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Freedom of Speech and Expression: An Overview

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ABSTRACT

Fundamental freedoms are enshrined in Part III of Constitution of India, and can also be called India's Magna Carta. The rights in the said Chapter help to ensure strongly that all fundamental rights are guaranteed to each and every citizen of the nation and that no one can violate them. The main focus of this paper is to throw some light on the freedom of speech and expression. When a socio-economic and political structure of the society changes the very essence of these rights keeps on evolving. This paper tries to highlight some of the historical developments of freedom of speech and expression. The rights envisaged in Article 19(1)(a) which is not absolute and subject to reasonable restrictions although these restrictions cannot be arbitrary. The Landmark judgments have been provided to make it more presentable and understandable from the point of view of our respected Judiciary. India is one of the stringent countries in the world in terms of censorship. In this light, it will be the objective of this paper to consider and evaluate possible alternatives and modifications of the present system of Censorship in India. The purpose of this paper is to give an overview of Freedom of Speech and Expression.

I disapprove of what you say, but I will defend to the death your right to say it.

- Voltaire

I. INTRODUCTION

Right from the start, freedom of speech and expression would mean the right of any citizen to express his or her thoughts, beliefs, opinions, whether in support of or against any issue of cultural, political or social interest, without fear of any restriction or punishment. Everyone has their own intelligence and the ability to see, understand and interpret the situation in their own unique way. The same may or may not be in line with the general view, but this does not stop anyone from not having their views heard. The very essence of freedom of expression lies in the fact that it forms and influences public opinion, helps to bring about healthy debates and

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discourses, leads to the exchange of ideas and views, acts as the foundation for dialogue and successful decision-making, and creates stronger democratic institutions. Freedom of speech is a bedrock of all the liberties. Freedom of speech is one of the widely protected right across the world. It finds an important place in Union Declaration of Human Rights.

II. HISTORICAL BACKGROUND OF FREEDOM OF SPEECH AND EXPRESSION

The roots of freedom of speech can be found in ancient Greece, where people have championed freedom of speech as a democratic principle. Ancient Greece's word "parrhesia" meant "free speech" or "candid speech." The term first appeared in Greek literature around the end of the 5th century B.C. During the classical period, Parrhesia has become the central art of democracy in Athens. England's Bill of Rights 1689 formally defined the universal right to freedom of expression in Parliament, which is still in force. The Declaration of the Rights of Man and the Citizen, adopted during the French Revolution of 1789, expressly proclaimed freedom of expression as an inalienable right. Article 11 of the Declaration on Freedom of Expression, which declared free cooperation of thoughts and opinions, is one of the most precious human rights. Article 19 of the Universal Declaration of Human Rights, introduced in 1948, specified in that declaration that: everyone has the right to freedom of thought and expression; that right requires the freedom to hold opinions without intervention and to search, obtain and communicate knowledge and ideas across any media and throughout boundaries.³

Section 12 of the Virginia Bill of Rights, 1776, in the context of the English legal situation, proclaimed that freedom of the press is one of the great bulwarks of democracy, and that despotic governments should never suppress it.

In the spirit of emancipation, Article II of the French Declaration of the Rights of Man and of the Citizen of 1789 declared freedom of opinion as a constitutional right. One of the most precious right of man is unrestrained communication of thoughts or opinions. Every citizen can talk, write and publish freely in cases decided by law, provided that he is responsible for the abuse of this freedom. In 1948, the United Nations convened a Geneva Conference on Freedom of Information to which 54 countries participated. It passed a series of resolutions by United Nations for further consideration which ultimately led the United Nations General Assembly to declare Freedom of Information a fundamental human right. In particular, the Universal Declaration of Human Rights states in its Article 19 that "everyone has right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to

³Universal Declaration of Human Rights, 1948

seek, receive and import information and ideas through media and regardless of frontiers”.⁴

The Rome Convention for the Protection of Human Rights and Fundamental Freedoms, and came into force on 3rd September, 1950⁵ and mainly Article 10, Which states the freedom of expression as (i) Everyone has the right to freedom of speech. This Article does not prevent States from requiring licenses to broadcast, television or cinema companies, and (ii) The exercise of these freedoms as it brings with it its duties and obligations may be subject to the formalities, requirements, limitations or penalties laid down by law and necessary in a democratic society, For the sake of national security, territorial integrity or public safety, in order to avoid disorder or crime, in order to protect health or morality, in order to protect the dignity or right of others, in order to prevent the release of information obtained in confidence or in order to maintain the independence and impartiality of the judiciary.

In India, the Preamble of the Constitution is not like Preamble of other enactments but it is the gist of intention of the Constituent Assembly. The debate on Article 13 of the Constituent Assembly (corresponding to Article 19 of this Constitution) took place on Wednesday, 1 December 1948, granting citizens certain freedoms including freedom of speech and expression. The views of the different constituent assembly members are important to note here:

When interpreting any clause thereof, Preamble should be seen as an integral part of the Constitution and should be viewed as instructions for the interpretation of the Constitution where confusion exists. The preamble to the Constitution also indicates that it is the people who are sovereign in democracy. Five words in the beginning of the Preamble to the Constitution of India govern true democracy i.e. WE, THE PEOPLE OF INDIA and ending with five more words i.e. GIVE TO OURSELVES THIS CONSTITUTION. In general, the people of India live mostly in the darker part of the country's governance and are often uninformed about public affairs and governed by those who exercise influence in the executive, legislative and judicial spheres. The jurisprudence of democracy is provided for in Articles 23 and 25 of the Universal Declaration of Human Rights of 1948 and Part III and Part IV of the Indian Constitution, which guarantees certain rights, such as the right to life, equality, dignity and decent living and development conditions⁶.

