

An Analysis of Right to Speech and Expression

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Abstract: Life is the ultimate gift of the god to the universe. He blessed every single living creature on the planet to feel and react. Though every living creature communicates in one way or the other, but among all only human being is the one who is blessed by the supreme with the Power of words, when words began to take root they formed language. And today language is the hallmark of our species. With the span of generations and time, the mode of communication between individuals has developed from signs, words to written text. Today we are connected to each other through transmission of rays, wires, visually in short we are “super connected”. However when the world got divided in to territories and the concept social contract and welfare state emerged the era of manmade law beings. And ultimately the theory “sovereignty”, “command” Rights and Duties came in to existence and the man has started controlling the action and reactions of one and another through legislation.

Keywords: Right to Speech, India

ऐसी वाणी बोलिए मन का आप खोये | औरन को शीतल करे, आपहुं शीतल होए ||---Saint Kabir Dass

1. Introduction

According to Locke, man is born “with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of nature” and he has by nature a power “to preserve his property – that is, his life, liberty and estate, against the injuries and attempts of other men.”¹ Thus the era of “Human Rights” takes its root. However the history of human Rights is as old as human civilization itself. With the Universal declaration of human rights in 1948 all the democratic countries of the world has framed there constitution under its shadow of basic principles of Universal Declaration of Human Rights. Article 19 of the said declaration provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

India has pledge to adhere the basic principle of human rights and was signatory to it, thus in order to secure to all its citizens with Justice, Liberty, Equality and Fraternity. The fundamental Rights guaranteed under part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights. Article 19 (1) (a) of the Constitution of India provides that all citizens shall have the right to freedom of speech and expression. It further provides that nothing in sub-clause (a) of clause (1) shall affect the

operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. However fundamental rights are the modern name for what have been traditionally known as natural rights.²

2. Speech and the expression?

Black’s Law Dictionary Define the term “Speech” as “The expression or communication of thoughts or opinions in spoken words; something spoken or uttered”.³ It includes communication of oral and written messages which involves the use of symbols, which too includes non linguistic symbols, conventionally understood to convey ideas and information.⁴ Further it includes Silence ⁵ In Romesh Thappar v. State of Madras⁶, the Apex Court is of the view that freedom of expression means the right to express one’s convictions and opinions freely, by words of mouth, writing, printing, picture or any other manner. It would thus include not only the freedom of press, but the expression of one’s ideas by any visible representation, such as by gesture and the like, by carrying banners and signs.

¹ Rod Hay (ed) P.N., John Locke, Two Treatises of Government, 141, Para 87 (5TH edn, London 1823).

² Golak Nath vs State of Punjab, AIR 1967 SC 1643

³ Brayan A. Garner, “Black’s Law Dictionary”, 1558, (9th edn, USA, 2009)

⁴ M.B. Nimmer, *The Meaning of Symbolic Speech under First Amendment*, 29, 61 (UCLA, Law Review, 1973)

⁵ Bijoe Emmanuel & Ors v. State of Kerala, (1986) 3 SCC 615

⁶ 1950 SCR 594

3. Applicability of the Fundamental Right to Speech and Expression.

It was held by the Supreme Court of India that a foreigner enjoys no rights under Art. 19. Art 19 confers certain fundamental rights on the citizens and not on non citizens of India. The court ruled out that a foreigner does, however, enjoy the fundamental Right to life and person liberty under Art. 21. According to the tenor language of Art. 21, it is available not only to every citizen of this country, but also to a person who may not be a citizen of this country. Even those who come to India merely as tourist or in any other capacity are entitled to the protection of their lives under Art. 21.

The Law commission of India in its 101 Report has taken up for consideration the question whether the fundamental right to freedom of speech and expression as guaranteed by the constitution should be made available to companies, corporation and other artificial persons, as if so subject to what condition. And proposed to deal with the restriction made explicit in the constitution itself, namely, that the provision of the article 19 can be availed of only by the citizens, according to the report the use of word "citizen" in article 19 has had the effect of leaving corporate bodies out of the scope of article 19. As per the commission the position as to the application of article 19 of the constitution to various categories of persons may be stated in the form of propositions as under.

