

Freedom Of Speech And Expression And Reasonable Restrictions In India: Legislative And Judicial Perspective

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Abstract

The inherent conflict between the interests of the society and the interest of the individual is a never ending problem of political theory and at every stage in human history, some workable reconciliation between these conflicting interests has to be evolved, Art. 19 (1) guarantees certain fundamental rights, subject to the power of the State to impose restrictions on the exercise of those rights. The Article is thus intended to protect these rights against State action other than in the legitimate exercise of its power to regulate private rights in the public interest.

Keywords: Fundamental Rights, Public Interest, Art. 19, Freedom, Restrictions

Introduction

Chapter III of the Indian Constitution guarantee fundamental right to citizens of India, it is treated as the Magna Charta of India. Fundamental rights which are inviolable and are to be guaranteed to him, the principle underlying such guarantee of fundamental rights and the necessity for securing, These rights to the people is present in all modern Constitutions. Right to freedoms which are very basic and necessary for the development of individuals, out of these freedoms, freedom of speech and expression is the one of them as fundamental right incorporated in under Art. 19 (1) (a), before to see this provision necessary to historical back ground of freedom of speech and expression.

Historical Background of Freedom of Speech and Expression in India

What we see the fundamental rights today in the Indian Constitution, it has long struggle in British regime, for the first declaration of fundamental rights arose in the year 1928 at the all parties" conference in which Nehru Committee incorporated these rights in its report. The committee stated that: "Our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances."¹ Indian National

¹ Report of Nehru Committee (1928)

Congress Karachi Session held in the year 1931, in which Session it was declared that any Constitution which might be proposed would be acceptable only, if it contained certain fundamental rights as formulated by it. British government organized three Round table conference for the discussion over the Constitutional reforms in India during the 1930- 32.

Our Indian national leaders given the tress for Bill of Rights in the new Constitution Act, the view was that to binding the administration with certain declaration of rights of Indians. But unfortunately the Simon Commission rejected this demands. Stating that: “We are aware that such provisions have been inserted in many Constitutions, notably in those of the European States formed after the war. Experience however has not shown them to be of any practical value. Abstract declarations are useless unless there exist the will and means to make them effective”.²

India appointed joint parliamentary committee which was one type of adhoc Parliamentary committee. Such committee agreed with the observations as to the value of a bill of Rights and presented it as a dilemma. “Either the declaration of Rights is of so abstract a nature that has no legal effect of any kind, or its legal effect will be to impose an embarrassing restriction on the power of the Legislature and to create a grave risk that a large number of laws may be declared invalid by the Courts because of inconsistency with one or other of the rights so declared”.³ In the Government of India Act, 1935, however certain concessions were made. Section 275 provided: “A person shall not be disqualified by sex for being appointed to any civil service or civil post under the Crown in India, other than such a service or post as may be specified by general or special order made by Governor-General or the secretary of State for India as the case may be”. Section 298(1) of the Act further said: “No subject of His Majesty domiciled in India shall on ground only of religion, place of birth, decent, colour or any of them is ineligible for office under the Crown in India or be prohibited on any such grounds from acquiring holding or disposing of property or carrying on any occupation, trade, business or profession in British India”. Section 299 (1) and (2) Stated: No person shall be deprived of his property in British India, save by authority of law. Neither the federal nor a provincial legislature shall have power to make any law authorizing compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking or any interest in, or any company owning, any commercial or industrial undertaking, unless the law

² Report of the Indian Statutory Commissions, 1930 (cmd 3569-1930)

³ Report of the Joint Parliamentary Committee on, Indian Constitutional Reforms, Vol. I, Part I Para, 366. (1934)

provides for the payment of compensation for the property acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which it is to be determined". The Constitution assembly adopted the objectives resolution moved, by Pandit Nehru, stating that the object of the Constitution Assembly was to draw up a Constitution, when the occasion arose to draft the Constitution for independent India. The people of India gave to themselves, the Constitution of India, with a view make it Sovereign, Democratic, Socialist, secular and Republic. In our democratic society, pride to place has been provided to freedom of speech and expression, which is mother of all liberties. One of the main objectives of the Indian Constitution as envisages in the preamble, is secure LIBERTY OF THOUGHT AND EXPRESSION to all the citizens. Freedom of expression is among the foremost of human rights. It is the system of administration; various Constitutions make a mention of the freedom of expression. Freedom of expression is collective freedom, whose character becomes more and more pronounced as the technical methods of their diffusion multiply and improve.

The right of free speech is absolutely requisite for the prevention of a free society in which government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities.⁴ By inserting the fundamental rights in the Constitution, India has consciously torn herself from the British Tradition. British liberty was directly only against the executive to capture and tyranny while parliament was always held sacrosanct, above the scrutiny of the court of justice. The American concept was the judicial supremacy making the congress subject to the Supreme Court sphere of interpretation. The pattern adopted under the Constitution of India is compromise between the parliamentary sovereignty of the U.K. and the judicial supremacy of the U.S.A.

