

Lecture- 10



Freedom of Commercial speech

In *Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd.*, the Supreme Court held that a commercial advertisement or commercial speech was also a part of the freedom of speech and expression, which would be restricted only within the limitation of Article 19(2). Supreme Court held that advertising, which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product-advertised. Public at large are benefited by the information made available through the advertisements. In a democratic economy, free flow of commercial information is indispensable.

Right to Broadcast

The concept speech and expression has evolved with the progress of technology and include all available means of expression and communication. This would include the electronic and the broadcast media.

In *Odyssey Communications (P) Ltd .v. Lokvidayan Sanghatana*, the Supreme Court held that the right of a citizen to exhibit films on the State channel Doordarshan is part of the fundamental right guaranteed under Article 19(1)(a). In this case, the petitioners challenged the exhibition on Doordarshan of a serial titled *Honi Anhonion* on the ground that it encouraged superstitious and blind faith amongst viewers. The petition was dismissed as the petitioner failed to show evidence of prejudice to the public.

Right to information

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 judgements which have discussed the right to information in varied contexts from advertisements enabling the citizens to get vital information about life-saving drugs, to the right of sports lovers to watch cricket and the right of voters to know the antecedents of electoral candidates.

The Supreme Court observed in *Union of India v. Assn. for Democratic Reforms*, "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". (2002) 5 SCC 294.

Right to criticize

In **S. Rangarajan v.P. Jagjivan Ram**, everyone has a fundamental right to form his opinion on any issues of general concern. Open criticism of government policies and operations is not a ground for restricting expression. Intolerance is as much dangerous to democracy as to the person himself. In democracy, it is not necessary that everyone should sing the same song.

Right to expression beyond national boundaries

In *Maneka Gandhi vs Union of India*, the Supreme Court considered whether Article 19(1)(a) of Indian Constitution was confined to Indian territory and held that the freedom of speech and expression is not confined to National boundaries.

Right not to speak or Right to silence is also included in the Right to speech and expression.

In the case of National Anthem, three students were expelled from the school for refusal to sing the national anthem. However, the children stood up in respect when the national anthem was playing. The validity of the expulsion of the students was challenged before the Kerala High Court and they upheld the expulsion of the students on the ground that it was their fundamental duty to sing the national anthem.

However, on an appeal being filed against the order of the Kerala High Court before the Supreme Court, it was held by the Supreme Court that the students did not commit any offence under the Prevention of Insults to National Honour Act, 1971. Also, there was no law under which their fundamental right under Article 19(1) (a) could be curtailed. *Bijoe Emmanuel v. State of Kerala* 1986 3 SC 615

What are the grounds on which this freedom can be restricted?

There are many grounds on which the freedom of speech and expression can be restricted up to some reasonable restrictions by the state. Such restrictions are defined under the clause (2) of

Article 19 of the Constitution of India which imposes certain restrictions on free speech under the following:

- 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.

Security of the State

Some reasonable restrictions can be imposed on the freedom of speech and expression, in the sections which are involved with the security of the State. The term 'security of the State' is required to be distinguished from the term 'public order' because they are similar but different in terms of their intensity. Hence, the security of state refers to serious and aggravated forms of public disorder an example of this can be rebellion, waging war against the state even if it is against a part of the state, etc.

Case: People's Union for Civil Liberties v. Union of India (AIR 1997 SC 568)

Public interest litigation (PIL) was filed under Article 32 of the Constitution of India by PUCL, against the frequent cases of telephone tapping happening throughout the nation. And thus the validity of Section 5(2) of The Indian Telegraph Act, 1885 was challenged. It was then observed that "occurrence of public emergency" and "in the interest of public safety" is the sine qua non for the application of the provisions laid down under the Section 5(2). If any of these two conditions are absent from the case, then the government of India has no right to exercise its power under this section. Telephone tapping, therefore, will be violative of Article 19(1) (a) unless it comes within the grounds of reasonable restrictions under Article 19(2).

Friendly relations with foreign States:

This ground for the restriction was added by the Constitution (First Amendment) Act of 1951. The State has the authority to impose reasonable restrictions on the freedom of speech and expression if it is affecting negatively the friendly relations of India with other State or States.

Public order

This ground for the restriction was also added by the Constitution (First Amendment) Act, 1951 this was done in order to meet the situation arising from the Supreme Court's decision in the case of Romesh Thapar v. The State of Madras (AIR 1950 SC 124). According to the Supreme court of India, public order is very much different from law and order and security of the state. The term 'public order' indicates the sense of public peace, public safety and tranquillity. Anything that disturbs public peace, in turn, disturbs the public. But mere criticism of the government does not disturb public order. A law which hurts the religious feelings of any class has been held to be valid and reasonable restriction aimed at maintaining the public order.

Decency and morality

These are defined under the Sections 292 to 294 of the Indian Penal Code 1860 provides for the instances of restrictions on the freedom of speech and expression on the grounds of decency and morality, it then prohibits the sale or distribution or exhibition of obscene words.

Contempt of court:

The right to freedom of speech in no way allows a person to contempt the courts. The expression Contempt of Court has been defined under Section 2 of the Contempt of Courts Act, 1971. The term 'contempt of court' relates to civil contempt or criminal contempt under the Act.

Defamation

The clause (2) of Article 19 of the Constitution of India prevents any individual from making any statement that injures the reputation of another in the eyes of society. Defamation is a serious crime in India and is defined under Section 499 and 500 of the Indian Penal Code. Right to free speech is not necessarily absolute. It does not mean freedom to hurt any other person's reputation (which is protected under Article 21 of the constitution). Although 'truth' is considered a defence

against defamation, but the defence would only help if the statement was made 'for the good of the public' and that is a question of fact to be assessed by the independent judiciary.

Incitement to an offence

This is another ground which was also added by the Constitution (First Amendment) Act of 1951. The Constitution also prohibits an individual from making any statement which incites or encourages other people to commit an offence.

Sovereignty and integrity of India:

This ground was added subsequently by the Constitution (Sixteenth Amendment) Act of 1963. This is only aimed to prohibit or restrict anyone from making statements that directly challenge the integrity and sovereignty of the country.

Conclusion

Expressing one's opinions through speech is one of the basic rights guaranteed by the Constitution of India and in the modern context, the right to freedom of speech and expression is not just limited to expressing one's own views through words but it also includes the circulation of those views in terms of writing, or through audiovisuals, or through any other way of communication. This right also comprises of the right to freedom of the press, the right to information, etc. Hence it can be concluded with this article that the concept of freedom is very much essential for the proper functioning of a Democratic State.

The words "in the interest of public order" and "reasonable restrictions" mentioned under Article 19 of the Constitution of India are used to indicate that the rights provided under this section are not absolute and they can be restricted for the safety of the other people of the nation and to maintain the public order and decency.