of Indian constitution.

3. **Right to Information:** To get information is the fundamental right and one of the aspects of freedom of speech and expression. By this information, people get from government without any obstruction, and it comes under Article 19(1) of Indian constitution and judiciary also give many landmark judgments time to time and considered as fundamental right.

In *Union of India v. Assn. For Democratic*⁷, the Supreme Court ruled that One-sided information, disinformation, misinformation, and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.

4. **Right to Criticize:** In *S.Ragnarajan v. P. Jagajivan Ramthe*⁸, court ruled that it is fundamental right to give their opinion on any public policy or general concern regarding public welfare. Criticizing government is not a restriction of expression. It is to be said that tolerance of bad things is dangerous in society.

In a tweet, our Prime Minister Narendra Modi said that constructive criticism is needed and always welcome in democracy, it makes democracy strong and vital. Those policies of government that work public welfare, must be appreciated but if there is any fault in policy that reflects it is not good for public then it should be criticized.

5. **Right to freedom of commercial speech:** Democratic country like India, where Media is free from governmental control, they can publish or advertise anything for public. So, Advertisement is also part of right to freedom of speech and expression under Article

⁶ *Odyssey Communication Ltd. v. Lokkvidyan* [1988] AIR 1642,

⁷ *Union Of India v. Assn. For Democratic* [2001] Delhi 126

⁸ *S. Rangnarajn v. P. Jagajivan Ranthe* [1989] SCR (2) 204

19(1)(a) of Indian constitution. Advertisement is a commercial transaction, so everyone who want to advertise for public is free to advertise their products, public at large got benefits from those products. Advertisement is also part of speech and expression through which they communicate their products details to other.

In *Indian Express Newspaper v. Union of India*⁹, the Supreme Court held that commercial speech is also protected under article 19(1)(a) of freedom of speech and expression. Also States that “*We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution merely because they are issued by businessmen and its true character is detected by the object for the promotion of which it is employed.*”

In a case *Dabur India v. Colortek Meghalaya Pvt. Ltd*¹⁰, the Delhi High Court gave some guiding principle to commercial speech as follows:

- Commercial speech is protected under Article 19(1)(a) of Indian constitution
- Advertisement or commercial speech not in deceive or misleading in nature
- If some advertisement is misleading or deceptive in mature, then it cannot be protected under Article 19(1)(a).

6. **Right to expression beyond boundaries:** The evolution in technology and print and electronic media and other social platform in following decade reduced the global gap barriers. We know what’s happening in the other part of world within a fraction of second by the help of technology.

In *Maneka Gandhi v. Union of India*¹¹, the Apex court discussed that article 19(1) (a) of Indian constitution cramped the Indian territory and held that freedom of speech and expression not restricted to national boundaries.

7. **Right to remain silence:** Freedom of speech and expression not only give right to freely speak but also give. To remain silence. This is also important part of freedom of speech and expression and justified by judiciary in many cases. In *Bijoe Emmanuel v. State of Kerala*¹², also known as National Anthem case, three students were rusticated by School administrative authority because they refused to sing national anthem at school prayer. They were standing in prayer with other students, but they didn’t sing national anthem also refused to sing, while they also showed respect towards national anthem. For this act

⁹ Indian Express Newspaper v. Union Of India [1986] AIR 515

¹⁰ Dabur India v. Colortek Meghalaya [2010]AIR (42) PTC 88 (Del.)

¹¹ Maneka Gandhi v. Union of India [1978] AIR 597

¹² Bijoe Emmanuel v. State of Kerala [1987] AIR 748

school authority rusticated them. The three students challenged this rustication in Kerala High Court. The court held that their expulsion was on the ground of not singing national anthem is valid because it was their fundamental duties to sing national anthem.

Later, the students move to Supreme Court against the judgment of Kerala High Court and the court held that they were not committed any offence under Prevention of Insult to National Honor Act, 1971. So, their expulsion was violation of Article 19(1)(a) freedom of not to speak.

IV. GROUNDS OF RESTRICTIONS

Freedom of speech and expression is necessary in democratic country. So, it is also needed to preserve these right. This right is not absolute. So, Article 19(2) of Indian constitution imposes some restrictions on the Article 19(1)(a) of Freedom of speech and expression. This clause 19(2) was amended two times. First in 1951 and second in 1964 to enable the legislature to impose restrictions on freedom of speech and expression.