Constitutional Safeguard: Right to Freedom of Speech and Expression

In the preamble, the people of India gave to themselves, the Constitution of India, with a view to make it Sovereign, Democratic, Socialist, secular and Republic. In our democratic society, pride to place has been provided to freedom of speech and expression, which is mother of all liberties. One of the main objectives of the Indian Constitution as envisages in the preamble, is secure LIBERTY OF THOUGHT AND EXPRESSION to all the citizens. In order to give effect to this objectives mentioned in the preamble by our Constitutional maker, "freedom of speech and expression" has been guaranteed as a fundamental rights under

⁴ Spenser v. Randall, 357 US 513

Article 19(1)(a) available to all citizens, subject only to restrictions which may be imposed by the State under clause (2) of that Article. The relevant portion of Article 19 read as follows:

Art.19. (1) All citizens shall have rights

- a) To Freedom of speech and expression;
- b) To assemble peaceably and without arms,
- c) To form association or union,
- d) To move freely throughout the territory of India,
- e) To reside and settle in any part of the territory of India,⁵
- f) To acquire, hold and dispose of property.⁶

g) To practice any profession or to carry on any occupation, trade or business.

Art. 19 (2) nothing in sub clause (a) of clause (1) shall effect the operation of any existing law, or prevent the State from making law, in so far as such law imposed reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of sovereignty and integrity of India,⁷ the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Art. 19 (1) guarantees certain fundamental rights, subject to the power of the State to impose restrictions on the exercise of those rights. The Article was thus intended to protect these rights against State action other than in the legitimate exercise of its power to regulate private rights in the public interest.⁸ Violation of the fundamental rights of one individual by another individual (without support of State) is not within the purview of Art. 19.⁹ The scope of this guarantee has however been defined by the limitations incorporated in clause (2) to (6) of the Art. 19. Itself. These clauses permit the State to impose reasonable restrictions for the purpose of any objectives mentioned therein. The Article thus consists of two parts: (i) the declaration of rights in clause (1) , comprising seven sub-Clauses, (ii) The limitation contained in clauses (2) to (6). The courts have to consider these questions, namely, whether the impugned law imposes a restriction on any these rights, whether restriction imposed is for the purpose of achieving any of the objects, mentioned in the relevant clause, and whether the restriction is reasonable. There is no definite or positive

⁵ “ inserted by the Constitution, (44th Amendment) Act, 1978, w.e.f. 20-6-1979

⁶ Sub-Cl. (f) omitted by the Constitution (44th Amendment) Act, 1978,w.e.f. 20-6-1979.

⁷ . Inserted by the Constitution (16th Amendment) Act, 1963, w.e.f. 6-10-1963.

⁸ . Samdasani P.D. V. Central Bank of India, AIR 1952 SC 59 : 1952 SCR 391

⁹ Ibid

test to adjudge the reasonableness of restriction. Each case is to be judged on its own merit, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The impugned law may contain substantive as well as procedural provisions and both must satisfy the test of reasonableness. Patanjali Shastri C.J. formulated the following wing test for determining the reasonableness of restriction:¹⁰“The nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict.” Courts of India have wider discretionary powers U/Art. 19 for determination of reasonableness of the restrictions imposed by the State on freedom speech and expression

Nature of the Right in General certain rights to freedoms guarantee U/Art. 19. subject to the power of the State, to impose restrictions on the exercise of those rights. The Article thus was intended to protect these rights against State action other than in the legitimate exercise of its power to regulate private rights in the public interest. (i) It may be observed that Art. 19 are confined to what are known as civil rights as distinguished from political rights. (ii) Though the concept of natural rights is not relevant in India for ascertaining whether these are any inviolable rights apart from those included in the Constitution, the concept has nevertheless been utilized for determining the ambit of the fundamental rights themselves, for determining how far the guarantee under Art. 19 will be available. The Supreme Court has observed that Art. 19 refer to what are known as natural or common law rights as distinguished from the right created by the statute. The Supreme Court has observed that Art. 19 (1) Guarantees.¹¹ Nature of Limitations in General Unrestricted individual rights cannot exist in any modern political society.¹² In fact there is no formal declaration of any fundamental rights in England. In the England prevails the doctrine of the Sovereignty of parliament, which gives unlimited power on parliament to abridge, modify or even abolish any of the rights of the people. The British concept does not envisage a legal check on the power of parliament which theoretically is free to make any law which pleases, even though it affects the basic civil rights and liberties of the people.¹³ In the United States, also even though the Constitutional guarantees of fundamental rights and the limitations are permissible through various devices contrived and sanctioned by the Supreme Court. As the U.S.

