

FREEDOM OF SPEECH AND EXPRESSION- Ishwar Mohan Jaiswal¹**ABSTRACT**

Freedom is the essence of democratic society, society deprived of its freedom to conscience, speech and against other constraints cannot build a democracy. Several fighters had sacrificed their life for independence of India and liberty of people with the idea to have a nation free from any restraints, and after the long struggle did India achieved providing freedom to its citizen?

Freedom is to do an act without any fear or hesitation for the consequences or punishment of their act. It is ones right to choose to do an act and reject without any barriers and restraints, it not only limits to one's physical freedom but expands to the mental, economical, and spiritual freedom too. A utopian outlook of freedom is portrayed by Rabindranath Tagore in his verse, his idea of a nation is one, where people could live free and with dignity without any constraints on conscience by superstitious beliefs and not by any physical restraints of slavery, corruption, and manipulation. A nation which is united and strives with perseverance to form seventh heaven of a nation, with truth and reason bearing in soul and mind.

Democratically, A state is based on the people's choice, without free speech and expression one will not be able to harness the information, developing opinion and thus harnessing decision making. Liberty is the fuel of democracy required for proper mechanism without which the whole idea would fail. Furthermore, it is also a necessary tool to maintain transparency by keeping a check on the working of government through regular broadcasts and active criticisms to avoid the arbitrary use of power for self-benefit.

Freedom of speech and expression has been empowered to public by Article 19 in Part IV of The Constitution of India. Rights cannot be granted unchecked as it may result in

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arbitrary and immoral uses further violating other's rights similarly, Freedom of speech though being crucial right it cannot be an absolute one to maintain public order and peace. It was appropriately held that 'man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals.'

INTRODUCTION

“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” John Milton

Freedom is the essence of democratic society, society deprived of its freedom to conscience, speech and against other constraints cannot build a democracy. Several fighters had sacrificed their life for independence of India and liberty of people with the idea to have a nation free from any restraints, and after the long struggle did India achieved providing freedom to its citizen? Let's evaluate the answer after the end of the research.

Freedom is to do an act without any fear or hesitation for the consequences or punishment of their act. It is ones right to choose to do an act and reject without any barriers and restraints, it not only limits to one's physical freedom but expands to the mental, economical, and spiritual freedom too. Absolute freedom would be hazardous than good for the society as a men's greed and desire for liberty are not limited to the values of social good and morality, but it harnesses evil for self-benefit and thus endangering freedom of the rest. A utopian outlook of freedom is portrayed by Rabindranath Tagore in his verse, his idea of a nation is one, where people could live free and with dignity without any constraints on conscience by superstitious beliefs and not by any physical restraints of slavery, corruption, and manipulation. A nation which is united and strives with perseverance to form seventh heaven of a nation, with truth and reason bearing in soul and mind.²

² Where the mind is without fear

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What is freedom of speech and expression? Why is it needed to be protected by the state in a democratic society? The concept of free speech and expression have attracted several interpretations, it is the impartation or communication of one's thoughts, ideas, knowledge, and expression to public or specific using any media. Speech do not confine its horizon to verbal or written communication, but it can be spread through expressive and symbolic inferences for e.g., wearing a LGBTQ2+ badge, waving white flag, burning down posters, hand-gestures etc. are also to be considered as a mode of conveying expression and thoughts of one. Protection of free speech is a crucial part of the state to protect individual autonomy and democracy in the state. Individually it is a necessity as several times exclaimed free speech is the "mother of all liberties", "basic right" or "natural right"³, humans being the most socially active organisms require free speech in their life for self-fulfilment, impartation of stories and knowledge and for discovery of truth. Without free speech the mechanism to discover truth in the society won't prevail as truth gains wider credibility when is faced with opposite propositions, also through several trials to discover truth and attempts to segregate false would develop the reasoning of society.

Democratically, A state is based on the people's choice, without free speech and expression one will not be able to harness the information, developing opinion and thus harnessing decision making. Liberty is the fuel of democracy required for proper mechanism without which the whole idea would fail. Furthermore, it is also a necessary tool to maintain transparency by keeping a check on the working of government through regular broadcasts and active criticisms to avoid the arbitrary use of power for self-benefit.

