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FREEDOM OF PRESS AND CHALLENGES OF NEW SCIENTIFIC DEVELOPMENT

‘Freedom of Speech’

1. RIGHT TO SPEECH AND EXPRESSION

“Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers” proclaims the Universal Declaration Of Human Rights (1948). The people of India declared in the Preamble of the Constitution, which they gave unto themselves their resolve to secure to all the citizens liberty of thought and expression. This resolve is reflected in Article 19(1) (a) which is one of the Articles found in Part III of the Constitution, which enumerates the Fundamental Rights.

2. MEANING

Article 19(1)(a) of Indian Constitution says that all citizens have the right to freedom of speech and expression. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs, and the like. This expression connotes also publication and thus the freedom of press is included in this category.

3. OBJECTIVE

Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. This propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value. The freedom of speech and expression includes liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people; otherwise this freedom would not include the freedom of press.

Freedom of expression has four broad special purposes to serve:

- 1) It helps an individual to attain self-fulfillment.
- 2) It assists in the discovery of truth.
- 3) It strengthens the capacity of an individual in participating in decision-making.
- 4) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
- 5) All members of society would be able to form their own beliefs and communicate them freely to others.

4. REASONABLE RESTRICTION

- ✘ Under Indian law, the freedom of speech and of the press do not confer an absolute right to express one's thoughts freely. Clause (2) of Article 19 of the Indian constitution enables the legislature to impose certain restrictions on free speech under following heads:
- ✘ I. security of the State,
- ✘ II. friendly relations with foreign States,
- ✘ III. public order,
- ✘ IV. decency and morality,
- ✘ V. contempt of court,
- ✘ VI. defamation,
- ✘ VII. incitement to an offence, and
- ✘ VIII. sovereignty and integrity of India.

a) Security of the State:

Reasonable restrictions can be imposed on the freedom of speech and expression, in the interest of the security of the State. In case of State of Bihar v. Shailabala Devi, AIR 1952 SC 329 it was observed that all the words intended to endanger the security of the State by crimes of violence intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc., may be restrained in the interest of the security of the State.

But in Romesh Thapar v. State of Madras, AIR 1950 SC 124 it does not refer to the ordinary breaches of public order which do not involve any danger to the State.

b) Friendly relations with foreign States:

This ground was added by the Constitution (First Amendment) Act of 1951. The State can impose reasonable restrictions on the freedom of speech and expression, if it tends to jeopardise the friendly relations of India with other State.

c) *Public order:*

This ground was added by the Constitution (First Amendment) Act, 1951 in order to meet the situation arising from the Supreme Court's decision in Romesh Thapar's case (AIR 1950 SC 124). The expression 'public order' connotes the sense of public peace, safety and tranquility.

In Kishori Mohan v. State of West Bengal, the Supreme Court explained the differences between three concepts: law and order, public order, security of State. Anything that disturbs public peace or public tranquillity disturbs public order. But mere criticism of the government does not necessarily disturb public order. A law punishing the utterances deliberately tending to hurt the religious feelings of any class has been held to be valid as it is a reasonable restriction aimed to maintaining the public order.

d) *Decency and morality:*

The word 'obscenity' is identical with the word 'indecent' of the Indian Constitution. In an English case of *R. v. Hicklin*, the test was laid down according to which it is seen 'whether the tendency of the matter charged as obscene tend to deprave and corrupt the minds which are open to such immoral influences'. This test was upheld by the Supreme Court in Ranjit D. Udeshi v. State of Maharashtra (AIR 1965 SC 881). In this case the Court upheld the conviction of a book seller who was prosecuted under Section 292, I.P.C., for selling and keeping the book *Lady Chatterley's Lover*. The standard of morality varies from time to time and from place to place.

e) Contempt of court:

In *In re Arundhati Roy* ((2002) 3 SCC 343), the Supreme Court of India followed the view taken in the American Supreme Court (Frankfurter, J.) in *Pennekamp v. Florida* (328 US 331 : 90 L Ed 1295 (1946)) in which the United States Supreme Court observed: "If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise". In *E.M.S. Namboodripad v. T.N. Nambiar* ((1970) 2 SCC 325; AIR 1970 SC 2015), the Supreme Court confirmed the decision of the High Court, holding Mr. Namboodripad guilty of contempt of court. In *M.R. Parashar v. Farooq Abdullah* ((1984) 2 SCC 343; AIR 1984 SC 615.), contempt proceedings were initiated against the Chief Minister of Jammu and Kashmir. But the Court dismissed the petition for want of proof.

f) Defamation:

The clause (2) of Article 19 prevents any person from making any statement that injures the reputation of another. With the same view, defamation has been criminalised in India by inserting it into Section 499 of the I.P.C. Where defamation is concerned, in case of a criminal defamation suit as laid down in Sections 499 and Section 500 of the Indian Penal Code, the issue - in question - being the truth isn't considered a defence. Even if a person has spoken the truth, he can be prosecuted for defamation.

g) Incitement to an offense:

This ground was also added by the Constitution (First Amendment) Act, 1951. The Constitution also prohibits a person from making any statement that incites people to commit offense.

h) Sovereignty and integrity of India:

This ground was also added subsequently by the Constitution (Sixteenth Amendment) Act, 1963. This is aimed to prohibit anyone from making statements that challenge the integrity and sovereignty of India.

5. NEW DIMENSIONS OF FREEDOM OF SPEECH AND EXPRESSION

a) Freedom of Press

Freedom of the press is the freedom of communication & expression through vehicles including various electronic media & published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other protection.

The Hon'ble Supreme Court observed in *Union of India v/s Association for Democratic Reforms*, “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”. In *Indian Express Newspapers v/s Union of India*, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are:

- ✗ Freedom of access to all sources of information,
- ✗ Freedom of publication, and
- ✗ Freedom of circulation.

