



FREEDOM OF EXPRESSION AND DEMOCRACY IN INDIA

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Abstract

Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. The freedom of speech, or the freedom of expression, is recognized in international and regional human rights law. The freedom of expression and dissent are suppressed by those in power from time to time in the name of sedition and national security. Freedom of expression is a prerequisite to the effective functioning of a democracy. The freedom of expression is key to the development, dignity and fulfillment of every person. One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Indian democracy can be strengthened by tolerance, non-violence, freedom of expression and secular approaches. The manner in which the image of the Supreme Court and fundamental rights is being whipped is equally shocking for the true democrats in India. The stakeholders of development are required to balance freedom of expression with other human rights. The centers of learning should be a space for healthy debates and discussions which shape the destiny of the nation.

Preamble

The freedom of expression is the fundamental right of every individual to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, according to the Universal Declaration of Human Rights (1948). The Constitution of India guarantees freedom of speech and expression to all citizens through Article 19(1)(a). This freedom is subjected to certain reasonable restrictions vide Article 19(2). The free communication of ideas and opinions is one of the most precious of the rights 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. There is a well established relationship between the scientific progress of mankind and freedom of expression and dissent. The freedom of expression and dissent are suppressed by those in power from time to time in the name of sedition and national security. The issues and concerns of freedom of expression in India are analyzed in this article.

Concept of Freedom of Expression

The freedom of expression has been considered as a necessary condition for a democratic polity. The social interest in free expression is based on the idea that without expression, there is no society at all, because communication is the very essence of social life (Fuller, 1963:05). Expression is a matter of liberty and right. The liberty of thought and right to know are the sources of expression. Free Speech is live wire of the democracy. Freedom of expression is integral to the expansion and fulfillment of individual personality. Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. Without freedom of speech, the appeal to reason which is the basis of democracy cannot be made (Jennings, 2007:08).

Historical Context of Freedom of Expression

The early human rights documents enumerate the concept of freedom of expression. The England's Bill of Rights (1689) legally established the constitutional right of 'freedom of speech in Parliament' which is still in effect. The Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution (1789) specifically affirmed freedom of speech as an inalienable right. The Article 19 of the Universal Declaration of Human Rights (1948:13) provides the basis for the freedom of expression. It reads: "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".

The freedom of speech, or the freedom of expression, is recognized in international and regional human rights law. The right is enshrined in Article 10 of the European Convention on Human Rights (1950:04), Article 19 of the International Covenant on Civil and Political Rights (1966:07), Article 13 of the American Convention on Human Rights (1978:02) and Article 9 of the African Charter on Human and Peoples' Rights (1986:01). These international conventions have emphasized that freedom of expression includes basically - the right to seek information and ideas, the right to receive information and ideas and the right to impart information and ideas. The international, regional and national standards also recognize that freedom of speech, as the freedom of expression, includes any medium, be it orally, in written, in print, through the Internet or through art forms. The freedom of expression is the means of generating public opinion on vital issues in a democratic society.



The Article 10 of the European Convention on Human Rights (1950:04) provides the right to freedom of expression and information, subject to certain restrictions that are in accordance with law and necessary in a democratic society. This right includes the freedom to hold opinions, and to receive and impart information and ideas. The article emphasizes that everyone has the right to freedom of expression which include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom of expression also carries with it duties and responsibilities which are subjected to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety.

The First Amendment to the Constitution of USA states: “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people to assemble peaceably and to petition the Government for a redress of grievance”. Freedom of speech is understood to be fundamental in a democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency.

The concept of democracy is that of self-government by the people. Freedom of expression is a prerequisite to the effective functioning of a democracy. The freedom of expression is key to the development, dignity and fulfillment of every person. The people feel more secure and respected by the state if they are able to speak their minds. The freedom of expression is necessary for good governance and establishment of a welfare state. Free debates and discussions also ensure the betterment of public policies and welfare programmes in a civil society.

Freedom of Speech and Expression in India

The Preamble of the Indian Constitution ensures to all its citizens the liberty of expression. The Constitution of India provides the right to freedom which is enshrined in articles 19, 20, 21 and 22 respectively. The framers of the constitution had understood the importance of freedom of expression in a democratic society like India and guaranteed the right to freedom in Article 19. The courts have held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.

The constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1)(a) of the Constitution. The constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1)(a) of the Constitution. Article 19(1) provides that all citizens shall have the right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practice any profession or to carry on any occupation, trade or business. The rights mentioned in Article 19(1) are not the exhaustive of all rights of a free man. Some of the rights falling outside Article 19 are freedom to move, right of citizenship, the right to vote, or contest election, the contractual right against the Government, right of Government servants to continue in employment and the right to strike. The freedoms enumerated in Article 19(1) are those great and basic rights which are recognized as natural rights inherent in the status of a citizen. But none of these freedoms is absolute or uncontrolled. The rights granted by Article 19 are available only to citizens and not to aliens or foreigners.

Thus the press is subject to the restrictions that are provided under the Article 19(2) of the Constitution. Freedom of speech is the right to communicate one's opinions and ideas without fear of government retaliation or censorship. The term freedom of expression is sometimes used synonymously, but includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used.