Several international covenants and charters upheld the Right to Free speech as it is considered crucial part of civilization. Similarly Article 19(1) and 19(2) of Universal Declaration of Human Rights contain the right of everyone 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.⁴ Article 19(3) imposes restriction on the same, as to limiting with respect of

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⁴ Article 19 (1) & (2), The Universal Declaration of Human Rights

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rights and reputations of others and for protection of national security or of public order, health or morals.⁵

In India the Preamble of Constitution of India, which has its foundation based on Jawahar Lal Nehru's Objective Resolution, portrays about Liberty of thought, expression, belief, faith, and worship. Preamble though is not considered as a part of Constitution but is to be regarded as a guiding structure of the constitution and supports in the interpretation of object and basic structure of the Constitution.⁶ In order to achieve the liberty of thought, expression..mentioned in the preamble free speech of public is a crucial element.

Freedom of speech and expression has been empowered to public by Article 19 in Part IV of The Constitution of India. It provides right of several freedoms to the citizens of India, freedom of speech and expression, assembly, movement, reside or settle, and practice any profession. Rights cannot be granted unchecked as it may result in arbitrary and immoral uses further violating other's rights similarly, Freedom of speech though being crucial right it cannot be an absolute one to maintain public order and peace. It was appropriately held that 'man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals.'⁷ Article 19 (2) provides with the restrictions on Freedom of Speech and Expression.⁸Besides Article 19(2), there are several restrictions imposed on the Freedom of Speech and Expression through various legislation: provisions of Indian Penal Code, 1860⁹, Contempt of Court Act, 1971¹⁰, The Unlawful Activities (prevention) Act,1967¹¹ and Official Secrets Act,1923¹².

FREEDOM OF SPEECH AND EXPRESSION

“Freedom is never dear at any price. It is breath of life. What a man would not pay for living” Mahatma Gandhi

⁵Article 19 (3), The Universal Declaration of Human Rights

⁶Gautam Bhatia, *Offend, shock, or disturb* (1 ed. 2016).

⁷ A.K Gopalan V the State Of Madras, 1950 AIR 27, 1950 SCR 88

⁸ Article 19 (2), The Constitution of India

⁹ Ss. 124 A, 294 & 499, The Indian Penal Code, (1872)

¹⁰ S. 2 (b), Contempt of Code Act, 1971

¹¹ Unlawful Activities Prevention Act, 1967

¹² Official Secrets Act, 1923

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Freedom is a concept of unmarked or dynamic subject and is usually faced with conflicting ideas. A common approach towards the interpretation of a restriction on freedom is muddled with inability. I cannot fly because of the physiology of my body and a person if caged cannot move, I claim a breach of my freedom to fly would be a blasphemy but in latter situation a person can claim the breach of his freedom of movement. The distinction amongst them is the nature of background condition under which a freedom can be exercised and interference or coercion against freedom in latter situation. Similarly in Sakal newspaper case, the inability of new entrants in newspaper market due to the low prices of Sakal Newspapers in unregulated markets were not entertained for a breach of Freedom of Speech and expression. It wasn't the coercive intention of the Newspaper to cause a barrier for the freedom of speech but their inability to survive in the unregulated market.¹³ The Constitution of India guarantees Freedom and not the value of freedom to one, though in some cases through judicial interpretation value of freedom is also established. Value of freedom being the conditions in which a freedom granted to one can be thoroughly exercised to make the right worthwhile or valuable.¹⁴

The interpretation of Article 19 (1) in several instances demonstrates the value of freedom being granted as in Cricket Association Bengal Case, the airwaves for broadcasting the match were considered as a public property and infrastructure for imparting speech. The court in understanding, the value of freedom of speech is insignificant without the medium and forming imperishable bond between medium and free speech.¹⁵ Speech and Expression as per mentioned in Article 19 (a) does not limit to a single mode of communication but rather has a broader implication, through several judicial interpretation the right has grasped wider horizon and engulfed several specific and significant provisions.

