



FACULTY OF JURIDICAL SCIENCES

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Lecture-11



LECTURE 11: Guarantee of freedom of speech

Guarantee of freedom of speech under the following heads:

Freedom of Press

Although **Article 19** does not express provision for freedom of press but the fundamental right of the freedom of press implicit in the right the freedom of speech and expression. In the famous case **Express Newspapers (Bombay) (P) Ltd. v. Union of India** court observed the importance of press very aptly. Court held in this case that “In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

The above statement of the Supreme Court illustrates that the freedom of the press is essential for the proper functioning of the democratic process. 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 right of making a choice, free and general discussion of public matters is absolutely essential. This explains the constitutional viewpoint of the freedom of press in India.

Obscenity

Freedom of speech, though guaranteed, is not absolute in India. Unlike the U.S. Constitution, the text of India’s Constitution clearly sets out restrictions on free speech. The freedom of speech guaranteed under **Article 19(1)(a)** can be subject to reasonable state restriction in the interest of decency or morality. Obscenity in India is defined as “offensive to modesty or decency; lewd, filthy and repulsive.” It stated that the test of obscenity is whether the publication, read as a whole, has a tendency to deprave and corrupt those whose minds are open to such immoral influences, and therefore each work must be examined by itself .

With respect to art and obscenity, the Court held that “the art must be so preponderating as to throw obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked .” The Court concluded that the test to adopt in India, emphasizing community mores, is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech.

Right to Information

Right to know, to information is other facet of freedom of speech. The right to know, to receive and to impart information has been recognized within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. The right to know has, however, not yet extended to the extent of invalidating **Section 5** of the **Official Secrets Act, 1923** which prohibits disclosure of certain official documents. Even, **Right to Information Act 2005**, which specially talks about peoples’ right to ask information from Government official, prohibits disclosure of certain documents under u/s 8 of the Act. These exceptions are generally the grounds of reasonable restrictions over freedom of speech and expression under **Article 19(1)** of **Constitution** of India. One can conclude that ‘right to information is nothing but one small limb of right of speech and expression.

Voters Have Right to Know About their Candidates

In a landmark judgment in **Union of India v. Association for Democratic Reforms**⁴, a three-judge bench held that the amended Electoral Reforms Law passed by Parliament is unconstitutional as being violative of citizen’s right to know under **Art. 19(1)(g)**.

The ‘Freedom of Speech and Expression’ Is Indeed A Very High One

In recent judgment of the Supreme Court in **Khushboo v. Kannaiammal**⁶ upholds the right to freedom of speech and expression. Khushboo’s right to freedom of speech was violated by the institution of multiple criminal cases against her in various courts across the country and consequent harassment that she suffered.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	In one of the earliest judgments, pre-censorship of the press was held to be unconstitutional	Ramesh Thapar vs. State of Madras	Kedarnath vs. State of Bihar	Virender vs. State of Punjab	Hamdard Dawakhana vs. Union of India
2	The law of sedition under section 124A of the I.P.C. was also subjected to dispute	Kedarnath vs. State of Bihar	Ramesh Thapar vs. State of Madras	Hamdard Dawakhana vs. Union of India	Virender vs. State of Punjab
3	Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press and the same is included in the freedom of expression, which is conferred on all citizens	Virender vs. State of Punjab	Kedarnath vs. State of Bihar	Ramesh Thapar vs. State of Madras	Hamdard Dawakhana vs. Union of India
4	freedom of the press under the Indian Constitution is not higher than the freedom of an ordinary citizen.	Sakal Papers vs. Union of India	Virender vs. State of Punjab	Hamdard Dawakhana vs. Union of India	Kedarnath vs. State of Bihar
5	It has been held by the Supreme Court that right of speech and expression includes right to acquire and import ideas and information about the matters of common interests	Hamdard Dawakhan a vs. Union of India	Ramesh Thapar vs. State of Madras	Kedarnath vs. State of Bihar	Virender vs. State of Punjab

Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)