There are following grounds of restrictions of freedom of speech and expression: -

- **Security of State:** Security of state is always coming first for any nation. If someone uses his right and violates the right according to constitution and it comes out in term of security of state, then reasonable restrictions impose on freedom of speech and expression. In terms of security of state, sometimes these come out in most dangerous form of public disorder as rebellion, war against the state, expending chaos etc. Yu
- **Public Order:** In *Romesh Thapar case*¹³, the Supreme Court of India States that law and order is different from public order and security of state. While in other case *Kishore Mohan v. State of West Bengal*¹⁴, the court said that public order is not just means of public peace but any event that disturb public peace also disturb public order.
- **Decency and Morality:** Morality is concerned with a bigger picture of lasting good for all, and eternal and universal principles of right and wrong to assure progress, good, truth, individual growth, and social unity. Decency is more about social and cultural decorum and manners, to behave with respect of others socially. Section 292 to 294 of Indian Penal Code, 1860 gives the norms related to decency and morality. In case *Ranjit D. Udeshi v. State of Maharashtra*¹⁵, in this case Bombay High Court said that section 292 of Indian Penal Code, 1860, punish any person who sells any obscene book

¹³ Romesh Thapar v. State of Madras [1950] AIR 124

¹⁴ Kishore Mohan v. State of West Bengal AIR [1972] SC 1749

¹⁵ Ranjit D. Udeshi v. State of Maharashtra [1965] AIR 881

or other material which is not acceptable in society.

- **Defamation:** Right to freedom of speech is not absolute, so clause (2) of Article 19 imposed restrictions on people to not harm the reputation of another person that is protected under article 21. Defamation is communication of false speech that harms the individual's reputation, business, product, government, religion, or nation. In India, both civil and criminal defamation is offence. Section 499 and 500 of INDIAN PENAL CODE, 1860, 1860, 1860 gives the law related to defamation. In *Subramayam Swamy vs Union of India*¹⁶, the Constitutional validity of section 499 and 500 was challenged. In this case the SC held that the validity of se provision is not violating the constitution and refused to decriminalize. The court said that right to freedom of speech doesn't provide absolute right to someone to speak or published whatever they wanted. They have imposed some restrictions by article 19(2) of Indian constitution. Protection of someone reputation is human right and fundamental right that protected under article 21 as Right to live with dignity.
- **Contempt of Court:** Article 129 and article 215 of Indian constitution provide that Supreme Court and High Court have power of court of record respectively and power of court of record and have power to punish for their contempt's itself. While Article 142(2) give power to Supreme Court to investigate and punish for contempt itself.

In *Vinay Chandra Mishra v. The Unknown*¹⁷, the Supreme Court held that contempt of Superior court is not based on law, but it is inherent in court because it is court of record.

V. RIGHT TO SPEECH- BOON OR BANE?

Every coin has two faces. So here, same situation right to speech is also. If we talk about good things, then it would be mistaken to forget its bad thing. In *Tablighi case*, the chief justice of India S A Bobde, who headed the case said that Freedom of speech is the one of the most abused right in present time. But again, it is also important in democracy.

So, there are following two conditions in which when it would good or bad, so we discussed Freedom of speech v. Hate speech: _

1. **Right to speech:** We live in a democratic country where everyone has granted some fundamental right. Right to freedom of speech is one of them. This right is very important in democratic form of government because people expression their ideas,

¹⁶ Subramanyan Swami v. Union of India 2020 SC

¹⁷ Vinay Chandra Mishra v. The Unknown AIR [1995] SC 2348

thought, opinion etc...without any sign of fear. There following some points which justify the above:

- Those customers who are not satisfied from your services the biggest source of your learning. If they not satisfied, then they gave you idea what's to do and not to do. They criticize you and show your fault. Article 19(1)(a) of Indian constitution give this right under freedom of speech and expression.
- In Delhi Rape case, media plays an important role. they united the country's people to fight against common enemy. Again, freedom of press comes under Article 19(1)(a).
- It would be also fact that right to speech comes from silence and right to silences comes from speech.

2. **Hate speech:** A right to express one's opinion is one of the precious gifts of democracy but not when it stifles the voices of others or puts them in danger, right to freedom of speech must not take the place of freedom to life.

