

Freedom of Speech and Expression or A right to Abuse?

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Abstract- *“The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.”* Pennsylvania Constitution (1790). Freedom of speech and expression is the concept of being able to express oneself freely whether through words of mouth, literature, art, or any other medium of communication. It is often regarded as an integral concept in modern liberal democracies, is most fundamental and is one of the most contested individual right. It is an essential freedom not only because it is how we protect all of our rights and liberties it is because this is how we build our personal relations, society and the nation. If we could not speak openly about the policies and actions of government, then we would have no effective way to participate in the democratic process or protest when we believed governmental behavior threatened our security or our freedom.

Keywords- Freedom of Speech and Expression, right to Abuse

I. INTRODUCTION

Although at a point we agree that free speech is central to democratic government, we disagree sharply about what we mean by speech and about where the right begins and ends. Speech clearly includes words, but does it also include conduct or symbols? Certainly, we have the right to criticize the government, but can we also advocate its overthrow? Does the right to free speech allow us to incite hate or use foul language in public? Freedom of speech is under threat around the world today. On one side of this battle are governments and corporations seeking, to various degrees, to set limits on what is acceptable to say and what is not. On the other are ordinary citizens and activists demanding that their voices be heard - voices that, in this new age of smartphones, print, electronic and social media, are harder than ever to silence, even as technology puts new implements of censorship into the hands of autocrats. As part of the fundamental Rights, freedom of speech and expression is guaranteed by the Constitution, but it is not defined by it. That task is left up to the people through a representative government that makes the laws and a judicial system that interprets and applies the laws to resolve disputes. The Supreme Court of India in *Shreya Singhal v. Union of India; March 2015*, in a move towards greater protection of free expression in the world's largest democracy struck down Section 66A of the Information Technology Act, 2000 in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2). But there is still much to do. As rightly observed by Justice Oliver Wendell Holmes, Jr., in *Schenck v. United States (1919)* that “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. *The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.*” The present study aims to scrutinize the entire concept of freedom of speech and expression in Indian context along with its judicial dimensions.

II. FREEDOM OF SPEECH

A capacity for language is a hallmark of our species. When languages began to take root, people could share information with one another more widely but also more concretely. At first, they'd share easily memorizable facts, such as lists of kings or names of clans that they thought important to pass along to future generations. When they did so, those facts could become fixed in people's minds and in the collective memory of the group. It would then become more important for future group members to know such facts and knowing them would become part of their role and identity as group members. Sharing information in this way became part of how people related to one another and helped connect them to one another. Today the whole world is wired, living in a state of electronic connectivity with digital technologies whether they be cameras, print and electronic media, or computers and mobile devices. Thus, our societies are superconnected, and so are, we never in human history have so many been connected to so many others, in so many ways, with such wide - ranging social implications. Almost 3 billion people 40% of the world's population use the internet. The number of mobile phone subscriptions is approaching the number of people on earth over 7 billion with penetration in developing areas growing at twice the rate as in more developed areas. High-speed, always on mobile broadband technology is utilized in about one-third of these subscriptions. Increasingly, the internet and mobile phones are used to establish social networks pathways between people that can be used to obtain and share resources, opportunities and information or to form connections and communities.

III. RIGHT TO ABUSE

The technologies that contributes so much to the shape and texture of our lives were designed and invented and built by people and are continually shaped by people as well by the collective actions of all those who create and use technologies. It is not useful or accurate to think of technology as an entity doing something to people and then to blame the technology when things go wrong or get