The Supreme Court (1950:10) in *Romesh Thapar v. State of Madras* observed: “Freedom of speech and of the 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 popular government, is possible.”

The Supreme Court (1984:11) in *Indian Express v. Union of India* and others remarked: “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 such as freedom of access to all sources of information, freedom of publication and freedom of circulation.

The Supreme Court (2002:12) in *Union of India v. Assn. for Democratic Reforms* asserted: “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”.

The Clause (2) of Article 19 of the Indian Constitution enables the legislature to impose certain restrictions on free speech under following heads such as security of the State, friendly relations with foreign States, public order, decency and morality, contempt of court, defamation, incitement to an offence and sovereignty and integrity of India. The citizens and media representatives are equally subject to the restrictions that are provided under the Article 19(2) of the Constitution.

Emerging Issues

In the present times, there are series of threats to freedom of expression in India. The present union government has resorted to saffronization, commercialization and politicization of education and culture across the country. The government has failed to win the confidence of all sections of society for political compulsions. The recent attack of Kanhaiya Kumar, student leader of JNU by a group of advocates has been strongly condemned by the media and progressive forces. Indian democracy can be strengthened by tolerance, non-violence, freedom of expression and secular approaches. The manner in which the image of the Supreme Court and fundamental rights is being whipped is equally shocking for the true democrats in India.

Ambekarites, secularists and other progressive forces are branded as anti national. The people who speak against communalism and corruption are considered as anti-nationals by the vested interests even though the constitution guarantees freedom of expression. The recent march in support of JNU students has received abundant support from intellectuals and activists across the country. Activists have strongly condemned the attack of Kanhaiya Kumar and several universities in Europe and America have strongly criticized the police action on campus and violation of freedom of expression. There is exceptional and unprecedented break down of the justice delivery mechanism and administration of justice, lamented Kanhaiya Kumar. D.Raja, CPI leader stated that action against JNU students was an attack on right to freedom of speech and expression.

The parliament should amend the Section 124A of the Indian Penal Code which deals with sedition since it is outdated, outmoded and outrageous provision (Gandhi, 2016:06). The idea of nationalism is misused by the fundamentalists. The supporters of students' agitation have lamented that the BJP is running shrill campaign branding all those who dissent as anti-nationals. Recently renowned thinker and media critic Noam Chamsky strongly condemned the intervention of police in the affairs of JNU.

Many of us remain very concerned about the crisis in JNU, which was apparently created and precipitated by the government and university administration with no credible evidence of any seditious activities on campus”. Chomsky and other academicians across the world have also condemned the culture of authoritarian menace that the present government in India has generated. They have opined that those in power have replicated the dark times of the oppressive colonial period and the emergency. The Supreme Court of India states: “If a citizen comes to this court saying his fundamental rights are under threat, we have to hear him. Something extraordinary is going on in this country. No doubt about it. We will certainly examine the students bail plea (Chamsky, 2016:03).

The Bar Council of India told the Supreme Court that serious action would taken against the errant lawyers who brazenly defied the courts order for calm and indulged in violence in the Patiala House courts complex recently. The scribes have also condemned the Patiala House court attacks and registered their concern for freedom of expression and protection of fundamental rights in the country. The academics and researchers have strongly protested against the shrinking democratic space in educational institutions across the country.

These events have deepened the state of tension, suspicion and discord that has afflicted the country over the past several years. At one level, the events bring to sharp focus the mindset of the Narendra Modi government, the partisanship of university and law enforcement authorities, the brazenness of lawbreakers, the nature of student politics and inflammatory role of some television channels. Every one of these aspects demands serious debates, review and a new broad consensus if we are to retain our hard-won and hard-preserved freedoms. At another level, the events call upon us as citizens to reflect on our relationship with the entity that we call India; to reflect on the nature of the feeling we have for India, and indeed, what is the 'India' that we have feelings for nationalism without liberalism is a monster. We saw this when lawyers and a local Delhi politician brazenly resorted to violence in the name of nationalism (Pai, 2016:09).

Conclusion

The national leaders won the freedom against too many odds after one thousand years of slavery. They accepted democracy as a way of life. The framers of Indian Constitution led by Baba Saheb Ambedkar consciously accorded a place of pride to



freedom of expression which sustains democracy in India. The freedom of speech and expression should, therefore, receive generous support from all those who believe in the inclusive development of women and weaker sections who are the strong pillars of national development. 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. The stakeholders of development are required to balance freedom of expression with other human rights. The centers of learning should be a space for healthy debates and discussions which shape the destiny of the nation. The academic institutions are required to produce people who ideate and think in the interest of the nation. The students should be enabled to learn appropriate lessons in citizenship and nation building endeavors. The media have played a responsible role in the protection of freedom of expression in the wake of recent developments in Central University of Hyderabad, JNU, Delhi University and other centers of learning. In the new millennium, the electronic media and social media have played a crucial role in the battle against political corruption and violation of freedom of expression by the powers that be in Indian Republic.

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