What does Speech exactly mean?

⁴ United Nations General Assembly Resolution No. 217A (III), 1948

⁵ P.K. DAS, HANDBOOK ON THE RIGHT TO INFORMATION ACT 15 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2010)

⁶ Supra Note 4

The term Speech might be self-explanatory i.e., writing or speaking using mouth or through audio-visual instrumentalities. Oxford Dictionary outlines the term as “the expression of or the ability to express thoughts and feelings by articulate sounds.” Freedom of speech also includes freedom of discussion. Discussion helps to exchange knowledge, ideas and points of views and beliefs between two people.

Freedom of speech includes the dissemination of knowledge on the basis of one's own ideas, provided that it does not infringe collective interests or that the object is not purely commercial.⁷Conferring to Halsbury's Laws of England, the expression “freedom to express” incorporates both the right to receive and to express ideas, information and secrecy of private communications. When the term” Freedom of speech and expression” is used together it means Oral and verbal communication of ideas, thoughts and opinions held by a person with regard to any subject that he chooses to speak and convey to another person or even to a large crowd. It may be published or printed in print media, telecasted or relayed to electronic media or posted, blogged, tweeted to social media. It may have been published or printed in print media, telecasted or relayed in electronic media or posted, blogged or tweeted to social media. Media gives ample space to everyone, albeit at different levels, to society to make their opinions heard in the world at large.

But if we think about it literally carefully there is a particular line which gets blurred to what constitutes speech. But what about non linguistics forms of communication or artistic expression or wearing an arm band or other forms of expressive conduct? What about flag burning which is a widely discussed topic, citizens tend to burn their country's flag to express their strong oppression against the government. The U.S. legislation acknowledges flag burning as freedom of speech and freedom of expression, but our constitution has opposed and strongly limited this.⁸

Speech and expression have a wider scope, it includes other forms of expression. The Canadian Approach to freedom of expression allows a broad interpretation of “Expression” within sec 2(b). The Supreme Court of Canada has stated that, a wide and inclusionary approach to the interpretation of Charter's free Expression guarantee is to be preferred⁹.

Chief Justice Dickson ¹⁰explained that “‘expression’ has both content and a form and the two can be inextricably connected. Activity is expressive if it attempts to convey meaning. That

⁷Valentine v. Chrestensen, 316 U.S. 52 (1942) (U.S)

⁸ Union of India v. Naveen Jindal, (2004) 2 SCC 510 (India)

⁹Ford v. QUEBEC (1988) 2SCR 90 (Can SC)

¹⁰LIC of India v. Prof. Manubhai D Shah, (1992) 3 SCC 637 (India)

meaning is its content”¹¹. Speech is not only about voicing our opinions it’s also about listening to the views of other. We are living in an era where people don’t want to be in a room full of people with whom they disagree but be comfortable with them despite having knowledge of their counter opinions at least. This further gives them alright to oppose or challenge their views and opinions.

III. IMPORTANCE OF FREE SPEECH AND EXPRESSION

Speech enables a person to express himself physically, intellectually and socially. It allows for active participation in the democratic establishment. It strengthens the role of individuals in decision-making. Being a citizen of a democratic country and upholding the principles of democracy, it is important to protect human freedoms. Justice Louis Brandeis gave the importance of freedom of speech and expression in the pretext of US constitution which states- They believed that the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile.... that public discussion is a political duty; and that this should be a fundamental principle of the American government.”¹²

Various judgement of court has referred to the importance of freedom of speech and expression from both the point of liberty of the individual and from the point of view of our democratic government. Example- In case of Romesh Thappar v. State of Madras¹³, the court stated that freedom of speech lay at foundation of all democratic government. While an informed citizenry is a precondition for meaningful governance, the culture of open dialogue is generally of great importance”¹⁴.

IV. POSITION IN INDIA

Our constitution makers envisaged a liberal India. They provided the essence of freedom of speech and expression in Preamble of Indian constitution as Liberty of thought, expression, belief, faith and worship. To achieve the objectives of preamble, freedom of speech and expression has been guaranteed in the form fundamental right under part III of Indian Constitution. Article 19(1)(a) of Indian Constitution guarantees freedom of speech and expression.

In Romesh Thappar v. State of Madras¹⁵, while quoting the Supreme court’s view in Lovell v.

¹¹ Irwin Toy Ltd v Quebec (AG), [1989] 1 S.C.R. 927 (Canada)

¹²Whitney v. California 247 US 214 (U.S)

¹³ A.I.R 1950 SC 124 (India)

¹⁴Khushboo v. Kanniammal, (2010) 5 SCC 600 (India)

¹⁵Supra Note 13

Griffin¹⁶, the court held that the freedom of speech and expression guaranteed under Article 19(1)(a), means the right to speak and to express one's opinion by words of mouth, writing, printing or in any other manner. It is to express one's convictions and opinions or ideas freely, through any communicable medium or visual representation.

