

Freedom Of Speech And Expression: Under Article 19(1)(A) Of The Constitution

Arshdeep Singh

Master of Law, Kurukshetra university kurukshetra

Abstract: Article 19 (1) (a) of the Indian constitution secures to every citizen the freedom of speech and expression. The clause should be read with clause (2) which provides that the said right shall not prevent the state from making any reasonable law relating to the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation of incitement to an of since and sovereignty and integrity of India.

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1. Introduction

The phrase speech and expression used in Article 19 (1) (a) has broad connotation.¹ The right to paint, sing, dance² to write poetry or literature and right to read is also covered by Article 19 (1) (a) as the basic characteristics of all these activities is included in freedom of speech and expression. In the Calcutta High Court it was observed that the freedom of sing or dance is an important mode of expression and is an integral part of the freedom of speech and expression enshrined Article 19 (1) (a) of the constitution if any authority tries to force or prevent the people of India for seeing or hearing such songs or dances, then Art 19 (1) (a) might as well as be written off. It is for the simple reason because freedom of speech implies not only the views which one approves but the freedom to propagate the views which are totally disapproved.

2. Freedom of the press:

Article 19 (1) (a) guarantees the freedom of speech and expression. The phrase 'speech and expression' is of very wide connotation. 'Expression' naturally presupposes a second party to whom the ideas are expressed or communicated. The freedom of expression thus, includes the freedom of the propagation of ideas, their publication and circulation. In short, the freedom of speech and expression includes the liberty of the press.³

Unlike the American Constitution, Art 19 (1) does not specifically or separately provide for liberty of the press. The omission was explained by Dr. B.R. Ambedkar when he observed⁴:

The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are merely exercising the right of the expression, and therefore no special mention is necessary of the freedom of the press.

It is now, settled law that the right to freedom of speech and expression in Article 19 (1) (a) includes the liberty of the press.⁵

3. No Pre-Censorship on Press :

"Liberty of the press" as defined by Lord Mansfield consists in⁶ - 'Printing without previous licence & subject to the consequences of law.'

The freedom of the press, thus means the right to print and publish what one pleases, without any previous permission, imposition of pre-censorship on publication is, therefore violative of the freedom of the press, unless justified under clause (2) of Article 19.

In *Brij Bhushan v. State of Delhi*⁷ in pursuance of Section 7 (1) (c) of the East Punjab Public Safety Act, 1949 as extended to the province of Delhi, the Chief Commissioner of Delhi

¹ M.P. Singh, V.N. Shukla's Constitution of India (1995) 105

² Usha Uthup v State of W.B. AIR 1984 Cal. 268

³ R. P Ltd. v Proprietors, Indian Express Newspapers Pvt. Ltd. AIR 1989 SC

⁴ C.A.D, VII, 980

⁵ Sakal Papers (P) Ltd.vs. Union of India AIR 1962 SC 305

⁶ AIR 1950 SC 129

⁷ AIR 1950 SC 129

issued as order against the petitioner, the printer, publisher and editor of an English weekly 'the organiser' published from Delhi, directing them to submit, for scrutiny in duplicate before publication till further orders, all communal matters and news and views about Pakistan including photographs and cartoons other than those derived from official sources or supplied by the news agencies. The majority of the Supreme Court struck down the order as violating of Article 19 (1) (a).

4. No Excess Taxes on Press :

In *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*⁸ the Supreme Court emphasized that freedom of speech and expression should receive a generous support from all those who believed in the participation of people in the administration. On account of this special import which society had in this freedom, the approach of the government should be more cautions while levying taxes on matters concerning newspaper industry them while levying taxes on other matters, the court opined.

In this case, the petitioner who were the editors, printers and publishers of newspapers, periodicals, magazines etc. Challenged the validity of the imposition of import duty on newsprint under the customs Act, 1962 read with the customs Tariff Act 1962 read with the customs Tariff Act 1975 and the levy of auxiliary duty under the Finance Act, 1981 on newsprint.

The Supreme Court held that the newspaper industry had not been granted exemption from taxation. However, the exercise of power to tax should be subject to scrutiny by courts.

5. Government has no monopoly on electronic media :

In a historic judgment in *Secretary, ministry of I and B v. Cricket Association of Bengal (CAB)*⁹ the Supreme Court has considerably widened the scope and extent of the right to freedom of speech and expression and held that the government has no monopoly on electronic media and a citizen has under Art. 19 (1) (a) a right to telecast and broadcast to the viewers/lighteners through electronic media Television and Radio any important event. The government can impose restrictions on such a right only on ground specified in clause (2) of Art. 19 and not on any other ground. State monopoly on electronic media is not mentioned in clause (2) of Art 19. The court directed the government to set up an independent autonomous broadcasting authority which will free Doordarshan and Akashvani from the shackles of government control and ensure conditions in which the freedom of speech and expression can be meaningful and effectively enjoyed by one and all.

