



BOOMI INTERNATIONAL RESEARCH JOURNAL OF TAMIL

An international open access, peer- reviewed, refereed journal

Constitutional protection and Legal Framework of Freedom of Speech and Expression

Yasavi Murugan

First year, LLM Student, Government Law College, Vellore- 632006, Tamilnadu, India.

Email id: yasavimurugan@gmail.com, Ph.no: 9514125283

Abstract

A fundamental right cannot be taken away by a constitutional amendment if it forms the basic structure of the Constitution. Article 19 (1) (a) secures to every citizens the freedom of speech and expression. The freedom of speech and expression means the right are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society. Convention jurisprudence gives different weight to different kinds of expression.

The modern Indian Constitution declares certain fundamental rights for individuals under Part III, Article 12 to 35. Some of these rights are only for the citizens whereas others are available equally to the non-citizens also. These fundamental rights are inviolable subject to the qualification defined in the Constitution itself. It establishes that no laws ordinance, custom usage or administration order can abridge or take away a fundamental right, these rights are binding upon both legislative and the executive and any law which violates the fundamental right, is void.

A fundamental right cannot be taken away by a constitutional amendment if it forms the **basic structure of the Constitution**. Article 19 (1) (a) secures to every citizens the freedom of speech and expression. The Freedom of speech and expression means the right to express once conviction and opinions freely by word of mouth, writing, printing, picture or any other mode. Freedom of speech is bulwark of a democratic government and it attaches great importance to this freedom, because without the freedom of speech appeal to reason, which is the basis of democracy, cannot be made. Freedom of speech opens the channels of free discussion of issues and plays a crucial role in public opinion on social, political and economic matters.

The honourable Supreme Court has interpreted the phrase, “Speech and expression” of having a wide connotation and thus many rights not expressly found under the articles plain words has been recognized. Thus in this paper an attempt is made to find out as to how relevant and effective has been such dynamic interpretation of the right.

Keywords: Fundamental Right, Freedom of Speech and expression, Basic structure of Constitution, Equal protection of law, Reasonable Restrictions.

Introduction

Freedom of Speech and Expression is defined under Article 19(1)(a) of the Constitution of India which states that all the citizens of India have a right to freedom of speech and expression. The philosophy behind this Article lies in the Preamble of the Constitution of India- ‘where a solemn resolve is made to secure to all its citizen, their liberty of thought and expression’. The exercise of this right is, however, subjected to reasonable restrictions for some purposes being imposed under Article 19(2) of the Constitution of India.

The Right to Freedom of Speech and Expression as per the Indian Constitution- means the right to express one’s own conviction and opinions freely.

1) The word “freely” means the freedom of a citizen to express his views and opinion in any conceivable means including by words of mouth, writing, printing, banners, and signs and even by way of silence.

2) The Supreme Court of India has held that the participation in sports in an expression of one’s self and thus it is a form of freedom of speech.

3) The Supreme Court has also held that hoisting the National Flag by citizens is a form of freedom of speech and expression (see Union of India vs Naveen Jindal & Anr on 23 January, 2004).

4) Freedom of Press is an inferred right implicit Under Article 19(1)(a).

5) The Right to Information (RTI) emerges as a fundamental right under article 19(1)(a) as freedom of speech and expression are meaningless without access to information.

6) The right to political dissent.

Restrictions- under Article 19(2) of the Constitution of India, the State may make a law imposing “reasonable restriction” on the exercise of the right freedom of speech and expression “in the interest of” the public on the following grounds:

- Security of State



- Friendly relation with foreign states
- Public Order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offense
- Sovereignty and integrity of India.

Aims and objectives

Freedom of speech enjoys special position as far India is concerned. The importance of freedom of expression and speech can be easily understand by the fact that preamble of constitution itself ensures to all citizens inter alia, liberty of thought, expression, belief, faith and worship. The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as fundamental and human right in Article 19(1)(a) "freedom of speech and expression".

What are the main elements of freedom of Speech and Expression?

These are the following essential elements of the freedom of Speech and Expression: This right is solely available to a citizen of India and not to persons belonging to other nations i.e. foreign nationals. The freedom of speech under Article 19(1)(a) includes the right to express one's views and opinions about any kind of issue and it can be done through any kind of medium, such as by words of mouth, by writing, by printing, through picturisation or through a movie.

