

FREEDOM OF SPEECH AND DISSENT - A RESOUNDING ASSERTION OF DEMOCRACY

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Freedom of speech is the bulwark of the democratic government. It has great prominence in our society it is because that if there is no free speech then, it is destroying the basis of the democracy. It is a principle which strengthens the essence of democracy. Yet, another question is that how this right opens the wings to all and how it brings under one umbrella. Here, the significant question is that whether we have the right to dissent on the main quoted areas of interest. It is quite certain that if there is assent, then there is dissent also. This paper undertakes to probe into the question that whether we have the freedom to express differences of opinion in the light of the societal issue that we are facing in our day to day life. The essence of the right contained in our constitution is that in one way it is a fundamental right that is guaranteed to all the citizens, but in other way, it is not absolute and thereby it brings restrictions to the enjoyment of the said right. This article mainly penned down to the core issue of the freedom to dissent and its new developments in our era. How it really works here is that, whether the freedom to speech and expression also includes the freedom to dissent by looking on to the line of the judicial decisions of this taste.

The very essence of the term 'Democracy' as in the words of Abraham Lincoln is that it is "of the people, by the people and for the people". So, here every citizen of India is provided with free speech and expression and that this freedom in other way helps to participate in the democratic process. Again, to understand there are two rights flowing from it, one is to free speech on any of the core points which is attracted in the society and in the other hand, to express one's own thoughts freely. The author delves into the scope and extends of the freedom of speech. The author also examines how such a freedom has to be portrayed in a democratic state. Thus, in this paper the author brings to light the actual understanding of the right to freedom of speech as envisaged in the constitution and also trying to explain the scheme of this right under the international conventions.

Key words: Freedom of speech, Indian constitution, democracy, Right to dissent.

FREEDOM OF SPEECH: INTRODUCTION

Freedom of speech and expression is a sacred icon in the constitution which is provided in the part III of the constitution. This freedom is a central tenet of the constitutional faith. Textually, it is recognized in Article 19 that also lists certain other fundamental freedoms that Indian citizens enjoy. It is considered as the basic freedom by most philosophical thinkers, consists of several facets, including the right to express one's own opinion unhindered, unfettered by the fear of retribution.[2] It is one of the most basic elements for a healthy, open minded democracy. It allows people to freely participate in the political and social happenings of the country. The essence of free speech is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution, restriction or repression by the government.[3] It is through free speech, people would come together to achieve political influence, to strengthen the morality and to help others to become enlightened citizens. The freedom of speech is considered as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succor and protection to all other liberties. It is the mother of all liberties.[4] In modern times, it is widely accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all time. The first principle of a free society is an untrammled flow of words in an open forum, liberty to express one's opinion and ideas without hindrance and especially without fear of punishment plays significant role in the development of that particular society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression and regulation.

INTERNATIONAL OBLIGATIONS

Freedom of speech is guaranteed not only by the constitution or statutes of various states but also by various international conventions like Universal Declaration of Human Rights, 1948, European convention on Human Rights, 1950, International Convention on Civil and Political Rights, 1966 etc, these declarations expressly talk about protection of speech and expression. But like the Indian constitution, the right embodied in the international covenants is not absolute and is subject to limitations.

- Article 19 of the UDHR provides, everyone has the right 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
- Article 10 of the ECHR provides, everyone has the right to freedom of expression. This right also extends to include freedom to hold opinions without interference

and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ICCPR- Everyone shall have the right to hold opinions without interference; everyone shall have the right to freedom of expression; this right shall include and to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his

choice.[5] According to ICCPR there are two key categories of restrictions that limit freedom of expression for respect of the rights or reputations of others; For the protection of national security or of

Public order (ordre public), or of public health or morals. These restrictions shall only be such as are provided by law and are necessary.

The ECHR broadly and more specifically defines all possible restrictions. According to Article 10 of the ECHR, the exercise of the right to freedom of expression since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in democratic society in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime for the protection of health or morals, for the protection of the reputation of the rights of others, for preventing the disclosure of information, received in confidence for maintaining authority and impartiality of the judiciary.[6] There is no other law defining so many restrictions as the ECHR does. In any case it's worth mentioning that this freedom supposes also responsibility and restrictions. All these and many other international documents clearly guarantee the right to freedom of speech and expression. However, there is no freedom which is absolute and unlimited. All these international documents provide instructions and respect for these rights.

Therefore, Freedom of speech constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development. The role of freedom of speech in a democratic society is the guarantee of control through mass media as the fourth power which is the instrument to exercise freedom of speech. It is necessary to exercise freedoms in order to have a democratic society, but their limitations are also needed for the maintenance of the democratic society.