The freedom of speech and expression has been given a wider Interpretation in Indian constitution. Article 19 confers rights which are not absolute and subject to restrictions.

Justice Patanjali Shastri stated that:

“Man, as a 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.”¹⁷

Whereas in US, in the case of Snyder v. Phelps¹⁸, Fred Phelps and his followers from the Baptist Church had strong negative views on homosexuality especially in the military Matthew Snyder, a soldier in the army, was martyred and the church picked up and posted slogans during his funeral that read as omnipresent god for dead soldiers. The petitioner lodged a lawsuit against the church in the US court alleging they had written defamatory remarks. The district court jury awarded Snyder compensation but the fourth circuit court of appeals reversed the decision and said the church's words were covered by the first amendment to the country's constitution. It explained that the Church made comments solely about public interests and claimed that the dialogue on political social and cultural issues needed to be unhindered.

In this case, it can be seen that the U.S. Supreme Court has noted and agreed that people are free to give opinions and views on any matter of public interest, and are covered by the first amendment.

V. TEST OF REASONABLE RESTRICTION

1. The Constitution does not define an expression of reasonable limitation, nor can the standard or general pattern of reasonableness be established for all cases and situations¹⁹.
2. The phrase reasonable restriction connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. The word reasonable implies intelligent care and deliberation that is the choice of course which reason dictates.²⁰

¹⁶ 303 U.S. 444(1938) (U.S)

¹⁷A.K. Gopalan v. State of Madras, AIR 1950 SC 27 (India)

¹⁸562 U.S. 443(2011) (U.S)

¹⁹State of Madras v. V.G. Row, A.I.R 1952 SC 126 (India)

²⁰Chintamani Rao v. State of M.P, A.I.R 1951 SC 118 (India)

3. Whether Restriction is reasonable or not is for the judiciary to decide and not the parliament²¹. If the court decides that a particular restriction is not reasonable then it will declare it void.
4. The restriction must be reasonable from the substantive as well as procedural standpoint. The court should consider not only the duration and extent of the restriction but also the circumstances under which and the manner in which that imposition has been authorized²².
5. Restrictions also include prohibitions²³. If a Law prohibits a citizen say trafficking in women and a restriction has been imposed then that restriction will be termed as a reasonable restriction.
6. The limitation imposed on a freedom should not be arbitrary or excessive, or beyond what is required in the situation in the interests of the public²⁴.
7. There must be a reasonable nexus between the restriction imposed and object ought to be received.²⁵
8. There is no exact standard or general pattern of reasonableness that can be laid down for all cases. Each case is to be judged by its own merit. The standard varies from nature of the right infringed, the underlying purpose of restriction imposed, the extent and the urgency of the evil sought to be remedied, the disproportion, of the imposition, the prevailing condition at that time²⁶
9. All the reasonable restrictions shall be based on eight grounds that have provided under Article 19(2).

Thus, we notice that when a law clearly violates Article 19(1)(a) by virtue of it not deriving its authority from Article 19(2), then it is not difficult for the judiciary to strike it down. However, in most instances, it is not that the constitutive offence which is missing (say, public order), but rather that the nature of the restriction sought to be imposed is either vague or overreaches. In such cases, the test to determine its reasonableness becomes the only mode to protect speech.

²¹ Ibid.

²² N.B. Kharev. .State of Punjab, AIR 1960 SC 211 (India)

²³ Narendra Kumar v. Union of India, AIR 1960 SC 430 (India)

²⁴ M.R.F. Ltd. v. Inspector Kerala Govt., AIR 1999 SC 188 (India)

²⁵ Ibid

²⁶ Supra Note 13

10. The term 'reasonable' implies intelligent care and deliberation, i.e. the choice of a course, which reason dictates. It seeks to strike a balance between the individual right secured by

Article 19(1) and social control permitted by Article 19(2) to (6) of the Constitution.²⁷

11. The standard of reasonableness is to be judged with due reference to the subject-matter of the legislation in question, economic and social condition in India and surrounding circumstances²⁸.

VI. REASON FOR IMPOSING RESTRICTION

1. *In favor of Citizen*- Citizens have right to duly exercise their freedom of speech and expression. The state can only impose restrictions on the eight grounds provided under Article 19(2).

2. *In favor of State*- If there won't be any restriction there will be misuse of this freedom. Absolute freedom cannot be given to citizens otherwise there will be hue and cry in the country.

VII. NATURE OF FREEDOM OF SPEECH AND EXPRESSION:

The Rights Guaranteed under Article 19 is available only to citizen and not to an alien or foreigner. Citizen under Article 19 mean only natural persons and not legal persons, such as corporations or companies²⁹. But in Bank Nationalization case³⁰ held that though a company cannot claim a right under Article 19, yet its shareholder can claim the right only if by the state the right of company and shareholder is impaired. This Freedom is exercisable not only in India but outside too. There is no geographical restriction to freedom of speech and expression.

