

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

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Critical Analysis of Right to Speech and Expression in Lieu of National Security

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ABSTRACT

We have certain basic rights as citizens of India. Fundamental Rights are enshrined in the Indian Constitution under Part III. Freedom of speech encloses the right to express and the right to access information. The Freedom to express ideas and opinions without hindrance plays an important role in the development of society. Freedom of speech is guaranteed not only by the Constitution of India but also by various International Conventions. This right is one of the basic elements for a healthy and open-minded democracy because it allows people to freely participate in the social and political happenings of the country. But the government validates undue abridgement of the right to speech and expression on the grounds of national security and terrorism which includes mishandling of this right, which encourages troublesome relation and pressure between national security and fundamental rights. This article deals with meaning, national security and grounds of restrictions for freedom of speech and expression guaranteed under article 19(1)(a) of the Indian Constitution. It also deals with the laws of freedom of speech and expression in relation with the national security.

Keyword: *Freedom of Speech and Expression, National security, Article 19, Constitution, Fundamental Rights.*

I. INTRODUCTION

Freedom of speech and expression is the foundation stone of every democratic society. The core of free speech is the ability to speak freely and to acquire information from others. It is regarded as the first condition of liberty. It is one of the most important fundamental liberties guaranteed against state suppression or regulation². This fundamental right to freedom of speech and expression is guaranteed by the constitution under article 19(1)(a)³. Freedom of expression is recognized as a human under article 19 of the Universal Declaration of Human Rights (UDHR)⁴ and recognized in international human rights law in the ICCPR⁵. The freedom of expression can only be restricted by the law and it also includes right to communicate, print and advertise

¹ Author is a student at Galgotias University, India.

² Dheerendra Patanjali, "Freedom of Speech and Expression, India vs. America- A Study".

³ Article-19(1)(a)- to freedom of speech and expression.

⁴ Article-19- everyone has the right to freedom of opinion and expression.

⁵ International Covenant on Civil and Political Rights.

the information. Every citizen irrespective of his race, caste, sex has the freedom of speech and expression. This freedom incorporates the independence to hold conclusions and to get and confer information and the idea without any kind of obstruction by the public authority or the state. In short, the government legalizes the undue curtailment of rights to speech and expression on the grounds of national security and terrorism, for example mishandling is encouraged by the troublesome relationship and the pressure between national security and the human rights protection. The key role that can be played in addressing and resolving this issue will be played by the judiciary. There are ample instances around the world where the judiciary has played a lead role by rejecting the justification as to the curtailment of freedom of speech and expression at the time of emergency and in the interest of national security.

II. FREEDOM OF SPEECH AND EXPRESSION

Article 19(1)(a) guarantees that all the citizens shall have the right to freedom of speech and expression. This right is available only to every of India and not available to any person who is not a citizen of India i.e. foreign nationals⁶. Freedom of speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. Thus, it includes the expression of one's ideas through any communicable medium or visible representation, such as gesture, signs and the like⁷. The rights conferred under article 19 of the Indian constitution are the rights of free man. These are natural law or common law rights and not created by any kind of statute. Freedom of expression has four broad special purposes to serve-

1. It helps an individual, to attain self-fulfillment,
2. It assists in the discovery of truth,
3. It strengthens the capacity of an individual in participating in decision making,
4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

All member of society should be able to form their own beliefs and communicate them freely to others. In total, the fundamental principle involved here is the people's right to know. Therefore, freedom of speech and expression should receive generous support from all those who believe in the participation of people in the administration. It is on account of the special interest which society has in the freedom of speech and expression that the approach of the

⁶ State of Gujrat v. Ambica Mills Ltd., AIR 1974 SC 1300.

⁷ Lowell v. Griffin, (1939) 303 US 444.

government should be more cautious while levying taxes on matters of concerning newspaper industry than while levying taxes on other matters⁸.

III. NATIONAL SECURITY

National security or national defense is the security and defense of a sovereign state, including its citizens, economy, and institutions, which is regarded as an important duty of the government. Originally formed as the protection against military attack, national security is widely understood to include the non-military dimensions, including the security from terrorism, minimization of crime, economic security and energy security, environmental security, food security and cyber-security. Governments rely upon a range of measures including the political, economic and military power as well as diplomacy to safeguard the security of a nation state. They may also act to build the conditions of security regionally and internationally by reducing transnational causes of insecurity such as climate change, economic inequality, political executions and nuclear proliferation. The concept of national security is crucial to each and every nation which refers to the situation where the government ensures that the states and their citizens are protected and safe and assures these through political, economic, diplomatic and military mightiness. Above all these, the states have a wider obligation concerning the protection of the fundamental rights of the citizens, guaranteeing appropriate working of the democracy and establishing a peace and proper synchronization. National security is all about the free will of the government to take opposite decisions and to guarantee the country's sovereignty and territorial integrity. According to the Collins dictionary⁹, national security is defined as the ability of the government to protect itself from the threat of violence.

IV. INDIAN JUDICIARY'S PERSPECTIVE OF NATIONAL SECURITY

In the interest of the security of the nation, the freedom of speech and expression can be curtailed if the government believes that such a speech and expression may-

1. Wage war against the government,
2. Exaggerate external aggression.

In the case of *State of Bihar v. Shailabala Devi*¹⁰, the Hon'ble court observed that the gestures, graphical representation having a high probability of causing the problem in the state can be restricted and are covered within the purview of article 19(2) of the India Constitution. In the

⁸ *Indian Express Newspaper v. Union of India*, (1985) 1 SCC 641.