This right is not absolute as it allows the Government of India to frame laws which can impose reasonable restrictions in the cases which are involved with the sovereignty and integrity of India or the security of the state, or friendly relations with foreign nations, even public order, decency and morality and contempt of court, defamation and incitement to an offence.

Such a restriction on the freedom of speech of any citizen may be imposed as much by an action of the State as by its inaction. Thus, if failure is found on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of Article 19(1)(a).

Freedom of Speech

Freedom of speech and expression is the most basic of all freedoms granted to the citizens of India. J Patanjali Shastri has said in the case of Romesh Thapper vs State of Madras AIR 1950 SC that freedom of speech and that of the press lay at the foundation of a democratic society, for without free political discussions, no public education is possible, which is so important for the proper functioning of the govt. It allows us to freely express our ideas and thoughts through any medium such as print, visual and voice. One can use any communication medium of visual representation such as signs, pictures, or movies. Freedom of speech would amount to nothing if it were not possible to propagate the

ideas. Thus, the freedom of publication is also covered under freedom of speech.

Freedom of speech serves purposes

- Allows an individual to attain self fulfillment.
- Assists in the discovery of truth.
- It strengthens the capacity of a person to make decisions.
- It facilitates a balance between stability and social change.

This right is not only about communicating your ideas to others but also about being able to publish and propagate other people's views as well. Thus, freedom of speech and expression is linked to the people's right to know. Freedom of speech and expression is a broad term and encompasses several things. The following are important cases that have determined the extent of this right from time to time.

Right to know

Prabhu Datt vs Union of India SC AIR 1982: SC held that right to know news and information about the functioning of the govt is included in the freedom of press.

Union of India vs Association for Democratic Reforms SC AIR 2002 : SC held that people have right to know about the candidate before voting. Thus, the law preventing the Election Commission from asking for a candidate's wealth, assets, liabilities, education and other such information, is invalid.

Right to tell and propagate

LIC vs Manubhai D Shah SC AIR 1992 : In this case, Manubhai wrote an article in LIC's magazine about the problems with LIC that affected policy holders. LIC published a response to that but did not give a chance to public a rejoinder. SC held that LIC being a State as per Art 12, must publish his response. It also held that it does not mean everybody has a right to publish in a magazine and this right should be determined on a case by case basis.

Secretary, Ministry of I & B vs Cricket Association of Bengal SC AIR 1995 : In this historic judgment, SC has held that one has the right to publicize his expression as well. A game of cricket is an expression and the organizers have a right to propagate it everywhere in the world. So Doordarshan must provide its uplinking facilities to cab for transmitting the signals out of country. Art 19 (2) does not allow restrictions on 19 (1) (a) on the grounds of creating monopoly of the govt.

International Aspect

The Declaration provides for freedom of expression in Article 11 which states that: "The free communication of ideas and opinion is one of the most precious of the right of man. Every citizen may, accordingly speak, write and print with freedom but shall be responsible for such abuses of this freedom, as shall be defined by law".

Article 19 of the Universal Declaration of Human Rights, adopted in 1948 states that: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek receive and impart information and ideas through any media and regardless of frontiers.”

Today freedom of speech or the freedom of expression is recognized in international and regional human right law. The right is enshrined in Article 19 of the International Convent on Civil and Political Rights. Article 10 of the European Convention on Human Right Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on human and people’s rights. Based on John Milton’s argument, freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects:

1. The right seeks information and ideas;
2. The right to receive information and ideas ;
3. The right to impart information and ideas ;

International, regional and national standards also recognize that freedom of speech and expression, includes any medium, be it orally, in written in print through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only one content but also the means of expression.

What are the grounds on which this freedom can be restricted?

There are many grounds on which the freedom of speech and expression can be restricted up to some reasonable restrictions by the state. Such restrictions are defined under the clause (2) of Article 19 of the Constitution of India which imposes certain restrictions on free speech under the following:

1. Security of the State
2. Friendly relations with foreign States
3. Public order
4. Decency and Morality
5. Contempt of court
6. Defamation
7. Incitement to an offence, and
8. Sovereignty and integrity of India.

Security of State

Some reasonable restrictions can be imposed on the freedom of speech and expression, in the sections which are involved with the security of the State. The term ‘security of the State’ is required to be distinguished from the term ‘public order’ because they are similar but different in terms of their intensity. Hence, the security of state refers to serious and aggravated forms of public disorder an example of this can be rebellion, waging war against the state even if it is against a part of the state, etc.