In *Maneka Gandhi v. Union of India*³¹, The Supreme Court held that right to freedom of speech and expression has no geographical limitations. S.R. DAS, C.J., who spoke on behalf of constitution bench stated that: The point to be kept in view is that several rights of freedom guaranteed to the citizens by article 19(1) are exercisable by them throughout and all parts of the territory of India³²

²⁷Union of India v. Motion Pictures Association, AIR 1999 SC 2334 (India)

²⁸Pathumma v. State of Kerala, A.I.R 1978 SC: 771 (1978) 2 SCC 1 (India)

²⁹ Tata Engineering and Locomotive Co. v. State of Bihar, AIR 1965 SC 40 (India)

³⁰ R.C. Cooper vs. UOI, AIR 1970 SC 40 (India)

³¹AIR 1978 SC 587 (India)

³²AIR 1957 SC 896 (India)

VIII. FREEDOM OF PRESS

Media freedom includes the right to print and publish. It implies that in the process of printing, the person expresses his opinions. Freedom of the press also requires freedom of expression in the form of printing and publishing. The nature of press freedom lies in the wide dissemination and its exposure to the mass media. In newspapers or journals, television or radio networks. Freedom of press is a species of which freedom of expression is a genus. Under the Indian constitution, freedom of the press is no greater than the freedom of an ordinary citizen³³. Freedom of press is something which has to be redone every generation. Censorship has reduced the extent of creativity in the creative industry. Freedom of press is an Implied right. There is no written provision of freedom of press in Indian Constitution unlike American Constitution.

In the case of *Indian Express Newspapers v. Union of India*³⁴, it was held that the press plays a very significant role in the machinery of democracy. It is the responsibility of the courts to protect the freedom of the press and to invalidate all legislation and administrative acts that limit that right. Press freedom has three basic components. They are:

1. Freedom of access to all sources of information,
2. Freedom of publication, and
3. Freedom of circulation.

In the case of *R Rajagopal v. State of Tamil Nadu*,³⁵ the Supreme Court set a very special dimension. The court has broadened the horizons of freedom of the press and allowed the press to criticize and report on the public officials' actions. It has claimed that press freedom applies to engaging in an impartial and open discussion on public issues and public figure events. How anyone is so offended by a cartoon that they are inspired to kill fellow human being is difficult to understand. The saddest part is they are killed only because of doing their job. Yes it was outrageous, pushing their boundaries but somehow they were doing all these in spite of threat to their lives. A Pakistani journalist forced into exile in Sweden after covering violence, crime and a simmering insurgency in his home country was found dead on Friday in a river north of Stockholm, the Swedish police said.³⁶ Recently Press Council of India has taken a Suo moto cognizance of the attack on Anchor of Republic TV news channel, Arnab Goswami. This

³³*Sakal papers v. Union of India*, AIR 1952 SC 305 (India)

³⁴ (1985) 1 SCC 641 (India)

³⁵ 1994 SCC (6) 632 (India)

³⁶ Salman Masood, Exiled Pakistani Journalist Found Dead in Sweden Exiled Pakistani Journalist Found Dead in Sweden, (May 12, 2020), <https://www.nytimes.com/2020/05/02/world/asia/pakistan-journalist-dead.html?searchResultPosition=2>. (Last visited on 16th May, 2020)

Incident Occurred when Goswami made remarks against silence of congress party on palghar mob lynching incident.

It is the core principle of jurisprudence that, in absolute terms, no right can prevail; and press freedom is no exception. There are certain limits on that right as well.

IX. DIFFERENT FACETS OF FREEDOM OF SPEECH AND EXPRESSION

Freedom of speech and expression in itself guarantees cluster of rights to the citizens of India. Over the period of time Indian Judiciary has given a wider interpretation of Article 19. These Rights are:

1. RIGHT TO RECEIVE INFORMATION

ANIL DEV SINGH, J.— Information is a many splendored virtue. Its potential when channelized is capable of banishing ignorance, poverty, hunger and want It can transform democratic institutions and the governance of the country.³⁷

RIGHT TO INFORMATION ACT, 2005

Each citizen has the right to access public authorities' information. The purpose of this Act is to provide open administration, transparency and accountability. The act allows public agencies to computerize their records for broad dissemination and to publish those information categories proactively, so that people need little recourse to formally request information. The purpose of suo motu disclosures under Section 4 is to place large amount of information in public domain on a proactive basis to make the functioning of the Public Authorities more transparent and also to reduce the need for filing individual RTI applications.³⁸ On 4 April 2019, a five-judge Constitutional bench headed by Justice Ranjan Gogoi had reserved its judgment on three appeals filed in 2010 by the Secretary General of the Supreme Court and his Central Public Information Officer against the Delhi High Court order that the office of the CJI would fall within the framework of the Right to Information Act.³⁹

RIGHT TO KNOW

In *Prabhu Dutt v. Union of India*⁴⁰, the Supreme Court has held that the Right to know news and information regarding administration is included in Freedom of press. Although this right

³⁷Association for Democratic Reforms v. Union of India, 2000 SCC 836 Del

³⁸Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, *Implementation of suo motu disclosure under Section 4 of RTI Act, 2005 – Issue of guidelines regarding* (15th April, 2013) http://documents.doptirculars.nic.in/D2/D02rti/Suo_moto_disclosure-15042013.pdf

³⁹*Ayodhya to Rafale: CJI Ranjan Gogoi-led Supreme Court bench to deliver key verdicts over 8 days*, India Today, (November 9, 2019 00:25 IST), <https://www.google.com/amp/s/www.indiatoday.in/amp/india/story/cji-ranjan-gogoi-verdict-ayodhya-rafale-1613820-2019-10-29> (Last visited on 16th May, 2020)

⁴⁰ 1982 SCR (1) 1184

is not absolute and reasonable restrictions can be imposed on basis of eight grounds mentioned in Article 19(2).