¹³ Sakal Papers (P) Ltd. & Ors. V Union of India, 1962 AIR 305, 1962 SCR (3) 842

¹⁴Gautam Bhatia, *Offend, shock, or disturb* (1 ed. 2016)

¹⁵ The Secretary, The Ministry of Information & Broadcasting V Cricket Association Bengal 1995 AIR 1236, 1995 SCC (2) 161

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Justice Patanjali Shastri stated in one of the earliest cases involving freedom of press, “Freedom of Speech and of Press lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the process of Government, is possible.”¹⁶ This laid the foundation of Freedom of Press within the ambit of Freedom of speech and expression, further it being a dynamic concept is constantly evolving with the needs of time.

Initially the hon’ble supreme court ambiguously denied the acceptance of commercial speech or advertisement as being under the scope of Article 19 (a) and enjoying the freedom of speech and expression as commercialization of statements lose its purpose for protection under fundamental right.¹⁷ Later after 36 years in Tata Press Case, Supreme Court accepted the contention of commercial speech and advertisement being in the ambit of freedom of speech and expression. Broadcasting and exhibiting films were also interpreted as being part of the same.¹⁸ The Courts established that the advertisements are basic revenue stream of the media and media being lifeblood of democracy requires advertisements to be protected. Further enabling advertisements under protection of Article 19 would suppress the rise in prices of newspaper for revenue generation and would also lead to education of consumers regarding the available offers in the market.¹⁹

Article 19 not only protects the right of the speaker to portray or lay their thoughts, ideas, or expression in public, but it also protects the rights of listener to receive the information and ideas without any hindrance, thus through judicial interpretation of the article Right to information evolved. Supreme Court upheld the Right to Information as being guaranteed by Article 19(a), "One-sided information, disinformation, misinformation, and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions".²⁰

¹⁶ Romesh Thapar v. State of Madras, 1950 SCR 594, 607; AIR 1950 SC 124

¹⁷ Hamdard Dawakhana (Wakf) Lal Kaun, Delhi & Anr. V Union of India (1959), 1960 AIR 554, 1960 SCR (2) 671

¹⁸ Tata Press Ltd. V Mahanagar Telephone-Nigam Ltd. &Anr., 1995 AIR 2438, 1995 SCC (5) 139

¹⁹ Odyssey Communications Pvt. Ltd V Lokvidayan Sanghatana & Ors, 1988 AIR 1642, 1988 SCR Supl. (1) 486

²⁰ Indira Nehru Gandhi V Raj Narain & Anr.,1975 AIR 865, 1975 SCR (3) 333.

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A democratic nation without any right to dissent or criticize the government action or policies would not be called as a democratic nation as free speech would lose its purpose to maintain transparency and discover truth, In *S. Rangarajan v P. Jagjivan Ram*, Supreme court upheld that intolerance is as much as an issue to democracy as much it is to a private individual and included freedom to criticize under Article 19(a).²¹ Freedom of Right to Silence was also adopted by supreme in a case against children for not following up with the national anthem in school assembly even though they stood up in its respect, the court held that one had right to not speak or remain silent.²² In Supreme Court held that even though the right is confined to citizens but is not confined to national boundaries.²³

Freedom to Vote even though being the foundation of our democracy, initially didn't find its place in the Part III of Constitution of India. It was a statutory right granted in The Representation of People Act²⁴ and in Part XV of Constitution of India. So, the right to vote which is considered as the helm of democracy was not a fundamental or a part of basic structure of the constitution? Later, Supreme court established freedom to vote as a part of basic structure of the Constitution being under Article 19 (1). Voting being a form of conveying one's political ideology and inclination by choice of a representative.²⁵ In several judicial interpretations court facilitated for ease of voting like approving NOTA being a right of citizens²⁶, asset and criminal records of election candidates to be public²⁷ etc.

The interpretation of Free Speech is a conflicted subject as a statutory or standard definition of the same is not possible, in a recent NALSA judgement, court decided style of clothing or dressing signifies or expresses people's identity, thus any restriction aside provisions of Article 19(2) would be violative of their freedom of speech and expression.²⁸ If the free speech had spread its arms to dressing it had left a lot of

²¹ Article 19 (1) (a), The Constitution of India

²² *Bijoe Emmanuel v. State of Kerala*, 1986 3 SC 615

²³ *Maneka Gandhi V Union of India*, 1978 AIR 597, 1978 SCR (2) 621

²⁴ S. 62, Representation of people act, 1950

²⁵ *Union of India V Association for Democratic Reforms*, AIR 2001 Delhi 126, 2000 (57) DRJ 82

