

MISUSE OF FREEDOM OF SPEECH AND EXPRESSION

-SAHIL ARORA¹

“I disapprove of what you say, but I will defend to the death your right to say it.”.

...Free speech is a qualified human right and can be curbed when it interferes with other rights. The entire concept is predicated on the idea you can express in public anything that you so wish. Freedom to speech is a principle, which entitles every citizen, to articulate their opinion and ideas without fear of censorship or any legal action against the person who is exercising such right. It includes any act of seeking, imparting, information and ideas of an individual to another individual or to public

" Art 19(1)(a) of the Constitution of India, gives Freedom of Speech and Expression to every citizen of the country, irrespective of his caste, creed, race, religion and sex. The extent of the right to free expression is representative of the strength of a democracy. This is because, if in a representative government, people are not allowed to freely voice an opinion, it simply fails to be a government of all people

But this Right is not absolute and qualified. This right is Also Subject to some Reasonable Restrictions which are in Art 19(2).

This right shall include freedom 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.

Misuse of Freedom of Speech and Expression. And Relevant Cases on the Aspect

This Right is fundamental to every citizen, and it must not be misused by him in any circumstance, whatever it may be as this right does not give guarantee uncontrolled and unrestricted right to speech and expression. And the right should not be exercised arbitrarily or in a wrong manner,.

The Reasonable Restrictions in Art 19(2) are:-

1. Security of the Nation

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2. Public Decency and Morality
3. Sovereignty and Integrity of India
4. Friendly relations with Foreign States.
5. Contempt of Court and Defamation (Sec 499 IPC)
6. Incitement of an Offence.

Freedom of speech and expression, therefore, may not be recognized as being absolute, and common limitations to freedom of speech relate to libel, slander, obscenity, sedition, incitement, the right to privacy, the right to be forgotten, public security, and perjury.

In Kedar Nath Singh v. State of Bihar¹-There arose out a constitutional challenge to Sections 124-A of Indian Penal Code, 1860 which penalizes attempts to excite disaffection towards the Govt by words or in writing and publications which may disturb public tranquility. The SC dismissed the challenge but classified that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression.

In Mani Shankar Aiyar (a communist who gathered money for Chinese soldiers in Britain during 1962 war, who always speaks against India unfairly while being an Indian government servant and even when there is open proof that India did nothing wrong in a particular issue - you can see people tearing him a new one in regular conversation and media. ...

Moving on to A. Abbas v UOI² -The case is one of the firsts in which the issue of prior censorship of films under Article 19(2) came into consideration of the Supreme Court of India. Under the Cinematograph Act, 1952, films are divided into two categories- 'U' films for unrestricted exhibition, and 'A' films that can be shown to adults only. The petitioner's film was refused the 'U' certificate, and he challenged the validity of censorship as violative of his fundamental right of freedom of speech and expression. The Court, however, held that motion pictures are able to stir emotions more deeply than any other form of art., and there was violation of Art19(1)(a).

In ref to Benett Coleman v UOI³ - In this case, the validity of the Newsprint Control Order was challenged. The Order fixed the max. number of pages which a newspaper could publish, and

this was said to be violative of Article 19(1) (a) of the Constitution. Court also held that the fixation of page limit will have a twofold effect:-

1.It will deprive the petitioners of their economic viability, and 2. It will restrict the freedom of expression as compulsorily reducing the page limit will lead to reduction of circulation and area of coverage for news and views.

In *Indian Express Newspapers v. Union of India*⁴ is the next leading case on the issue. In which court, observed that, Article 19 of the Indian Constitution does not use the phrase “freedom of press” in its language, but it is contained within Article 19(1) (a). There cannot be any interference with the freedom of press in the name of public interest. The purpose of the press is to enhance public interest by publishing facts and opinions, without which a democratic electorate cannot take responsible decisions.

Don't you think that there should be a limit to how much freedom of speech can one have?

- Of course, there need to be laws to check that hate speech doesn't propagate over the Internet, minorities aren't dehumanised and riots don't take place,” as there are many cases when minorities are back bited and abused “and restrictions need to be better tailored due to the pervasiveness and the greater number of speakers due to the Internet”

Art 19(1)(a) and Sedition

In *Arundhati Roy* who was booked in 2010 , for ‘Sedition’ for an “anti-India” speech which she delivered at an event in Delhi. It became an important question: “Lowering the dignity of the Supreme Court was found to be an offence, but it is alright (under the blanket of ‘freedom of speech’) to lower the dignity of the nation and shout slogans against its very sovereignty and integrity?”

How about lowering the dignity of a Hindu goddess? Unbeknownst to most people, JNU has been a breeding ground for malicious and salacious content for long time. Since 2011, groups of JNU students have been celebrating ‘Mahishasur Diwas’ during the Durga Puja celebration. While, it sounds harmless enough, what needs mentioning is that Goddess Durga is shown as a seductress and prostitute, who killed Mahishasur by deceit at the behest of the Aryan King Indra!

.And the same individuals who are crying hoarse over “trampled” ‘freedom of speech’ were guilty of wrecking havoc at a Durga Puja pandal. Apparently, respecting religion is not a two-way street for these proponents of freedom.

What utter hypocrisy?

In ref to **Kanhailal Kumar v State of NCT Of Delhi** ⁵ - In February 2016, Kanhaiya Kumar, student union leader at JNU, was arrested on charges of sedition. He was accused of making anti-national speeches during a public meeting organised to protest the 2013 hanging of Mohd Afzal Guru, who was convicted for his role in the 2001 Parliament attack. Kumar was released on bail at a later date. There are other examples where the sedition provision has been used to silence political speech.

There are instances when there are paid media who sell their souls and are trying to sell our Country to outsiders for money. They are even trying to do every possible way to deteriorate the country's status and agitations, made by the Political parties are not peaceful. They are destructive of Public property by burning buses, trains, damaging property. The leaders of such agitation are portrayed before the Media as Hero.

People have misused and abused it as an excuse to be discriminative, unpleasant, and barbarous. India's present laws aren't geared towards checking the misuse of free speech, as showed in Iyer Mitra case. Rather than limiting the misuse of the right to free speech & expression, our laws, in their existing form, end up limiting free speech. Since these laws have not been tinkered they continue having the same effect. “The legislature as an institution has not seriously engaged to reform criminal laws and offences which impact free expression. It is often acted as an institution to further restriction on free expression.”

I would highlight that what's needed today is “legal reform to get rid of all of these colonial restrictions on free expression”—and the responsibility for this lies primarily with the Parliament as the chief law reformer. There are many problems with free speech-related laws exist because our legislators have not acted with the right amount of urgency to reform these laws since Independence. “The ideal way forward would be holding consultations on archaic and colonial laws. We need to review all these laws especially in the context of how technology has evolved.” A legislative movement is what is required.

1.lexisnexus.co.in

2.J.P Constitutional Law

3.Indian Law Journal