The Official Secrets Act, 1923- Is an act aimed at preserving state protection against the leakage of classified information. It deals with two kinds of offence namely spying and wrongful confinement of secret information. In *Nandlal more v. state*⁴¹, the Punjab High Court held that proposals for budgets were secret documents because their premature disclosure was not in the public interest.

2. RIGHT TO REMAIN SILENT

In *National Anthem case*⁴², the Supreme Court Held that no person can be compelled to sing National Anthem if he has genuine conscientious objects based on his religious faith. The students stood up in respect when the national anthem was playing, even though they refused to sing, they were expelled. However, The Supreme Court held that the students did not commit any offence under the prevention of insults to National Honor Act 1971.

3. RIGHT TO REPLY

In the case of *LIC of India vs. Manubhai D. Shah*⁴³, the executive of CERC published a study paper “fraud on policy holders”- A shocking story. A member of LIC published a counter magazine “yogakshma” and denied to publish the rejoinder of the Respondent. The LIC contended that the magazine is a in house magazine and not to be put in sale in market it is only for the staff member. The respondent’s fundamental right of speech entitles him to insist that his views on the subject should reach to those who read the magazine. The court held that the LIC’s house magazine is financed from public funds therefore its refusal to publish respondent’s rejoinder will be violative of Article 19(1)(a).

4. RIGHT TO COMMERCIAL SPEECH/ADVERTISEMENT

In case of *Hamdard Davakhana v. Union of India*⁴⁴ it was held that commercial speech or advertisement for commercial purpose is not included in Article 19(1)(a). In the case of *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd*⁴⁵ overruled *Hamdard Dawakhana* judgement. In *Tata Press Ltd. V. Manager Telephone Nigam* case, it has been held that commercial speech is a part of the freedom of speech and expression guaranteed by Art. 19(1) (a) and it cannot be denied to protection Art. 19(1) (a) merely it is issued by the businessman as the public has a

⁴¹ (1965) 1 cri LJ 392

⁴² *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SC 615

⁴³ *Supra Note 10*

⁴⁴ AIR 1960 SC 554

⁴⁵ (1995) 5 SCC 139

right to receive the commercial speech.⁴⁶

5. CALLING FOR BANDHS

Calling of bandhs and hartals are unconstitutional.⁴⁷ Right to hold demonstrations or protest does not include right to hold demonstration at one particular place.⁴⁸ Demonstrations are part of freedom of speech and expression but if these demonstrations take turn to be threatening public peace or causing nuisance then it would be violative of Article 19(1)(a).

7. RIGHT TO EXPRESS GENDER IDENTITY

A transgender has freedom to express one's chosen gender identity by way of expression, speech, mannerism, clothing, etc. Security, self-identity, autonomy and personal integrity are fundamental rights granted to members of the transgender community and must be secured and accepted by the State.⁴⁹

8. RIGHT TO OPT FOR MEDIUM OF INSTRUCTIONS IN MOTHER TONGUE

"In view of the foregoing, the right to freedom of speech and expression is protected and conferred to a citizen, which includes the right to opt the medium of instruction in the mother tongue or in any of the languages specified in the schedule of the Constitution of India, subjected to restrictions enumerated in Clause (2) of Article 19. Therefore, it can be concluded that, option to choose medium of instruction in school education, is a right guaranteed under Article 19 (1) (a) of the Constitution subject to the exceptions carved out by Article 19 (2) of the Constitution."⁵⁰

9. REPORTING COURT PROCEEDINGS

As Kautilya said in the Arthashastra, and they did so in an open court during that time when the judges delivered a judgement. The visual setting of the mechanism for the delivery of justice hasn't changed much from then until now. Although the Indian legal system is based on the principle of open tribunals, meaning that the trials are open to all members of the public, the reality is different. Only a handful of people should be physically present on any given day, and are allowed in the courtroom. Live-streaming from the courts is mandatory when cases of

⁴⁶Ibid

⁴⁷ Communist party of India(M) v. Bharat Kumar, (1998) 1 SCC 201 (India)

⁴⁸ Mazdoor Kisan Shakti Sangathan v. Union of India, AIR 2018 SC 3476 (India)

⁴⁹ National Legal Services Authority v. Union of India, AIR 2014 SC 1863 (India)

⁵⁰ Akshita Saxena, *Freedom Of Speech Includes Right To Opt Medium Of Instruction In Mother Tongue: AP HC Quashes Order Converting Govt Schools To English Medium*, LiveLaw (Apr.15,2020 10:03 PM), <https://www.livelaw.in/top-stories/betaking-freedom-of-speech-includes-right-to-opt-medium-of-instruction-in-mother-tongue-155303> (Last visited on 16th May, 2020)

'public significance' are heard. This will uphold the public's right to know and fairness in the judicial proceedings.

X. GROUNDS OF RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION

1. **Sovereignty and Integrity of India**- was added by sixteenth constitutional amendment Act 1963.

SEDITION

Recently, we have seen charge sheet against Kanhaiya Kumar⁵¹ and other JNU students were charged under sedition 124-A of Indian Penal code. The British era rule has been used time and time again where government has been criticized. This Law has been somehow used to silent the whip of criticism. This law can be invoked only when there is an incitement to violence.