Significance of Freedom of Speech in Democracy

Freedom of speech is the 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 up channels of free discussions of issues and play a crucial role in public opinion on social, political and economic matters.[7] The

term 'freedom of speech and expression' includes any act of seeking, receiving and imparting information or ideas regardless of medium used. Based on John Milton's arguments, freedom of speech is understood as a multi faceted right including not only the right to express or disseminate information and ideas but also including the right to seek, receive and impart information and ideas.[8] The notion of freedom of speech and expression is intimately linked to the concept of democracy. Alexander MeikelJohn[9] argues that democracy means self-government by the people and for the proper functioning of which, an informed electorate is indispensable which, in turn requires that there be no constraints on the free flow of information and ideas. Democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism.

Freedom of speech and expression may bring to the control over the state authorities exercised by the society and to the maintenance of the self-controlled society which is the demand of the democracy. The definition of a self-controlled society means that it itself shall make own decisions and the society can do this in the case it is informed in aggregate with the open exchange of opinions. Abraham Lincoln generally expressed this conception as follows; "Let the people be aware of the facts, and the country will be calm." [10] Hence mass media as an instrument for the exercising of the freedom of speech and expression gains importance for a democratic society.[11]

The people of India gave to themselves, the constitution of India, with a view to make a sovereign, democratic, socialist, and republic. In our democratic society place of pride has been provided to freedom of speech and expression which is the mother of all liberties. The liberty of thought, expression, belief, faith and worship are the basic concepts of our democratic constitution.[12] The objective part of the constitution of India that is, the preamble declares that the liberty encompassing several others basic freedoms like thought and expression as one of the assurances that were given to the people. These expressions indicate the priorities of the constitution with regard to fundamental right to freedom of speech and expression which assumes significance as it embodies within it a great scope for building a unified and civilized human society.[13]

The right of speech is absolutely indispensable for the preservation of a free society in which government is based upon the consent of an informed in the word right citizenry and is dedicated to the protection of the rights of all, even the most despised minorities.[14] This assurance of protection to free thought and speech has been provided in more explicit terms under Article 19(1) (a) of the constitution. The fundamental right to freedom of speech and expression regarded as one of the most basic elements of a healthy democracy for it allows its citizens to participate fully and effectively in the social

and political process of the country. In fact, the freedom of speech and expression gives greater scope and meaning to the citizenship of a person extending the concept from the level of basic existence to giving the person in political and social life.

In India, state is under an obligation to create conditions in which all the citizens can effectively and efficiently enjoy the aforesaid right. In *Romesh Thappar V. State of Madras*,^[15] was the court's first free speech decision, it arise from a government order forbidding the circulation of a journal, 'Crossroads'. This order was made under a state law enacted to protect public safety and public order. Thappar, 'Crossroads' editor and publisher complained that the order violated his freedom of speech. Here, in this case the supreme court of India held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication, as publication is of little value without circulation. Public order was not a constitutional basis to restrict free speech. The law was declared unconstitutional and the order set aside.^[16] Patanjali satri J., rightly observed that, freedom of speech and of the press laid at the foundation of all democratic organizations, for without free political discussion no education, so essential for the proper functioning of the process of popular Government, is possible. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help formation of one's opinion and view point and debates on matters of public concern. So long as the expression confined to nationalism, patriotism and love for the motherland, the use of national flag by the way of expression of those sentiments would be a fundamental right.

In *Maneka Gandhi v. Union of India*,^[17] Bhagwati J has emphasized on the significance of the freedom of speech and expression in these words,

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of the government action in a democratic setup. If democracy means government of the people, by the people and for the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free and general discussion of public matters is absolutely essential"

The phrase 'freedom of speech and expression' contained in Article 19(1) (a) has been given a very wide interpretation by the apex court in the case of *People's Union for Civil Liberties and another V. Union of India*,^[18] by mentioning that it includes freedom of propagation of ideas, right to circulate one's ideas, opinions and views as well as right of citizens to speak, publish and express their views as well as rights of people read as well as to know the affairs of the government. The only restriction that may be imposed on the rights of the individual under Article 19 (1) (a) are

those which clause (2) of Article 19 permits and no other. Recently, the apex court in the case of *Shreya Singhal V. Union of India*,^[19] has reiterated same view laid down in the above case, in reference of Section 66 of the Information Technology Act, 2000 by mentioning that a provision of law that forces people to self-censor their views for fear for criminal sanction violates the constitutional guarantee of free speech. Freedom of speech and expression includes the right to acquire information and to disseminate it. Same is necessary for self-expression, which is an important means of free conscience and self-fulfillment. A legitimate right of freedom of speech and expression including fair criticism is not to be throttled. No responsible person in democracy could make the people to disobey the rule of law duly enacted, but situations may arise where responsible persons may feel that it is the duty to criticize the subject and invite the people to come for discussion on subject.