²⁶ *People's Union Of Civil Liberties V Union of India and Anr.*, AIR 1997 SC 568

²⁷ *Union of India V Association for Democratic Reforms*, AIR 2001 Delhi 126, 2000 (57) DRJ 82

²⁸ *National Legal Services Authority V Union of India & Ors*, AIR 2014 SC 1863

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confusion regarding its capacity. If a person dedicating his time for playing is interfered with his freedom to play, like had destroyed the ground, would it be considered as a violation of his free speech as football can be a self-identification of a person?²⁹ It is on the court's discretion to decide whether a particular is to be considered as Free speech. Similarly courts also have discretionary power to determine the content of speech, they have decided on going against the theory of content neutrality i.e., all the content being neutral and neither of negative value nor positive. Some speech patterns are brought under the hammers of restriction being 'propaganda', 'hate speech' and some being loved by the protection of free speech being 'information', 'in public interest'.³⁰

RESTRICTIONS UNDER ARTICLE 19

Constitution of India was drafted from 1946 to 1950, and came into force from 26 January, 1950. The Freedom of speech and expression was a heated topic even then, some professed the idea of the right to be absolute and not limited by restrictions as it were the habits of Britishers to curb free speech. They advocated that in an independent India it should be shredded off and another argument for their proposition was that the restrictions imposed on such right would lead to ineffectiveness of the right's prowess.

The advocates for restrictions claimed that Freedom cannot be absolute to maintain peace and social order, all over the world there were no nations with absolute freedom to speech and if a nation is governed by democracy and is not a monarchy or dictatorship the restrictions could not be arbitrarily used. In the end the right to freedom was passed with the imposing restrictions: "Subject to the other provisions of this article, all citizens shall have the right – (a) to freedom of speech and expression; ...

Proviso: Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the security of, or tends to overthrow, the State."³¹

²⁹ Gautam Bhatia, *Offend, shock, or disturb* (1 ed. 2016).

³⁰ Gautam Bhatia, *Offend, shock, or disturb* (1 ed. 2016).

³¹ Article 19, The Constitution of India

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Soon in 1951, The Constitution (First Amendment) Act, 1951, brought in several additions to the restrictions over freedom of speech and expression to curtail disorder and maintain peace, Article 19 (2) was amended to: "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 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."³²

Reasonable restrictions imposed on Article 19(1)(a) are enlisted in Article 19 (2), which curtail the freedom of speech and expression. It has enlisted the following criteria in which ambit of Article 19 (a) is limited:

1. **Sovereignty and Integrity of India:** The importance of Independence and Sovereignty is deeply vested in the heart of Indian democracy so to maintain its integrity and sovereignty throughout, this clause was added by The Constitution (Sixteenth Amendment) Act, 1963 with the rise of need to subdue the riots and revolts against government to divide and meddle with the hard-earned sovereignty and unity of the nation.
2. **Security of State:** Security of state refers to the serious and aggravated threat to the state, thus any statement or speech inciting violence or threatening the security of state like aggravated forms of public disorder e.g., rebellion, waging war, insurrection etc would be violative of Article 19 and be amenable to restrictions.³³
3. **Friendly relations with other nations:** Friendly relations concerning other nations is a significant and perennial requirement for development and survival in global level, thus, to avoid any malicious or unchecked propaganda the restriction was added through The Constitution (First amendment) Act, 1951.
4. **Public Order:** Security of state and public order are different yet similar concepts, Law and order, public order and Security of State are three concentric circles of which law and order being the largest one, then followed by public order and then

³² Article 19 (2), The Constitution of India

³³ People's Union of Civil Liberties V Union of India & Anr., AIR 1997 SC 568

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security of state. A discrepancy in security of state will affect public order but it's not the same vice versa,³⁴ An act may be affecting the tempo of life of whole community while latter one might be affecting individuals³⁵ keeping in mind these differences the parliament after the Romesh Thapar Case³⁶ included public order in the restrictions through the Constitution (first amendment) Act, 1951.