In “Kedar Nath Singh v. State of Bihar”⁵², 5 judges of the Supreme Court made it clear that allegedly seditious speech and expression may be punished only if the speech is an ‘incitement’ to ‘violence’, or ‘public disorder’.

In the Landmark Judgement of Kedar Nath case,⁵³The Supreme Court distinguished between disloyalty to the government of the country and commenting on government measures without incitement to violence.

In Balwant Singh v. State of Punjab⁵⁴, The Supreme Court overturned the conviction of sedition who had shouted ‘Khalistan Zindabad, Raj Karega Khalsa’ on the evening of 31 October 1982, In different instances, we can see that encouraging revolutions or supporting a violent state overthrow does not amount to sedition unless it is an incitement to violence and, most importantly, an incitement to imminent violence.

Aseem Trivedi best known for his cartoons against corruption was arrested on charges of sedition in 2010 where a complaint was filed against him condemning Trivedi’s display of ‘insulting and derogatory’ sketches, that depicted the parliament as a commode and the National Emblem in a negative sense having replaced the lions with rabid wolves, posting them on social media.

Section 66A of the IT Act was sought to be in violation of Article 19(1)(a). In Shreya Singhal

⁵¹Vijaita Singh, *Sedition charge against Kanhaiya Kumar may be dropped*, Hindustan Times, (February 18, 2016 02:55 IST), <https://www.thehindu.com/news/national/Sedition-charge-against-Kanhaiya-Kumar-may-be-dropped/article14086081.ece>. (Last visited on 16th May, 2020)

⁵² AIR 1962 SC 955 (India)

⁵³ Ibid.

⁵⁴ (1995) 3 SCC 214 (India)

v. Union of India⁵⁵. Was one of the key principles of modern internet legislation. In this case the Mumbai police arrested two girls in 2012 for expressing their anger at a bandh on facebook. The petitioners challenged the validity of Section 66A of IT Act and held that none of the grounds under article 19(2) were capable of being invoked as a legitimate defence to the validity of Sec 66A.

Law of Sedition helps to keep a check on Anti-state activities.

2. SECURITY OF STATE

“While, speeches or expressions 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”⁵⁶

3. PUBLIC ORDER

It was added by First constitutional amendment, 1951 in order to meet the situation arising out of Romesh Thappar’s case.

In Babulal Parate v. State of Madras⁵⁷ Section 144 of CrPC was challenged on the ground that it imposed on reasonable restriction on the right of freedom of speech and expression. The court upheld validity of section 144 holding that the anticipatory action to prevent disorder is within the Ambit of (2) of article 19. Under section 144 of CrPC if a magistrate is of the opinion that there is sufficient ground for immediate danger of breach of peace he can by a written order direct a person or persons to abstain from certain acts if he considers that such direction is likely to prevent or tend to prevent a disturbance of public tranquility or a riot, or affray.

4. DECENCY AND MORALITY

Section 299-294 of Indian Penal Code provide restrictions on the instance of decency and morality.

The Court interpreted that the words ‘decency and morality is not confined to sexual morality alone. The ordinary meaning of the ‘decency’ indicates that the action must be in conformity with the current standards of behaviour or propriety.⁵⁸

5. CONTEMPT OF COURT

Lord Russel in R v. Gray⁵⁹ defined contempt of court as an act done or writing published to

⁵⁵ AIR 2015 SC 1523 (India)

⁵⁶ State of Bihar v. Shailabala Devi, AIR 1952 SC 329 (India)

⁵⁷ AIR 1961 SC 884 (India)

⁵⁸ Ramesh Y. Prabhoo v. Prabhakar Kashinath Kunte, AIR 1996 SC 113 (India)

⁵⁹ (1900) 2 Q.B. 36 at 40

bring a court or judge into disrepute or abstract or interfere with the due course of justice or unlawful process of the court.

The Contempt of Court Act, 1971 defines the expression as: Section 2, In this Act, unless the context otherwise requires,—

(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

6. INCITEMENT TO AN OFFENCE

The word offence is not defined here but it can be found in the General Clauses Act as "Offence shall mean any act or omission made punishable by any law for the time being in force".

In *Indulak K. Yagnik v. State of Maharashtra*⁶⁰ Sec 3 of the police(incitement to disaffection) Act of 1922 was challenged. The Bombay High Court held that an inducement by a police officer, punishable under the section amounted to an incitement to an offence, thus is protected by article 19 (2).

7. DEFAMATION

According to Winfield, Defamation is the publication of statement which reflects on a person's reputation and tends to lower him in estimation of right thinking members of the society.. Section 499 of IPC contains the criminal law relating to Defamation.

It is Certainly in Public Interest that anything shaky or unjust or improper in the conduct of a Minister making appointments should be brought to the notice of the country at large. It is in fact criticism without which any democratic system is doomed to failure and ministers inevitable suffering absolute corruption by their unscrutinized exercise of power. Whether the

⁶⁰AIR 1969 Bom 399 (India)

conduct of any particular individual should be firm publicly criticized and would be in Public Interest, would naturally vary with the circumstances of each case⁶¹

8. FRIENDLY RELATIONS WITH FOREIGN STATES

This ground was again added by Constitution(First amendment) Act, 1951. The object of it is to prevent malicious propaganda against a foreign state which may jeopardise its relation with India. In India The Foreign Relations Act 1932 provides punishment for Libel by citizen of India.