Freedom of speech offers every human being to express they feelings and thoughts to others, but this is not the only reason, purpose to protect the freedom of speech. They are four justifications for why the freedom of speech to be protected;

- For the discovery of truth by open discussion: According to it, if restrictions on speech are tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.
- Free speech as an aspect of self-fulfillment and development: Freedom of speech is an integral aspect of each individual's right to self- development and self-fulfillment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth. It helps an individual to attain self-fulfillment.
- For expressing beliefs and political attitudes: Freedom of speech provides opportunity to express one's belief and show political attitudes. It ultimately results in the welfare of the society and state. Thus freedom of speech provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
- For active participation in democracy: Democracy is most important feature of today's world. Freedom of speech is there to protect the right of all citizens to understand political issues so that they can participate in the smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in decision-making.

RIGHT AND DUTY TO DISSENT

In ancient Indian history also there are similar instances of dissent. It has been observed with much justice that

the history of progress of mankind is a history of the informed dissent. To the line, Kautilya dissented against the Nandas of Magadha, who were complacent in the face of the Alexander's invasion. He created the Mauryan Empire. The Buddha dissented against the orthodoxies of his times and eightfold path stood revealed. Adishankara dissented against the fading of sanathana dharma and resurrected it. Shivaji dissented against the kingdoms of the Deccan and the might of the Mughal Empire to lay the foundation of the Mauryan Empire. The dissent of the soldiers at Barack pore and Meerut led to the first war of independence in 1857. A longtime of dissenters thereafter, from Lokamanya Tilak to Bose, Nehru and Gandhi, gave us our path to an independent India. Dr. Ambedkar, a man who dissented even to Mahatma Gandhi, gave us a constitution that has endured all these years.[20]

The reluctant radical dissenters set in motion chain of events that eventually produced the greatest revolution in the way of thinking that civilization had seen. In a democratic society the need to accept the difference of opinion is an essential ingredient of plurality.[21] In that sense, the right of dissent also becomes the duty to dissent since tactics to suppress the dissent tend to diminish the democratic essence. Suppressing dissent deprives humanity with truth and invades its progress. People have the right to question, criticize and condemn government in power. It can be well understood, that every right has a co-relative duty and therefore right to dissent must have its correlative duty that is, duty to tolerate dissent clearly with constitutional means. This is a legitimate demand of pluralism and progressiveness.[22]

RIGHT TO DISSENT AND THE JUDICIARY

Freedom of speech thus placed on a more impregnable footing as compared to other freedoms guaranteed under Article 19 as those freedoms were subject to reasonable restrictions in the interest of general public or of public order or for a wide range of similar purposes. Apart from the specific and more or less well defined categories of legal intention covered libel, slander, defamation, contempt of court and decency or morality- the general test to be applied was whether the matter sought to be inhibited undermines the security of the state or tends to overthrow the state regardless of the fact that it serves to restrict the freedom of speech and expression. However the impairment of that freedom for less serious purposes would be unconstitutional because it was presumed that such purposes could be achieved by means less desperate than enforced silence. The court also provided that if free speech is to be restricted on specific grounds of public order, the law placing such a constraint has to satisfy the test of clear and present danger; a test that has been used by the American courts for almost a century to determine the speech that the government may restrain. The same was brought out by Justice Oliver Windell Holmes,

writing for the court in *Schenk v.U.S*[23], as he asked whether "the words create a clear and present danger that they will bring about substantive evils congress has a right to prevent"