In *Brij Bhushan v. State of Delhi, AIR 1950 SC 129*. The fundamental right of the freedom of the press implicit in the freedom of speech and expression is essential for political liberty and proper functioning of democracy. The American Press Commission has said, “Freedom of the press is essential to political liberty. When man cannot freely convey their thoughts to one another, no freedom is secured, where freedom of expression exists the beginning of a free society and means for every retention of liberty are already present. Free-expression is therefore, unique among liberties.

b) No monopoly on electronic media

In a historic judgment in *Secretary, Minister of I&B v, Cricket Association of Bengal (CAB)*, the Supreme Court has given new dimension to freedom of speech and expression that Government has no monopoly on electronic media. 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 Article 19(1) (a), a right to telecast and broadcast to the viewer/listeners through electronic media Television and Radio any important event. The Government can only impose restrictions on such a right only on grounds specified in clause (2) of Article 19.

c) Advertisement

In *Tata Press Ltd v. MTNL*, the Supreme Court held that commercial speech (advertisement) is a part of the freedom of speech and expression granted under Article 19 (1) (a) of the Constitution. The Court, however, made it clear that the commercial advertisements which are deceptive, unfair, misleading and untruthful could be regulated by the Government.

d) Freedom of child to be educated at the primary stage of school in a language of the choice

In *State of Karnataka & Anr. v. Associated Management of (Government Recognised Unaided English Medium) Primary and Secondary School's & Others*, The Supreme Court held that “child’s right to choose the medium of education at primary stage, flows from freedom of speech and expression guaranteed by Article 19(1)(a) and State cannot impose restriction on such right except for purposes mentioned in Article 19(2).” Court further elaborate “The right to freedom of speech and expression includes the freedom of child to be educated at the primary stage of school in a language of the choice of the child and the State cannot impose controls on such choice just because it thinks that it will be more beneficial for the child if he is taught in the primary stage of the school in his mother tongue.”

e) Right to communicate and receive ideas

In *Ajay Gautam v. Union of India & others*, a petition was filed for prohibition on exhibition of film. The Court held that “right to communicate and receive ideas, facts, knowledge, information, beliefs, theories, creative and emotive impulses by speech or by written word, drama, theatre, dance, music, film, through a newspaper, magazine or book is an essential component of freedom of speech and expression. And this right cannot be suppressed on ground of formation of harmful act by its audience as a result of such beliefs, unless commission of harmful acts is a real close and imminent consequence of speech in question.”

f) Sending offensive messages online

In *Shreya Singhal v. Union of India*, the Supreme Court held that provisions of Section 66A of the Information Technology Act, 2000 which prescribes punishment for sending offensive messages online are in its entirety violative of Article 19 (1) (a) of the Constitution and are not saved

g) Indian Judiciary on Right to Strike

- ✘ Division of powers, which separated judiciary as a wing entrusted with the duty of interpretation of laws, in absence of statutory recognition of strike, was under duty to interpret strike as a matter of right like the 'right' or 'wrong' of any other act or an individual or State or the validity of a legislation. The judiciary by the way of interpretation has to settle the dispute. The decisions given by different Labour Appellate Tribunals, High Courts and Supreme Court shows the changing dimension of the act of the worker i.e. "strike" from time to time.
- ✘ The decade of 1950 started with the decisions that the Government servants shall be prohibited from becoming members of, or otherwise being associated with any political party or a like organization (*Surya Pal Singh v. State of UP, AIR 1951 All 674*). In 1950, Chatterjee. J, of the Hon'ble High Court of Calcutta held that "prohibiting strikes during the presence of a reference made with regard to a single employee will result in great hardship or absurdity or injustice."
- ✘ In *Workers of Bihar Fire Bricks and Potteries Ltd. v. Management*, it was observed that strike is a weapon of expressing protest and if the deductions are allowed to be made, it would amount to denying the working their right which they have achieved after great deal of struggle and sacrifice. In the same case it was also held that, justification of strike cannot be judged from the result of adjudication of demands.

- ✘ The Labour Appellate Tribunal in 1954 held that "Mere illegality of strike does not end the matter. It means if the strike is illegal and the same time unjustified, the workers have no claim to wages and must also be punished, if it is justified, they have a right to claim wages." [*Rama Krishna Iron Foundry, Howrah v. Their Workmen, (1954) II LLJ (LAT)]*.
- ✘ *In Rama Krishna Iron Foundry case* few reasons for not justifying a strike was explained which are as follows: (a). demands may be unreasonably high, (b). demands may be made with the extraneous motives, (c). Steps taken by employer to redress the alleged grievances through negotiation or conciliation.

CONCLUSION

- ✘ Expression through speech is one of the basic guarantees provided by civil society. However in modern world Right to freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. It is a right to express and self realization. Two big democracies of world i.e. America and India have remarkably protected this right. As far as India is concerned, this important right is mentioned in Article 19(1) (a), which falls in fundamental right category. Indian courts have always placed a broad interpretation on the value and content of Article 19(1) (a), making it subjective only to the restrictions permissible under Article 19(2).
- ✘ The words 'in the interest of public order', as used in the Article 19 include not only utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. There should be reasonable and proper nexus or relationship between the restriction and achievement of public order. Initially, the American constitution was not having any provisions directed to protection of freedom of speech and expression. It was inserted in the constitution vide first amendment of the constitution. The First Amendment has been drafted in broad and sweeping terms, and for this reason, the text of the First Amendment does not contain any standard for determining permissible restrictions on freedom of speech. The restrictions that are permissible now are those that have been developed by the Supreme Court in its interpretation of the First Amendment.