In the instant case, the petitioner the cricket association of Bengal (CAB) wrote a letter to the Director General of Doordarshan that a six-nations International Cricket Tournament will be held in Nov. 1993 as a part of its

Diamond Jubli Celebration and requested the DD to make necessary arrangements for telecasting of all matches in the Tournament in India. The CAB made it clear that the foreign T.V. rights would remain with it. The CAB had agreed to pay the requisite royalty amount to the D.D. Meanwhile the CAB without permission from the Government entered into an agreement with a foreign T.V. – TWI (Trans World International) for telecasting all the matches out of India and asked the DD to make available its TV signals for telecasting the matches. The TWI had agreed to pay more royalty to the CAB. The DD refused the permission. The CAB filed a writ petition in Calcutta High Court and requested the court to issue a direction for telecasting the matches by the Agency appointed by the CAB. The Government filed an appeal in the Supreme Court against the order. It contended before the court that it had monopoly on it under Section 4 of the Telegraph Act 1855. The word 'Telegraph' includes telecast. It was submitted that the CAB TWI had obtained no licence or permission under the Telegraph Act and therefore they cannot telecast the matches from any place in Indian territory. The CAB argued that the game of cricket provides entertainment to public. It is a form of expression and therefore included within the expression of speech and expression guaranteed by Art 19 (1) (a) of the constitution. The right includes the right to telecast and broadcast the matches and this right belongs to the organizers which cannot be interfered with anyone. The organizer is free to choose any agency as it thinks appropriate for this purpose.

The Supreme Court, confirming the order of the Calcutta High Court, held that the fundamental right to freedom of speech and expression includes the right to communicate effectively and to as a large population not only in this country but also abroad. There are no geographical barriers on communication. A citizen has a fundamental right to use the best means of imparting and receiving communication and as such have an access to telecasting for the purpose. At present electronic media viz. T.V. and Radio is the best effective means of communication. However, since airways are public property and they must be used for public good. They are therefore subject to certain limitations. The court directed the government to establish an independent autonomous public authority representing all sections of society to control and regulate the use of airways. A monopoly over electronic media is inconsistent with the right to freedom of speech and expression. Broadcasting media must be under the control of public. Justice Reddy in his concurring judgement suggested that suitable amendments should be made to the Indian Telegraph Act keeping in view of modern technological developments in the field of information and communication.

⁸ AIR 1986 SC 515

⁹ (1995) 2 SCC 161

6. Telephone Tapping – Invasion on right to Privacy :

In a judgement of far reaching importance in people's union for civil liberties union of India¹⁰ the petitioner, people union for civil liberties a voluntary organization filed a petition under Art. 32 of the constitution by way of public interest litigation highlighting the incidents on telephone tapping in recent years. The petitioner has challenged the validity of Section 5 (2) of the Indian Telegraph Act, 1885, Section 5 (2) permits the interception of messages in accordance of the provisions of the said section.

“Occurrence of any public emergency” or “in the interest of public safety” are the sine quo non for the application of the provisions of Section 5 (2) unless these two conditions are satisfied the government cannot exercise its power under the said section. The expression “public safety” means the state or condition of freedom from danger or risk for the people at large unless these two conditions are in existence the government cannot resort to telephone tapping, even though there is satisfaction that it is necessary or expedient to do so in the interest of sovereignty of India etc.

7. Conclusion

The court has laid down exhaustive guidelines to regulate the discretion vested in the state under section 5 (2) of the Indian Telegraph Act for the purposes of phone tapping and interception of other messages so as to safeguard public interest against Arbitrary and unlawful exercise of power by the government.

The court has expressed its displeasure that the state has so far not framed any rules to prevent misuse of the power, the court said –

“In the absence of just and fair procedure for regulating the exercise of power under Section 5 (2) of the Indian Telegraph Act, it is not possible to safeguard the rights of the citizens guaranteed under Art. 19 (1) (a) and Art. 21 of the constitution.”

Telephone tapping also violates Art. 19 (1) (a) unless it comes within grounds of restrictions under Art. 19 (2). The freedom means the right to express one's convictions and opinions freely by words of mouth, writing, printing, picture or in other manner. When a person is talking on telephone he is exercising his right to freedom of speech and expression. Telephone tapping unless comes within the grounds of restrictions under Art. 19 (2) would violate Art. 19 (1) (a) of the constitution.

¹⁰. AIR 1997 SC 568