Number of ways it can be abused. Few examples that happened in society are: -

- A political rally was organized, and top leaders lead that rally. They have good images in societies. But when rally slogans were enchanted, every person was shocked, the chanting was "DESH KE GADDARO KO, GOLI MARO SALO KO". it was totally shocking why public accepted these types of rallies.
- India is a sovereign country which means it is independent from external control, make his own decision on his internal and external matters. But at present time, here some people want freedom, they enchant their slogan for supporting the terrorist like Afjal guru, for them he was a good man. They enchanted like "Hum leke Rahenge Aazadi," their slogan is anti-national, like disrespect the country and support the other. Seriously, they wanted freedom from whom? Is this not a violation of Freedom of speech? But again, it was acceptable.
- Recently people protested Citizenship act at Sahinbagh where number of people violates their right of freedom of speech and expression. A video has been released from Sahinbagh protest where they enchanted slogans like "Jinna wale Aazadi". In that a video an individual on stages enchanting "Hum ladke lenge Aazadi, Jinna wale azadi etc.". From whom they wanted aazadi and what that mean Jinna wale Aazadi? What are they wanted to say that they wanted to have Aazadi in order to break the

India as two national theory?

- Only people violate right to speech of expression but the person who made law also violates. For example, Congress leader Mani Shankar Aiyar called Narendra Modi as “neechaadmi” (vile man), who did dirty politics etc., on first phase of Gujrat Assembly poll.

VI. CONCLUSION

Right to Freedom of speech is an integral part of the world where we live in. And it is also a fundamental human right, that’s why some reasonable restriction is also imposed by government on this right. It is a type of a right which is used everywhere by the people according to their own will. Being able to criticize the society is a most important feature of democracy, and it is also believe that developing curiosity is an essential part of the human to learn human behavior in society which can be done by observing the behavior of the people and their way of talking working and living altogether.

It is duty of the government to take every possible measure to prohibit hatred among people and try to reduce provoking speeches among people by limiting their area of freedom of speech and expression but many people in country still misuse their power of speech given through the idea of freedom of speech and expression. It is the work of the authority to silence peaceful dissent by passing laws criminalizing freedom of speech and expression. This is often done in the name of counterterrorism, national security, or religion.

Free speech is a bedrock value in this country. But it isn’t the only one. Like all values, it must be held in tension with others, such as equality, safety, and robust democratic participation. Speech should be protected, all things being equal. But what about speech that’s designed to drive a woman out of her workplace or to bully a teenager into suicide or to drive a democracy toward totalitarianism? Navigating these trade-offs is thorny, as trade-offs among core principles always are. But that doesn’t mean we can avoid navigating them at all.

VII. REFERENCES

- Romesh Thapar v. State of Madras [1950] AIR 124, [1950] SCR 594
- BrijBhushan v. State of Delhi ,1950, AIR 129, [1950] SCR 605
- Bennett Coleman & Co. & Ors vs Union of India &Ors AIR 106, [1973] SCR (2) 757
- Odyssey Communications Pvt. Ltd vs Lokvidayan Sanghatana & Ors AIR 1642, [1988] SCR Supl. (1) 486
- Association For Democratic ... vs Union Of India (Uoi) And Anr AIR [2001] Delhi 126, 2000 (57) DRJ 82
- S Rangarajan Etc vs P. Jagjivan Ram [1989] SCR (2) 204, [1989] SCC (2) 574
- Indian Express Newspaper v. Union of India [1986] AIR 515, [1985] SCR (2) 287
- Dabur India v. Colortek Meghalaya Pvt.Ltd [2010] (42) PTC 88 (Del.)
- Maneka Gandhi v. Union of India [1978] AIR 597, [1978] SCR (2) 621
- Bijoe Emmanuel v. State of kerala [1987] AIR 748, [1986] SCR (3) 518
- Ranjit D. Uddeshi v. State of Maharashtra [1965] AIR 881, [1965] SCR (1) 65
- M.M. Kashyap & Ors. vs Chief Minister of Delhi (Tablighi case) [2020] SCC OnLine Bom 877
- The Hindu, <https://www.thehindu.com/opinion/op-ed/should-restrictions-on-free-speech-be-reviewed/article30694970.ece>
- Dr. Subramanian Swamy vs Union of India [2016] 7 SCC 221
- Vinay Chandra Mishra v. The Unknown AIR [1995] SC 2348