5. Modesty or Decency: Modesty or decency is the concept without any standard definition as it is differing from one person to another, one culture to another and one place to another too. An act in a culture may be normal but in another it may be indecent or immoral. ³⁷ Supreme court also held Obscenity as defined under section 292 of Indian penal code,1860 is offensive to Modesty or decency,³⁸ obscenity itself being a non-standard determination is currently considered by preponderating social purpose test, which is to test the gravity of obscene effect against the artistic or specific purpose of the matter.³⁹
6. Contempt of Court: Judiciary is one of the three pillars of a democratic society and hence play an important role in the smooth functioning of the democracy. So, to maintain courts authority and unhindered functioning any speech or expression undermining the same would be restricted. The issue regarding the restrictions lies in its ambiguity as contempt of court specifically is not defined in any legislation but in Contempt of court act, 1971. Section 2 defines it as being of two kinds, civil contempt, and criminal contempt.⁴⁰ Civil being disregard of court's decree, order or notification of some kind and criminal being the attempt to scandalise, interfere the proceedings or interference in administration of judiciary. After 2006, truth for public interest was added as an only defence against contempt of court.⁴¹ Article 129 and 215 of the constitution empowers Supreme court and High court to take Suo Moto Cognizance and punish for any issue related to the Contempt.⁴²
7. Defamation: Rights are followed by duties, amongst which the utmost being of not violating other's rights. Similarly, freedom of speech and expression of one

³⁴ Dr. Lohia V State of Bihar, 1966 AIR 740

³⁵ Arun ghosh v State of Bengal, AIR 1970 SC 1228

³⁶ Romesh Thappar V The State of Madras, 1950 AIR 124

³⁷ Chandrakant Kalyandas Kakodkar v State of Maharashtra & Anr., 1970 AIR 1390

³⁸ Rajit D Udeshi v State of Maharashtra, 1965 AIR 881

³⁹ KA Abbas v Union of India, 1971 AIR 481

⁴⁰ S. 2, Contempt of Court Act,1971

⁴¹ Indirect tax practitioner Ass. V R.K Jain, AIR 2011 SC 2234

⁴² Article 129& 215, The Constitution of India

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cannot allow them to violate public's right to reputation protected by Article 21 of the Constitution of India⁴³. Defamation is also criminalised by Indian Penal Code, 1860 in Section 499 with various exceptions and defence and Section 500 dealing with its punishment⁴⁴ and was held constitutional against right to speech and expression by supreme court.⁴⁵

8. Incitement of an offence: Any speech or expression inciting the public's emotion for committing an offence or indulging in some illegal activity is not protected by Article 19. This provision was added by The Constitution (First Amendment) Act, 1951.

CONTEMPT OF COURT

Judiciary is amongst the three important pillars of the democracy, it being of a crucial authority in the working of nation require a force to suppress any disobedience. The sword to adhere the courts authority is provided by the concept of contempt, Article 129 & 142 of Constitution of India empowers the Supreme Court and Article 215 declares the high court's power to punish for Contempt. Contempt of court is the tool empowering the courts to maintain the integrity and trust of public over the fairness and justness of the judiciary.

Further The Contempt of Court Act, 1971 classifies it into two broad divisions, Civil and Criminal Contempt.

*“Civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;*⁴⁶

“Criminal contempt” means the publication of any matter or the doing of any other act whatsoever which— (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere

⁴³ State of Maharashtra v. Public Concern of Governance Trust, 2007 3 SCC 587

⁴⁴ Ss. 500& 499, The Indian Penal Code, 1860

⁴⁵ Subramanian Swamy v. Union of India, (2016) 7 SCC 221

⁴⁶ Section 2 b, The Contempt of Court Act, 1971

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*with, or obstructs or tends to obstruct, the administration of justice in any other manner.*⁴⁷

The legislations regarding contempt of court are extremely wide in nature which leaves the interpretation in the hands of judiciary, the extent of discretion within the courts for an issue of contempt against themselves empowers them with arbitrary control over the issue for judging the case on the basis of their opinion and understanding, further it is also fundamentally against the principles of natural justice, “nemo debet esse iudex in propria causa” i.e., no man shall be the judge of his own case.⁴⁸

The presence of Mens rea is immaterial in the issue of criminal contempt, a person without any intention to scandalise or lowering the courts authority will also be held liable if his acts may depict otherwise.⁴⁹ Even the acts if are not actually lowering or scandalizing the authority of courts, but they tend to do so would be held for contempt.