complicated. Societies face serious social problems like crime, violence, poverty, war, environmental destruction, all kinds of inequalities. Since rapid technological change has accompanied these problems, it can sometimes seem to have caused them. But to understand and work toward solutions for social problems is a complex endeavor for which simple causal frameworks are rarely sufficient. Furthermore, when two things are associated or related or correlated in some way, it does not necessarily follow that one has caused the other. When you share a photo of yourself on Facebook or some other social media platform, for example, you are sending a message that communicates something about you. With Facebook (via a computer or mobile phone) acting as technological mediator, that message is transmitted to others. But think about what actually occurs within that simple act and consider the power of Facebook as you share that photo. Do all of your friends have an opportunity to view it? What about the non-Facebook population, or those who rarely check it? What about those friends of yours that Facebook has decided (via a formula called an algorithm) will not see your news feed? Are your friends equally empowered to know and receive what you are sending? What if some individuals who do see your photo comment on it in a way that you had never intended (perhaps making fun of something you found serious or pointing out the flaws in a picture you thought flattering). Have they grabbed some power - perhaps the power to change the meaning of the message? What if others tag or repost the picture or share it with someone you never thought would see it? What if the photo then receives another whole bunch of comments from people you don't know? What if some of these comments cause you distress? What if Facebook or an outside organization repurposes your photo as an endorsement of a product that you may or may not be comfortable being associated with? There are numbers of ways that we relinquish power over our ideas and images when we share them via internet and digital media networks. A technology does not have the property of human agency. It cannot think and act on its own accord, independent of human and social forces. To assume that it does and to therefore blame or credit a technology for consequences that emerge in connection with its use is a less than helpful way of understanding how technology intersects with our social worlds. According to Locke, man is born "with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of the nature" and he has by nature a power "to preserve his property - that is, his life, liberty, and estate against the injuries and attempts of other men. The declaration of the French Revolution, 1789, which may be regarded as a concrete political statement on Human Rights which was inspired by the Lockean philosophy declared that "The aim of all political association is the conservation of the natural and inalienable rights of man". Therefore, a free speech is meaningless unless it has space to breathe. In this context the U.S Constitution was the first modern Constitution to give concrete shape to the concept of human rights by putting them in to the constitution and making them justifiable and enforceable through the instrumentality of the courts in 1787. In modern times, the concept of the

people's basic rights has been given a more concrete and Universal texture by the Charter of Human Rights enacted by the United Nations Organization (U.N.O), and the European Convention on Human Rights. Freedom of speech and expression is granted unambiguous protection in international law by the [International Covenant on Civil and Political Rights](#) which is binding on around 150 nations. The concepts of Fundamental rights thus represent a trend in the modern democratic thinking and the enforcement of human rights becomes a matter of major significance to the constitutional jurisprudence. An outstanding example of this trend is Canada. The Canadian Constitution had only a few guaranteed Rights. Then, the Canadian parliament enacted a law laying down basic rights of the people. Being only a law made by the parliament, it did not constitute any restriction on parliament itself. The matter has now been taken further. The Canadian Constitution has amended and a Charter of Rights has been formally incorporated therein.

IV. DISCUSSION

Coming to India, the world's largest democratic country, Incorporation of basic Human Rights in Indian Constitution derives its inspiration from bill of rights, enshrined in the American Constitution. The Indian society is fragmented into many religious, cultural and linguistic groups it was necessary to declare Fundamental Rights to give a sense of security and confidence. It was thought that people should have some rights which may be enforced against the government which may become arbitrary at times. During the British rule in India, human rights were violated by the rulers on a very wide scale. Therefore the framers of the constitution, many of whom had suffered long incarceration during the British regime, had a very positive attitude towards these rights. Article 13 of the constitution of India, is the key provision in this regard as it gives teeth to the fundamental rights and makes them justifiable. The effect of Article - 13 is that Fundamental Rights cannot be infringed by the government either by enacting a law or through administration action. Apart from guaranteeing certain basic civil Rights and freedoms to all, fundamental Rights in India also fulfill the important function of giving a few safeguard to minorities, outlawing discrimination and protecting religious freedom and cultural rights. The fundamental Rights Constitutes by and large a limitation on the government, the most important problem which the courts have been faced with while interpreting these rights has been to achieve a proper balance between the rights of the individual and those of the state or the society as a whole, between individual liberty and social control. This very difficult as well as a delicate task indeed in these days of the development of the country in to a social welfare state. On the whole one could say that in the areas of non economic matters, like freedom of speech or Right to life, the line has been shifting in favor of the individual while in the area of economic matters, the line has been constantly shifting in favour of social control.