"The constitutional right to free expression is powerful medicine in a society as diverse and population as ours. It is designed and intended to remove governmental restraints from the arena of the public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comfort within the premise of individual dignity and choice upon which our political system rests." [24] In *Ramesh V. Union of India*[25], the challenge was to telecast the film 'Tamas' which depicted the violence, killing and looting that took place during the partition of the country. The Supreme Court agreed with the observations of Justice Vivian Bose in *Bhagwati Charang Shukla V. Provincial Government*[26] "that the effects of the words must be judged from the standards of reasonable, strong minded, firm and courageous men and not the weak and vacillating minds, nor of those who scent danger in every hostile point of view". It was further observed that, "if some scenes of violence, some nuances of expression or some events in the film can stir up certain feelings in the spectator, are equally deep, strong, lasting and beneficial impression can be conveyed by scenes revealing the machinations of selfish interests, scenes depicting mutual respect and tolerance, scenes showing comradeship, help and kindness which transcend the barriers in religion." It was held that "viewed in its entirety" the film was creating a lasting impression of this message of peace and co-existence and that people are not likely to be obsessed, overwhelmed or carried away by the scenes of violence or fanaticism shown in the film." Earlier, the apex court in the case of *S.Rangarajan v. P.Jaggivan Ram*[27] held that, "The different views are allowed to be expressed by proponents and opponents not because they are correct or valid but because there is free in this country for expressing even differing views in any issue. It says that irrespective of whether a view is correct, the freedom to express your views is a legitimate and constitutional right in this country that cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1) (a) can be reasonably restricted only for the purposes mentioned in article 19(2) and the restriction must be justified on the anvil of necessity and not the quick stand and of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself." Again the apex court in *Baldev Singh Gandhi v. state of Punjab*, [28] has clearly ruled that discussions believed

to be in public interest would not constitute misconduct. A new taste in the subject matter was brought by the Bombay High Court in *FA Picture International V. CBFC*,^[29] in this case the Bombay High Court observed that “dissent was quintessence of democracy and that those who question the unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the state to clamp down on the free expression of opinion must hence be frowned upon.” It was then observed that films which deal with controversial issues necessarily have to portray what is controversial. A film which is set in the backdrop of communal violence cannot be expected to eschew a portrayal of violence.

Recently in the case of *Sandeep Pandey V. Union of India and 8 others*^[30], the brief facts of the case is that, Mr. Sandeep Pandey, who was the petitioner in the said case was terminated from the post of visiting faculty of IIT, Banaras Hindu university on the basis of circulating controversial articles to his students. The main accusation against the petitioner is that the teachings of the petitioner are against the national interest and it could disturb the communal harmony and as well as encourage students to take law in their hands on campus. On the belief that the students will emulate from the ideas of the Magsaysay awardee, the petitioner, they have terminated him from the services of the university. The court clearly states that fair criticism of government policies cannot be a ground for restricting the freedom of speech and expression. It says that situations may arise where responsible persons may feel it is their duty to criticize and invite people to come for discussion, which would not constitute misconduct.^[31] The court in this case has clearly upheld the right to dissent, which is a resounding assertion of democracy. This judgment is most importantly a defence of the freedom of speech and expression.

CONCLUSION

To conclude in its entirety, that dissent is not a bad word in the public domain as we seen now. Dissent is not a negative thought but it is only a rational thinking of a group to urge to bring their ideas or tend to lead the nation to a right path. Unlike the freedom of speech and expression, this right has to use with precaution otherwise it will end with constraints. All famous people have dissented, to the line Gandhi have dissented through his principles to bring the freedom to our hands from the British- versioned India and mostly all freedom fighters from their slogans itself bring the taste of dissent. The Indian courts as well as the American courts have given standard view to the concept of dissent. In other way dissent is only something which brings the people to make open discussions with a different taste. Everywhere there is dissent, the judges are dissenting, the politicians are dissenting and dissent is there in the arena of film too.

As I have already mentioned that it is not bad word, but there are only passing their ideas with a different thought. Some examples^[32] show that, the dissenting judgments had become a precedent in later period. Dissent usually occurs where the issue concerns the personal liberty of persons and involves the delicate question about the restraints that can be put upon fundamental rights in the supposed interests of national security. It can be tagged as the future development of law that can be useful in the subsequent judgments. Another examples in the film sector also highlights the same issue, we have seen the drastic situation on the release of ‘Jodha Akbar’ and more recently in the release of ‘udta Punjab’. In this juncture, the observation made by Justice Vivian Bose in *Bhagwati Charang Shukla V. Provincial Government* is totally correct as the effects of the words must be judged by the strong minded, firm and courageous men and not by the weak. As in a democratic country like ours, all people are entitled to free speech and can also express their opinions [dissent] without any barriers or fear. Free speech and expression is the very essence of democracy. These are two pillars in which our nation is built off. Thus, it can be understood that, the democratic value of Freedom of speech and the right to dissent is the safeguard of democratic government. This freedom is crucial for the proper functioning of the democratic process. Thus, every citizen of the republic has the right and duty to judge. Herein lays the indispensability of the right to dissent. I fold this paper by quoting the Voltaire’s famous saying, “I disapprove of what you say, but I will defend to death your right to say it”.__

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