1. Article 19 of the constitution being confined to citizens, foreigners cannot claim any right there under.⁷
2. A corporation cannot claim citizenship,⁸ and cannot therefore claim any right under article 19.
3. This is so, even though the corporation is company whose shareholders are citizens of India.
4. The shareholders of a company can challenge the constitutional validity of a law on the ground of infringement of article 19, if their own rights are infringed,⁹ and in such a proceeding the company may be joined as a party.

In *S.T. C vs Commercial Tax officer*¹⁰, it was decided by the majority that the provision of the Citizenship Act were conclusive on the question that a corporation or a company could not be a citizen of India and in *Tata Engineering and Locomotive Co. Ltd vs. State of Bihar*¹¹ it was unanimously decided by a bench of five judges of the Supreme Court that article 19 guaranteed the rights in the question only to citizens as such, and that an association (such as a company) could not lay a claim to the fundamental rights guaranteed by article

19, solely on the basis of the fact that was an aggregation of citizens.

4. Limitations

In the late 1940s, when Partition was still fresh in the minds of India's leaders they were wary of giving too much room to free speech, civil liberties, due process and religious freedom when they drafted the Constitution. Even so, they sought a compromise that would preserve India's multicultural diversity. The document embodied both the apprehensions and the hopes of the members of the Constituent Assembly, it being left to the future generations to make sense of its otherwise conservative text. It was the suggestion that restrictions on fundamental freedom should be "reasonable". Prime Minister Nehru disagreed and the 1948 draft omitted the qualification - which was only added at the insistence of Pundit Thakur Das.¹² In its final version, however, Article 19 of the 1950 Constitution included "reasonable" restrictions, even though these did not apply explicitly to freedom of speech and expression. The 1950 Constitution thus guaranteed the freedom of expression, and its restrictions were confined to defamation, contempt of court, and expression that were indecent, immoral, or undermined the security of the State.

Immediately after the Constitution came into force, three state governments moved to restrict free speech. Nehru, who preferred new legislation instead of a Constitutional amendment, sought advice from B.R. Ambedkar, his Law Minister and former Chairman of the Constitution Drafting Committee. Ambedkar advised against removing existing limitations, as a means of preventing the Supreme Court from reading them into Article 19, arguing that speech was already subject to reasonable restrictions for libel, slander, and undermining state security.

The Home Ministry recommended that public order and incitement to crime be listed among the exceptions to the right to freedom of speech and it argued for an amendment to permit restrictions "in the interests of the security of the State" and not only when speech aimed "to overthrow" the state. The Constitutional amendment of 1951 therefore "retroactively and prospectively empowered government to impose 'reasonable restrictions' on freedom of expression in the interests of the security of the State [replacing the words "tends to overthrow the State"], friendly relations with foreign States, public order; decency or morality or in relation to contempt of court, defamation, or incitement to an offence.¹³ The government claimed that the changes were

⁷337 US 1 (1949) quoted with approval by Jeevan Reddy, J. in *Printers Mysore Ltd. vs. Asstt. Commercial Tax Officer*, (1994) 2 SCC 434

⁸ *Barium Chemicals v. Company Law Board*, AIR 1967 SC 295

⁹ *Bennet Coleman v. Union of India*, AIR 1973 SC 106

¹⁰ (1964) 4 SCR 99

¹¹ (1964) 6 SCR 530

¹² Rajeew Dhavan, *Publish and Be Damned: Censorship and Intolerance in India*, 11 (New Delhi: Tulika Books, 2008)

¹³ Granville Austin, *Working a Democratic Constitution: The Indian Experience*, 44, (Oxford University Press, 1999)

necessary because Article 19 has been held by some courts to be so comprehensive as to permit incitement of murder and other violent crimes.¹⁴ The insertion of “public order” came on the heels of a Supreme Court ruling in the case of Romesh Thapar,¹⁵ which invalidated a law that pre-censored speech through press bans in the name of public order.¹⁶ The 1951 constitutional amendment sought to “correct” the Supreme Court’s expansive interpretation.¹⁷ Article 19(2) was further amended in 1963 with the insertion of the words “the sovereignty and integrity of India” as a permissible restriction on freedom of expression.