Case: People’s Union for Civil Liberties v. Union of India (AIR 1997 SC 568)

Public interest litigation (PIL) was filed under

Article 32 of the Constitution of India by PUCL, against the frequent cases of telephone tapping happening throughout the nation. And thus the validity of Section 5(2) of The Indian Telegraph Act, 1885 was challenged. It was then observed that “occurrence of public emergency” and “in the interest of public safety” is the sine qua non for the application of the provisions laid down under the Section 5(2). If any of these two conditions are absent from the case, then the government of India has no right to exercise its power under this section. Telephone tapping, therefore, will be violative of Article 19(1) (a) unless it comes within the grounds of reasonable restrictions under Article 19(2).

Friendly relations with foreign States

This ground for the restriction was added by the Constitution (First Amendment) Act of 1951. The State has the authority to impose reasonable restrictions on the freedom of speech and expression if it is affecting negatively the friendly relations of India with other State or States.

Public order

This ground for the restriction was also added by the Constitution (First Amendment) Act, 1951 this was done in order to meet the situation arising from the Supreme Court’s decision in the case of *Romesh Thapar v. The State of Madras* (AIR 1950 SC 124). According to the Supreme Court of India, public order is very much different from law and order and security of the state. The term ‘public order’ indicates the sense of public peace, public safety and tranquillity. Anything that disturbs public peace, in turn, disturbs the public. But mere criticism of the government does not disturb public order. A law which hurts the religious feelings of any class has been held to be valid and reasonable restriction aimed at maintaining the public order.

Decency and morality

These are defined under the Sections 292 to 294 of the Indian Penal Code 1860 provides for the instances of restrictions on the freedom of speech and expression on the grounds of decency and morality, it then prohibits the sale or distribution or exhibition of obscene words.

Contempt of court

The right to freedom of speech in no way allows a person to contempt the courts. The expression Contempt of Court has been defined under Section 2 of the Contempt of Courts Act, 1971. The term ‘contempt of court’ relates to civil contempt or criminal contempt under the Act.

Defamation

The clause (2) of Article 19 of the Constitution of India prevents any individual from making any statement that injures the reputation of another in the eyes of society. Defamation is a serious crime in India and is defined under Section 499 and 500 of the Indian Penal Code. Right to free speech is not necessarily absolute. It does not mean freedom to hurt any other person’s reputation (which is protected under Article 21 of the constitution). Although ‘truth’ is considered a defence against defamation, but the defence would only help if the statement was made ‘for the good of the public’ and that is a question of fact to be assessed by the independent judiciary.

Incitement to an offence

This is another ground which was also added by the Constitution (First Amendment) Act of 1951. The Constitution also prohibits an individual from making any statement which incites or encourages other people to commit an offence.

Sovereignty and integrity of India

This ground was added subsequently by the Constitution (Sixteenth Amendment) Act of 1963. This is only aimed to prohibit or restrict anyone from making statements that directly challenge the integrity and sovereignty of the country.

Current scenario

Although Article 19 does not express provision for freedom of press but the fundamental right of the freedom of press implicit in the right to freedom of speech and expression. In the famous case *Express Newspapers (Bombay) (P) Ltd. V. Union of India* court observed the importance of press very aptly. Court held in this case that “In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

Conclusion

Expressing one’s opinions through speech is one of the basic rights guaranteed by the Constitution of India and in the modern context, the right to freedom of speech and expression is not just limited to expressing one’s own views through words but it also includes the circulation of those views in terms of writing, or through audiovisuals, or through any other way of communication. This right also comprises of the right to freedom of the press, the right to information, etc. Hence it can be concluded with this article that the concept of freedom is very much essential for the proper functioning of a Democratic State.

The words “in the interest of public order” and “reasonable restrictions” mentioned under Article 19 of the Constitution of India are used to indicate that the rights provided under this section are not absolute and they can be restricted for the safety of the other people of the nation and to maintain the public order and decency.

Reference

1. Hate Speech and Freedom of Expression: Balancing Social Good and Individual Liberty by M.K. Bhandari and Mithilesh Narayan Bhatt
2. <http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf>
3. <https://www.probono-india.in/blog-detail.php?id=159>
4. <https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>
5. <https://10years.mediadefence.org/10-reasons-freedom-of-expression/#:~:text=Freedom%20of%20expression%20is%20a%20core%20value%20in%20the%20democratic,others%2C%20without%20censorship%20or%20reprisals>
6. <https://lexforti.com/legal-news/freedom-of-speech-and-expression/>