The judge’s discretion to decide the matter to be of contempt had several times been confused with the personal attacks against the judges and not the judiciary. Contempt of court is the defence mechanism provided to protect judiciaries against fathomable situations and not a shield to judges for personal attacks.

Innocent publication and distribution, fair criticism of judiciary, fair and accurate report of judicial proceedings, complaints against presiding officers and publication of proceedings in chamber or in camera are the defences given as per the Contempt of Court Act, 1971.⁵⁰ Truth for public welfare was recently added in 2006 amongst the defences against contempt.⁵¹ Even in defences against the punishment have several issues regarding the discretionary power of the court, “Wherever there is discretion there is room for arbitrariness”.⁵² Criticism of Court when transgresses the limits of fair and bona fide criticism amounts to contempt of court but the vagueness over the

⁴⁷ Section 2 c, The Contempt of Court Act, 1971

⁴⁸ Poddar Machinery House V Orissa Sales Tax Tribunals & Ors., 2000 II OLR 382

⁴⁹ D.C Saxena V Chief Justice of India, 1996 SCC (7) 216

⁵⁰ Ss. 3, 4, 5, 6, 12 &13, Contempt of Court Act, 1971

⁵² Dicey, *Law of the Constitution*, 8th Ed.

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limitation of the criticism and the discretion over court for interpretation of criticism against them gives them an arbitrary power.⁵³

Article 19 (2) holds contempt of court as a restriction over the freedom of speech and expression as it is a necessary mandate for the public to uphold the judiciaries integrity and honour. But with the wide discretionary power provided to the courts in the matter of contempt have increased its arbitrary use and made people conscious about their genuine opinions against judiciary. Judiciary believes in the principle that public of this backward country cannot be trusted for certain thoughts or ideas as they cannot rationally make their own choices, thus are open to manipulation.⁵⁴

PARLIAMENTARY AND LEGISLATIVE PRIVILIGES

Special privileges are pledged to the legislative bodies by Constitution of India with the view to maintain autonomous balance and allowing them to function without any obstruction and fear of legal penalty. Article 105 confers privileges and immunities to the houses of parliament and providing them with the unique and broader perspective of free speech as safeguarded by Fundamental Rights⁵⁵, Article 194 applies to state legislative, and the privileges are same as of parliament.⁵⁶ Thus, Article 105 applies mutatis mutandis to the state legislatures as well.

The privilege for free speech in the parliament had summoned from the famous case of Sir John Elliot,⁵⁷ Sir Elliot was convicted for the seditious speech by the Court of King made by him in house of commons which was later reversed by the house of lords stating that the words spoken in the house shall be decided there-in.

The Article confers absolute immunity to the members of parliament against any legal proceedings in court of law for anything said during the business of parliament,⁵⁸ the immunity also expands to the people who are allowed by the house to speak during the sitting. Although, the absolute immunity is against any court of law, the parliament have the internal autonomy to maintain discipline and regulate the business of house.

⁵³ Aswini Kumar Ghose v. Arbinda Bose, AIR 1953 S. C. 75

⁵⁴ Re Arundati Roy case, AIR 2002 SC 1375: 2002 Cri LJ 1792

⁵⁵ Article 105, The Constitution of India

⁵⁶ Article 194, The Constitution of India

⁵⁷ Earl of Minto V Sir William F Elliot, Bart, 1825 W&S 678

⁵⁸ Jagdish Gandhi v Legislative council Lucknow, AIR 1966 All 291

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The speaker or the chairman has the power to punish by way of reprimand, admonition, imprisonment, or fine to the offending party.⁵⁹

The provision also provides the members with qualified privilege for what one has caused to be published in the public press, article 105(2) provides that no person shall be held liable to any proceedings in any court of law for publishing report, paper, votes, or proceedings of the house by or under the authority of the Parliament. The Calcutta High Court held that the newspaper publishing a defamatory speech said by a member of the parliament without the authority of the house will be held liable to defamation as the said newspaper did not attain the authority of the house⁶⁰ but later the law was regarded as unsatisfactory as the advantages of publications by the newspapers to the community were realized and Article 361-A now enacts and provides the publications an immunity for fair and true report for the proceedings of any house if made without malice, this do not extend to the secret meetings or expunged speeches of the house.⁶¹ The Article only extends to report and not to articles or comments on the proceedings of the house and only to newspapers and air broadcast and not to magazines, booklet or other types and the house of parliament can take action to breach of privilege internally against one in violation without interference of judiciary.⁶²