XI. CENSORSHIP

Censorship is derived from a Latin word *censere* which means ‘to estimate, rate, assess, to be of opinion. Censorship is a restriction to free speech, which may be considered objectionable, harmful, sensitive, politically inconvenient. When an individual such as an author engages in censorship of their own work or speech is referred to as self -censorship. Censorship can be direct or indirect. It occurs in variety of media including speech, books, music, films or other arts. The press, radio, internet and television have variety of reason of imposing censorship like national security, controlling obscenity, child pornography and hate speech, to protect children and another vulnerable group, to promote or restrict religious or political views and to prevent slander and libel. Many countries provide strong law for protection against censorship but none of these is absolute and frequently a claim of necessity to balance conflicting rights in order to determine what could and could not be censored. This phenomenon can be used to curb one’s basic right and can be used, but it is a necessary evil. On a closer look it can be said that censorship is a limit to one’s Human right in order to upheld the community’s Human right.

INTERNET CENSORSHIP

The Landmark case of *Shreya Singhal* has struck down section 66A of IT Act. It reflects an instance where the court took the drastic measure and declared unconstitutional a statute of censorship passed by the parliament. This has given free speech in India a fresh lease Of Life. But what happens to section 69A? This section allows the government to censor the material when it threatens India's security, integrity, sovereignty or defence. However, the judgment in *Shreya Singhal* did not relate solely to Section 66A. Other provisions of the IT Act, Section 69A — and its subsequent rules — and Section 79 were challenged by the petitioners as well. The first authorizes the Government to restrict the transmission of information, including website blocking Where it is appropriate or expedient to do so, for, dispute settlement, the

⁶¹*Purushottam Vijay v. State*, (1960) SCC MP 84: AIR 1961 MP 205 (India)

interests of India's sovereignty and integrity, public order or to prevent incitement to perform any recognizable offence. And the second provides intermediaries (for example, websites such as Facebook and YouTube) with immunity, in some specific circumstances, for content published by individuals who use their content. Neither of these clauses was struck down by the court. It found the law to provide sufficient protections against governmental violence in both instances. Even if these elements of the decision were to be viewed as disruptive to our civil liberties in any way, at this juncture, all such issues would reflect only minor quibbles.⁶²

The government of West Bengal sustained a setback when the Calcutta high court instructed it to pay Rs 50,000 each to a professor at Jadavpur University and his neighbor who had been arrested and harassed three years ago for circulating a cartoon that lampooned chief minister Mamata Banerjee.⁶³

In August 2019, the Central Government had placed an absolute blackout of communications in the former state of J&K, immediately after the repeal of Article 370. Five months later in January 2020 the services were partially restored, and often at 2 G level for internet phones, on the basis of a Supreme Court order. Service was given only to a designated person. "White-listed" sites, and absolutely blocked social media. The Supreme Court had observed that indefinite internet suspension is not permissible, and internet restrictions must follow the principles of proportionality laid down in Article 19(2). (Livelaw .in, n.d.)

CHILD PORNOGRAPHY

*There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.*⁶⁴

Just as sexual abuse against children is illegal, child pornography is illegal around most of the world.

According to the POCSO Act of 2012, Child Pornography is "any visual depiction of sexually explicit conduct involving a child which includes photograph, video, digital or computer

⁶²Suhrith Parthasarthy, *The judgment that silenced Section 66A*, The Hindu, (Mar. 26th, 2015), www.thehindu.com/opinion/lead/the-judgment-that-silenced-section-66a/article7032656.ece. (Last visited on 16th May, 2020)

⁶³*Cartoon row: HC asks Bengal to pay compensation to Jadavpur professor*, Hindustan Times, (Mar 10, 2015 18:41 IST), <https://www.hindustantimes.com/india/cartoon-row-hc-asks-bengal-to-pay-compensation-to-jadavpur-professor/story-uEQUOFS5sanT2KQoGVvwO.html>. (Last visited on 16th May, 2020)

⁶⁴Kofi. A. Annan, *The State of the World's Children*, Unicef 2000 (Available at: <https://www.unicef.org/sowc/archive/ENGLISH/The%20State%20of%20the%20World%27s%20Children%2000.pdf>)

generated image indistinguishable from an actual child and image created, adopted or modified but appear to depict a child”.

PRESS CENSORSHIP

The liberty of press as defined by Lord Mansfield in *Lovell v. Griffin*⁶⁵, ”consists in printing without any licence subject to the consequences of law.” Thus, freedom of the press means freedom to print and publish, without prior permission, what one likes. This liberty is not confined to newspapers and periodicals alone. In *Schenck v. United States*⁶⁶, The Supreme Court provided for the following test of speech liability:

The question in every case is whether the words used are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has right to prevent”

NEWSPAPER

It is vital to freedom of expression that an independent newspaper publisher should never be told what he should put in his own newspaper. Press freedom is therefore not only a confusing term in itself, it has a complex and sometimes confusing relationship with the more basic right to freedom of speech. An unresolved question about how to hold powerful media accountable without undermining their independence is at the center of this. Press freedom can be at odds with individual freedom of expression. A person can assert a right to respond in a newspaper, but the newspaper may perceive enforcement of this as an infringement of its 'press freedom'. In *Auto Shankar case*⁶⁷, In this case, the court made it clear that any publication concerning the aspects of privacy could become objectionable if such publication was based on public records, including records of the Court, it is for this reason that once a matter has become a matter of public record, the right to privacy ceases to exist and it becomes a legitimate subject for comment by the press and other media.