In *Romesh Thapar v. State of Madrash*: AIR 1950 SC 124; entry and circulation of the English Journal "Cross Road", Printed and Published in Bombay, was banned by the government of Madrash. The same was held to be

violative of freedom of speech and expression as without liberty of circulation, publication would be of little value". The preamble to the Constitution of India resolves to secure for the citizens of India, liberty of thought, expression and belief. Article 19(1) (a) of the constitution is also applicable to media along with citizens. The media derives the rights from the right to freedom of speech and expression available to the citizens. Thus, the media have the same right no more and no less than any individual to write, publish, circulate or broadcast.

V. CONCLUSION

The freedom of 'speech and expression' comprises not only the right to express, publish and propagate information, its circulation but also to receive information. This was held by the Supreme Court in a series of judgments. Although the constitution guarantees the freedoms of speech and expression, legal protections are not always sufficiently upheld by the courts or respected by government officials. A number of laws that remain on the books can be used to restrict media freedom. The sedition law, formally Section 124A of the penal code, outlaws expression that can cause "hatred or contempt, or excites or attempts to excite disaffection," toward the government. The 1923 Official Secrets Act empowers authorities to censor security-related articles and prosecute members of the press. State and national authorities, along with the courts, have also punished sensitive reporting by using other security laws, criminal defamation legislation, bans on blasphemy and hate speech, and contempt-of-court charges. In September 2014, police in Assam arrested journalist Jaikhlong Brahma and accused him of having links with a faction of the National Democratic Front of Bodoland, a separatist group. Amnesty International reported that he was held without formal charges for several weeks under the National Security Act, but was released on bail in December. Journalist Sudhir Dhawale, who had been charged and jailed in 2011 under the Unlawful Activities Prevention Act (UAPA) and the sedition law due to allegations that he was supporting the Maoist insurgency, was acquitted on all charges in May 2014 and released after more than three years in prison. Under the Information Technology Act, 2000 (ITA), amended in 2008, the government has the authority to block content, even if it is not obscene, whenever it is the "national interest" to do so. Section 66A of the ITA criminalizes online information intended to cause "annoyance or

inconvenience," among other loosely worded criteria, and arrests under the provision continued to occur in 2014. In 2013, the Leader of the opposition in the Rajya Sabha Arun Jaitley has said that it was not proper on the part of television channels to have compared Prime Minister Manmohan Singh's Independence Day address with Gujarat Chief Minister and BJP prime ministerial candidate Narendra Modi's speech as it amounts to violation of the right to free speech and expression. Quoting Article 19(2) of the Constitution, Mr. Jaitley said it provided specific conditions under which the right to free speech could be restricted. These restrictions must necessarily have nexus to the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, the public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. "No restriction can be imposed on the right to free speech either by the government or by the Election Commission which falls outside the purview of any of the above circumstances. On the TRAI order restricting advertising time it was said it ostensibly hurt the business of a news channel and also effectively hurt the right of free speech. Criticism which does not offend any of the Article 19(2) restrictions can never be restricted. Though the fundamental rights are always remain controversial till as they are embodied in the constitution but are not expressly defined by it that task is left up to the people through a representative government that makes the laws and a judicial system that interprets and applies the laws to resolve disputes. Democracy can flourish only when four institution safeguard the interests of the citizens.

REFERENCES

- [1]. Dr. B.N. Mani Tripathi, Jurisprudence (All. Law Agency, 17th ed, 2006).
- [2]. C.K Takwani, Lectures on Administrative Law (Eastern Book Co., 2nd ed, 1994).
- [3]. The Indian evidence Act, 1872, Section 3.
- [4]. The Information Technology Act, 2000 (Act No. 21 of 2000)
- [5]. Vepa P Sarthi, Law of Evidence, (Eastern Book Co. 6th ed , 2006)
- [6]. Nayan Joshi, Electronic Evidence, (Kamal Publishers, New Delhi 2016)
- [7]. R.V. Kelkar's, Criminal Procedure ((Eastern Book Co. 5th ed , 2008)