Legislative-Judiciary Deadlock

The provisions regarding the privileges of the legislative and its breach are quite vague, uncertain, and indefinite, privileges being undefined in the constitution and with minimum judicial review leaves the parliament with a broad and almost authoritative interpretation of the same. For an instance giving wrong information is considered as breach of privilege to confusing the house with the wrongful information, this proviso is at several times abused against a member by opposite party by using technical mistakes of facts and initiating a proceeding for breach of privilege without any provision for judicial review.

The question whether the courts could interfere in the proceedings of the Breach of privilege in the house was quite adamant in the Keshav Singh case, in which the UP legislative assembly issued a general warrant to commit a person for breach of privilege free from judicial scrutiny. In response, Advocate Solomon presented a petition of

⁵⁹ Article 118, The Constitution of India

⁶⁰ Suresh Chandra Banerjee and anr. V Punit goala, AIR 1951 Cal 176

⁶¹ Pandit M. S. M. Sharma vs Shri Sri Krishna Sinha And Ors., 1959 AIR 395

⁶² Article 361A , The Constitution of India

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Habeas Corpus on behalf of Keshav Singh in the high court alleging his detention to be illegal and the house having no authority to do so, the High court passed an interim bail for the case.

The UP legislative assembly resolved that the advocate Solomon, High court judges and Keshav Singh had committed Breach of privilege and should be brought before the house in custody by passing the interim bail. A full bench of High court ordered the stay of resolution regarding the breach until the disposal of petition. The legislature withdrew the warrants, but the alleged party were still obligated by the resolution to present in the house and explain why the house should not proceed with the breach of privilege case, the court ordered a stay on the resolution too, thus a deadlock of legislative and judiciary.

The president referred the matter to supreme court on advisory opinion, the court held that the judges and the advocate had not breached the privilege as the high court had the jurisdiction to entertain appeal and take action on it, also the Article 211 debar state legislatures to discuss the conduct of high court judges for discharging their duties and also every citizen has the right to represent himself in the through an advocate, it is an important role to fulfil fundamental rights.

Thus, the court assert that it's within the rights of court to check whether the privilege exists or not since the date of commencement of constitution as any new one would be held violative to fundamental rights, it being an amendment to be passed by parliament would be scrutinized by the Judiciary for its constitutional validity. Once the privilege is proved to exist the court cannot interfere, as stated in Searchlight I⁶³ case, following the harmonious construction Article 19 (1) and 19 (2) will not be applicable as it being of a general nature and Article 105 being of a special nature, except in an incidence of violating Article 21. If the proceedings do not follow the due process of law or is of mala fide in nature the court can interfere and deter the decision of parliament.

CONCLUSION

Enabling restrictions in a freedom is an important task for maintaining peace but when the limitations are too strictly bound it led to the deterioration of autonomy of the

⁶³ Pandit M. S. M. Sharma vs Shri Sri Krishna Sinha And Ors., 1959 AIR 395

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public, when government do not trust the actions of customers and limit the types of commercial speech it leads to lack of customer's initiative in logic and reasoning.

Vagueness of restrictions leads to misuse of loopholes and fear against the justice system, several restrictions in the freedom of speech and expression of wide nature without proper definition by legislation. This absurdity in law has been leading to the chilling effect amongst public. People being clueless about the general idea of what is prohibited and what is allowed with room for arbitrary use has led them to self-censorship. Restrictions with vagueness in nature have an opposite effect to the freedom, the public gets subconsciously restrained with the fear of criminal sanction against them. Though several judicial interpretations had helped to form a better picture for the public it remains hazy. This haze not only cloud the minds of public ripping them off their freedom but also help some people to subdue free speech for their benefit and terrorize the victims. To expand the horizon of citizens and help them utilize their rights to judicially, the legislative and judiciary need to have a structured and definitive law. This would enable them to utilize the rights enshrined to them effectively and would also make them aware about the illegal activities.

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