*Brij Bhushan v. State of Delhi*⁶⁸ - In this case the imposition of pre censorship of a journal is a restriction on the liberty of the press which is an essential part of the freedom of the speech and expression declared by article 19(1)(a)

*Bennett Coleman & Co. v. Union of India*⁶⁹ - *Bennet Coleman and co. v. union of India* : the validity of the newsprint control order which fixed the maximum no. of the pages which a paper

⁶⁵Supra Note 16

⁶⁶(1918) 249 US 47 (V)

⁶⁷Supra Note 35

⁶⁸AIR 1950 SC 129

⁶⁹AIR 1973 SC 106

could publish was challenged as violative of FR guaranteed under art 19 (1) (a) and article 14 of the constitution. The govt. defended the measure on the ground that it would help small newspapers to grow and to prevent monopolistic combination of big newspapers. The court held that the newsprint policy was not reasonable restriction within the ambit of article 19(2). The newsprint policy abridges petitioner's right of freedom and speech and expression.

ON FILMS

Film censorship in a formal sense, film censorship in a formal sense did not come about until the 1918 Cinematography Act was passed.⁷⁰ It assigned the power to grant these licenses to the district magistrate in each locality or, in presidency cities, the police chief. The Act further provided that no film could be officially exhibited in India in the absence of prior certification by the appropriate authority. To that end, it empowered the provincial governments to establish authorities to examine and certify films intended for use and For public declaration. The British Government set up a Board of Censors in Bombay, Calcutta, Madras and Rangoon in 1920 and later in Lahore in 1927 These five provincial governments published rules regulating the certification of film And the terms to be added to the film license. A certificate issued by either of the above Boards of Censors was valid throughout British India, but could be suspended and terminated in any province on the order of the provincial government, the district magistrate or, instead, police commissioners. It was a small one to guarantee the health of the people attending the film exhibition.

However, with reference to the approval of films, it granted specific disciplinary powers to the Boards of Censors, which had the authority to classify a film merely as "acceptable" or "unsuitable" for public display as they so decided. In addition, the Act failed to include guidance on the existence of uncertifiable films for the benefit of the certifying authorities. However, the rules on film certification, which were enforced by each regional censor board, effectively remedied the inability of the Cinematograph Act to include guidelines for film censorship.

In case of Bobby Art International v. Om Pal Singh Hoon⁷¹ properly known as Bandit Queen case, It was held that the screening of a film cannot be prohibited merely because it depicts obscene and graphic events

COPYRIGHTS CENSORSHIP

Copyright shall be a pure privilege. It is given to a proprietor to protect him against copying

⁷⁰The Cinematograph Act, 1952

⁷¹(1996) 4 SCC 1 (India)

his original work. It protects the word but it does not protect the concept. In the 1957 India Copy Right Act was enacted to preserve an original author's plays. The right breaches when an act is carried out without the consent of the copyright owner.⁷²

Previously copyright was limited to books, songs, drawings, or films. But now it's about computer software and data processing due to technical developments in society. Sections 63 to 70 set down criminal responsibility for violation of copy rights. Sections 40 to 43 also apply to international copy rights.

The European Court of Human Rights explained for the first time in a judgment on the merits that a conviction based on copyright law for the unauthorized copying or public dissemination of copyright-protected content may be regarded as an interference with the right to freedom of speech and information under Article 10 of the European Convention. Such interference must adhere to the three conditions laid down in Article 10, second paragraph, of the Convention. This means that a conviction or any other judicial judgment based on copyright law, restricting the freedom of speech of a individual or an association, must be reasonably justified as appropriate in a democratic society, apart from being legally mandated and following a valid purpose.⁷³

XII. CONCLUSION

Several laws have been enacted in the United States, the United Kingdom and India, which provide for free speech in print, electronic and social media. Likewise, other than the United States, the United Kingdom and India, there are similar reasonable restrictions on the right to freedom of speech. Indulging in media trials, fake news, paid news and sting operations. In other words, it was found that electronic media and mainly news outlets misused the freedom of the press by covering any news item or incident without respecting the appropriate constraints to which they had been subject. In this regard, the judiciary released numerous seminal judgments, initially for print media and eventually for electronic and social media. So it is clear that the government is deliberately trying to curb the freedom of press in some way or the other, and hence the constant judicial interference is appropriate. The right to freedom of the press is the foundation stone of democracy and the justice system must preserve, secure, and support it.

The concept of freedom of speech and expression evolved in our nation over the years as a

⁷²Macmillian and co. ltd v. K. and J. cooper, AIR 1924 P.C. 25 (India)

⁷³ECHR: *Copyright Vs. Freedom Of Expression*, Kluwer Copyright Blog (25th January, 2013)

<http://copyrightblog.kluweriplaw.com/2013/01/25/echr-copyright-vs-freedom-of-expression/> (Last visited on 16th May, 2020)

result of the struggle, first under British rule against repressive laws of the press and then after independence from laws such as censorship etc. For the democracy to function effectively, then free speech is to sine quo non. Freedom of speech is the heart and freedom of expression is the fringe; and freedom of the press encompasses all aspects.