⁹ Collins dictionary- National Security.

¹⁰ 1952 AIR 329, 1952 SCR 654.

case of *Sanskar Marathe v. State of Maharashtra and Anr*¹¹, the court specifically held that only those expressions that influence or instigate hatred against the government or may cause public disorder are punishable within the meaning of section-124A¹² of Indian Penal Code, 1860.

V. GROUNDS OF RESTRICTIONS ON FREEDOM OF SPEECH & EXPRESSION

The restriction on the rights under article 19(1) can only be imposed by law and not executive or departmental instructions. No freedom can be absolute or completely unrestricted. Freedom of speech and expression is subject to limitations imposed under article 19(2) which empowers the State to put 'reasonable' restrictions on the following grounds, security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to offence and integrity and sovereignty of India.

- a) **Sovereignty and integrity of India**- sovereignty and integrity of India was added to clause (2) of article 19 by the constitution, 16th amendment act, 1963¹³. Freedom of speech and expression can be restricted so as not to permit any one to challenge the integrity and sovereignty of India or to preach cession of any part of India from the Union. In the case of *Devi Saren v. State*¹⁴, it has been held that sections 124A and 153A¹⁵ of Indian Penal Code, 1860 impose reasonable restrictions in the interest of public order and is saved by article 19(2).
- b) **Security of the state**- reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of the state. In *Romesh Thappar v. State of Madras*¹⁶, the Supreme Court has occasion to interpret the meaning of words 'security of state'. The court said that there are different grades of offences against 'public order'. Every public disorder cannot amount to be regarded as threatening the security of the state and the term 'security of state' refers only to serious and aggravated forms of public disorder, like rebellion, warring against state, insurrection and not ordinary breaches of public order and public safety.
- c) **Friendly relations with foreign states**- it was added by the constitution, 1st amendment

¹¹ 2015 CriLJ 3561.

¹² Section-124A- Sedition.

¹³ 16th amendment act, 1963- empowered the state to impose further restrictions on the rights to freedom of speech and expression and to assemble peacefully and form association in the interests of sovereignty and integrity of India.

¹⁴ AIR 1954 Pat 254.

¹⁵ Section-153A- Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

¹⁶ AIR 1950 SC 124.

act, 1951¹⁷. The object behind the provisions is to prohibit unrestrained malicious propaganda against a foreign friendly state which may jeopardize the maintenance of good relations between and the other state. It is noted that members of the commonwealth including Pakistan are not a 'foreign state' for the purpose of this constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the, matter is unfavorable to Pakistan.

- d) **Public order**- public order is an expression of wide connotation and signifies that state of tranquility which prevails among the members of political society as a result of international regulations enforced by the government which they have established. Article 19(2) did not contain the expression 'public order' and It was held that restrictions could only be imposed on the grounds mentioned in article 19(2). As a result of this decision the expression 'public order' was added to article 19(2) as one of the grounds for imposing restrictions on the freedom of speech and expression.
- e) **Decency or morality**- the words 'morality or decency' are words of wide meaning. Section 292-294¹⁸ of Indian Penal Code, 1860, provide instances of restrictions on the freedom of speech and expression in the interest of decency and morality. Obscenity in India is defined as "offensive to modesty or decency, lewd, filthy and repulsive".
- f) **Contempt of Court**- restrictions on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. The Contempt of Court Act, 1971 defines the expression 'Contempt of Court' as follows, "contempt of court may be either civil contempt¹⁹ or criminal contempt²⁰". Civil contempt means willful disobedience to any judge, judgement, decree, direction, order, writ or other process of the court. Criminal contempt means the publication, whether by words spoken or written or by signs or by visible representations or otherwise any matter or doing of any other act, which-
1. scandalizes or tends to scandalize or lower or tend to lower the authority of any court,
 2. prejudices or interferes or tends to interfere with the due course of any judicial proceedings,

¹⁷ 1st amendment act, 1951- empowered the state to make special provisions for the advancement of socially and economically backward classes.

¹⁸ Section 292-294- offences affecting public health, safety, convenience, decency and morals.

¹⁹ Section-2(b)- civil contempt.

²⁰ Section-2(c)- criminal contempt.

3. interfere or tends to interfere with the administration of justice in any other manner.
- g) **Defamation**- a statement which injures a man's reputation amounts to defamation. It consists in exposing a man to hatred, ridicule or contempt. In section 499 of Indian Penal Code, 1860²¹, contains the criminal law relating to defamation.
- h) **Incitement of an offence**- this ground was also added by the constitution, 1st amendment act, 1951. Freedom of speech and expression cannot confer a license to incite people to commit offence. The word offence used here is not defined in the Indian Constitution, however according to the General Clause Act, "offence shall mean any act or omission made punishable by any law for the time being in force".

VI. CONCLUSION

It can be concluded that the value of the freedom of speech and expression is determined by the extent to which the citizens are able to enjoy such freedom. Freedom of speech and expression is a fundamental human right. It is the bulwark of democratic government. It is also essential for the proper functioning of the democratic process. Speech is essential because it helps a human being to convey his thoughts, sentiments and feelings to others. Thus, it is a natural human right as a human being acquires it on birth. Therefore, it is a basic right and it should not be taken away from the citizens. But, solely in the name of national security and territorial integrity, the freedom of expression shall not be restricted, withdrawn or taken away. A proper justification shall be provided by the state that why they are restricting these rights and is it important to restrict the same. Therefore, it is the duty of the state to ensure a balance between the right to freedom of speech and expression and national security.

²¹ Section-499- Defamation.

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