



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

ANALYZING THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION UNDER THE CONSTITUTION OF INDIA

~ *Anuprabha Bansod*

“The Constitution matters because it works even for those who may not believe in it.” The Chief Justice of India, D.Y. Chandrachud quoted in a memorial lecture at the High Court of Bombay in December, 2018. For years, the Indian Constitution has stood as a pillar of rule of law, equality, liberty, democracy and justice for the Indians. The Constitution stands as the primary law of India, incorporating a written framework that delineates the fundamental structure, procedures, powers and responsibilities of the government and its bodies, as well as the rights and duties of its citizens.¹ At the core of this living document lies the right to freedom, enshrined in Articles 19 i.e. the right to freedom of speech and expression to all the citizens of India.

1. Historical Context

India endured nearly two years of the British colonial and imperial rule, marked by arbitrary laws and exploitative regulations imposed by the colonial government. The Indian freedom struggle arose in response to the brutal treatment of the Indian populace laying a fervent cornerstone for the desire of *Poorna Swaraj* i.e. complete self-rule and liberation from the colonial tyranny. The Indian Constituent Assembly was formed in 1946, convening its first session on December 9, 1946. Initially composed of 296 members, the Assembly's primary responsibility was to draft a constitution reflecting the diverse hopes and aspirations of India's populace. The Assembly

¹ Digital Sansad, Constitution of India
<https://sansad.in/ls/about/introduction>

included representatives from various communities, including Scheduled Castes, Tribes, Sikhs, Christians, Anglo-Indians, Parsis, and Muslims. Eminent figures such as Dr. B.R. Ambedkar, Sarvepalli Radhakrishnan, and K.M. Munshi played pivotal roles in its deliberations.² The right to freedom now enshrined in the Indian constitution had their dawn in the Motilal Nehru Report of 1928 which was issued in 1950.³ Most of these rights demonstrate the commitment of India's forefathers to the Universal Declaration of Human rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) in their coverage of issues addressed by the ICCPR. The right to freedom of speech and expression is thus an internationally recognized fundamental right by various statutes such as the UDHR, ICCPR and United Nations Charter (UN Charter).

2. Article 19

Article 19 (1) (a) of the Constitution of India states that all the Indian citizens have the right to freedom of speech and expression. This article can be further interpreted to incorporate the freedom of press, broadcast, information exclusively granting the right to Indian citizens to express their views and opinions on any subject through various mediums in writing, spoken words, pictures, films and movies.⁴ Nevertheless, this right is not absolute, the Constitution Sixteenth Amendment made in 1963 added a new section to Article 19 to impose reasonable restrictions under Article 19 to curtail the right to freedom of speech and expression in the interest of public order, security, sovereignty and integrity of the Nation.⁵ Additionally, friendly relations with foreign states, decency and morality or in relation to contempt of court or defamation or incitement to an offence are also some exceptions to the freedom of speech as under Article 19 (2).

3. Judicial Precedents

The Freedom of Speech and Expression has evolved over the years through amendments and judicial precedents as follows: **3.1. Romesh Thapar v. State of Madras 1950 AIR 124 SC**
The supreme court gave that freedom of the press lays at the foundation of all democratic

² Braja Paikaray, Indian Constituent Assembly – The Historical Backdrop, Orissa Review, Jan. 2015.

³ Adv. Chandni Gangadharan, Indian Constitution: An Analysis of the Fundamental Rights and the Directive Principles, 8 Int'l J. Soc. Impact 1 (2023)

⁴ Article 19 (1), Constitution of India

⁵ The Constitution of India Sixteenth (16th) Amendment, 1963

organizations. [Historical Context: In 1878, the then British Viceroy of India Lord Lytton passed the Vernacular Press Act depriving the Indian journals the right to freedom of criticism of the government in vernacular languages, this policy of the British viceroy received nationwide opposition and backlash and also contributed to the rise of Nationalism in India]

3.2 Indian Express Newspapers (Bombay) v. Union of India & Ors. 1985 SCR (2) 287

The Supreme Court held that the press plays a major role in the democratic framework and thus the judiciary must uphold the freedom of press and invalidate all such legislations that go against the established freedom of press. These Judgements thus address the protection of media, press and journalists and their role in holding the government accountable.

4. Contemporary Issues

While freedom of speech is a fundamental bedrock of a democracy it is essential to recognize that unrestricted freedom can have detrimental consequences. One such consequence is the proliferation of hate speech. The United Nations (UN) Plan of Action on Hate Speech defines hate speech as *“any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.”* However, till date no specific legislation defines hate speech, thus the protection of citizens against hate speech remains unrecognized.

Today, the growth of digitalization and online communities has led to a rise in the cases of hate speech due to anonymity, which underscores the need for comprehensive legislation or amendment specifically defining and providing safeguard against hate speech. Despite these challenges, the judiciary has made several significant judgements with respect to hate speech. In the case of *Pravasi Bhalayi Sangathan v. Union of India & Ors.* 2014 (11) SCC 477, the Supreme Court requested the Law Commission of India to address the issue of hate speech. The 267th Report of Law Commission of India, in response stated hate speech as the incitement of hatred against a religion, sex, gender, race, caste and the like.⁶

⁶ Chairman Dr. Justice BS Chauhan, 267th Report of Law Commission, 2015-18

5. International Statutes Relating to The Freedom of Speech

The protection of freedom of speech and expression under international law is grounded in the recognition of these rights as fundamental to the dignity, autonomy, and participation of individuals in society. The Universal Declaration of Human Rights (UDHR) is a major milestone in the history of human rights. The UDHR was pronounced by the United Nations General Assembly Resolution 217A setting out common standards of human rights. The UDHR was ratified by the Republic of India in 1948, thus setting the foundation of international cooperation and legitimacy in human rights especially freedom of speech and expression as given in the Article 19 of the UDHR. Subsequently, building upon the principles of the UDHR, the International Covenant on Civil and Political Rights (ICCPR) is a legally binding treaty ratified by India in 1979, the ICCPR specifies various forms of expression protected under international law.

Conclusion

The analysis of right to freedom of speech thus reveals its rudimentary significance in the country's democratic machinery. The historical context highlights the formation of India's independent constituent assembly with the aim to provide rights to the Indian populace and the liberation from arbitrary laws of the British under colonial rule. The Article 19 of the Indian Constitution thus reaffirms its commitment to international statutes such as the UDHR and the ICCPR in its adherence to providing the citizens with their fundamental right to freedom of speech and expression. However, the need for reforms such as a legislation addressing hate speech stands as the need of the hour.