5. Right to Speak or to Abuse?

India is a democratic nation. Freedom of speech and expression is having a special position in the country especially in the era to digitalization of communication. But at other side the Constitution also ask the citizens of the country to perform some fundamental duties it provides that it shall be the duty of every citizen of India to :-

1. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.¹⁸
2. To develop the scientific temper, humanism and the spirit of inquiry and reform.¹⁹

The manner in which the valuable right of speech and expression is use now days through various modes especially electronic, violates the constitutional mandate of fundament duties as rights and duties are inspirable to each other. The speeches and expression today not promote harmony and the sprite of brotherhood, scientific temperament and humanism. The situation became more worrisome when in the name of parliamentary privileges politician uses derogatory language and behavior keeping the fact aside that the proceedings of parliament in today’s era are telecast as live. At one point of time if we keep aside the said privilege of parliament then the situation become even more worrisome when these politicians speak in public during election and create the nuisance, trauma and endangers the sense of harmony and brotherhood in the name of so called “Abhivakti ki Savtantrta”, the freedom of speech and expression. There are countless occasions when the politicians and community workers are found creating echos in public, the case of JNU, statement of Justice Gangually upon the verdict of Supeme Cout, statement of deceased veteran Actor Om Puri in relation to Marytr, words and speeches of Asaduddin Owaisi in which he use to provoke the Muslims against Hindus, the recent Padamvati case are the classic examples of violation of constitutional mandate. Not only this in the name of

freedom of speech and expression the opposition parties even insulted and put derogatory remark against the active prime minister of the country. No doubt there can be differences of opinion and methodology at least this should be kept in mind that today we are superconnected. Such acts will derogate the dignity of the entire nation globally. Therefore it’s no more speech and expression it becomes a right to abuse. Promotion of harmony and brotherhood means respecting one and other views, providing a helping hand if someone is not behaving in a manner which is supposed to be on part of cultured and well mannered human it can be oppose through fair criticism and not by creating nuisance further.

6. Conclusion

India is a secular country and its secularism is not influenced by its diversity and constitutional mandate. It is secular because the diverse public of the nation irrespective of its religion cast and creed profess harmony and sense of brotherhood from the era when there is no means of communication except the natural voice and expression of an individual. Today the term “secularism” needs the answer to the question that when the Constitution, the supreme law of the land mandate that India is a Secular state then what is the status of the ruling government and the of the opposition along with all small and large political parties in the state. Are they are secular? No they are not. As they entire political scenario malafidely tries to divide the harmony and brotherhood of ages for few votes behind the curtain of freedom of speech and expression. This is necessarily to be stopped in the era of digital communication. Since from child hood we have been taught that there are good and bad effect of technology. There was a time when there were no telephones, Television, no internet and social media and we all lived in brotherhood and harmony but today we have blessed with the technology of digital speech and expressions but we all are living in a state of terror. Preservation of public order is the duty of the state. In order to keep it intact, state can impose reasonable restrictions upon freedom of speech and expression. It is to be noted that this ground was added by the constitutional 1st amendment, 1951. It is worthwhile to mention here that prior to this amendment; Supreme Court has refused to permit the imposition of restriction on the right to free speech and expression on the ground of public order. Thus there is an urgent need of a wider interpretation of term speech and expression and the abuse of any sort must be restricted for the dignity and integrity of the nation and for maintaining public peace and tranquility.

¹⁴ Preamble of the Constitution (First Amendment) Act, 1951, New Delhi

¹⁵ Romesh Thappar v. State of Madras, 1950 SCR 594

¹⁶ Chinmavi Arun, “Freedom of Expression Gagged” (February 15, 2013, the Hindu).

¹⁷ The chairman, Railway Board vs. Mrs Chandrima Das, AIR 2000 SC 988

¹⁸ Article 51A e , The Constitution of India

¹⁹ Article 51A h , The Constitution of India