¹⁰ State of Madras V. V. G. Row, (1952) S.C.R. 597

¹¹ State of West Bengal V. Subodh Gopal, (1954) S.C.R. 587

¹² M.P. Jain, Constitutional Law, Tripathi, Bombay, P. 388.

¹³ Liversidge V. Anderson, (1942) A.C. 206

Supreme court said: “The liberty of the individual to do as pleases in innocent matters is not absolute. It must frequently yield to the common good”.¹⁴ The inherent conflict between the interests of the society and the interest of the individual is a never ending problem of political theory and at every stage in human history, some workable reconciliation between these conflicting interests has to be evolved.¹⁵ When law is validated as having imposed a restriction upon a freedom of speech and expression, what the court has to examine is the substantive of the legislation, without being attract by the mere appearance of legislation. The legislative power being subject to the fundamental rights, the legislature cannot indirectly take away or abridge the fundamental rights in which it cannot do directly. ¹⁶ On the other hand effect of legislature are applicable for this purpose only in so far as they are direct and unavoidable consequences or the effect which could be said to have been in the contemplation of the legislature.¹⁷

Grounds of Restriction on Freedom of Speech and Expression.

A restriction cannot be said to be a restriction within the meaning of Art. 19. Where the restraint is self-imposed inasmuch as the operation of the law is attracted by reason of a contract which the citizen is free to enter into his own or choice, he cannot complain of the unreasonable of the law.¹⁸ Any restriction imposed upon the fundamental right of freedoms is prima facie unconstitutional, unless it can be legitimate under the limitation clause, i. e. Cl. (2)¹⁹ of the Article 19 of the Indian Constitution. This clause authorized the State impose restrictions upon the freedom of speech only on certain specified grounds so that, if any particular case, the restrictive law cannot rationally²⁰ be shown to relate to any of these specified grounds, the law must be held to be void.²¹ The right to freedom of speech and expression cannot rise of above the national interest and the interest of the society which is another name for the interest of general public. It is true that Article 19(2) does not use the word “national interest,” “interest of society” or “public Interest” but the several grounds mentioned in Clause (2) are ultimately referable to the interest of the nation and the society.²²

¹⁴ Adkins V. Children’s Hospital, (1923), 261, U.S. 525

¹⁵ Harrison V. Schaffner, (1941), 312 U.S. 579.

¹⁶ Gopalan A. K. State of Madras, 1950, S.C.R. 88 (101) A.I.R. 1950 S.C. 27

¹⁷ Hamdard Dawakhana V. Union of India, A.I.R. 1960, S.C. 554

¹⁸ Kharak Singh V. State of U.P, A.I.R. 1963, S.C. 1295

¹⁹ Rangarajan S. V. Jagjivan Ram P, (1989), 2 S.C.J. 128

²⁰ Sodhi Shamser Singh V. State of Pepsu A.I.R. 1954, S.C. 276

²¹ Romesh Thapper V. State of Madras, 1950, S.C.R, 594

²² Secretary M.I. &B.V. Cricket Association of Bengal, (1992),2 S.C.C. 161.

Cl. (2) of the Article 19 of the Indian Constitution as amended, enable the legislature to impose restrictions upon the freedom of speech and expression, on the following grounds.

1. Sovereignty and integrity of India
2. The security of the State,
3. Friendly relations with foreign States,
4. Public order,
5. Decency or morality or in relation to contempt of court
6. Defamation
7. Incitement to an offence²³

Conclusion

The structure of the modern welfare state is such that it requires that the administrative authorities are given discretionary powers to help them perform their functions properly. The existence of administrative discretion opens up a number of facets for the interaction, in the form of conflict or convergence, between administrative discretion and fundamental rights. At the outset, it has to be acknowledged that the Indian judiciary has done a wonderful job by consistently striking down the provisions which conferred unfettered and un-canalized discretion to administrative authorities. This approach of the Supreme Court is laudable and in consonance with the idea of the Indian republic as it was visualized by the framers of the Indian Constitution. However, unfortunately, the judiciary itself has weakened the spirit of rule of law by, at various odd occasions, upholding the validity of certain vague provisions which, in their practicality, conferred unbridled discretionary power to the administrative authority. While earlier, the courts used to deal only with the question of the existence of administrative discretion; of late, they also look through that the exercise of power is done in a lawful manner. While the judiciary does not usually intervene in administrative decisions owing to lack of expertise in the subject matter, yet, it does intervene, as it deems fit, so as to ensure that the discretionary power being enjoyed by an authority is not unfettered and exploitative. It is submitted that for rule of law to thrive in a modern welfare state, a stable balance has to be achieved between the administrative discretion that the State needs to confer upon the executive and the fundamental rights and freedoms of the people. Then only, it can be hoped that India will become the ideal democratic republic as envisaged by the Indian Constitution.

²³ <https://lexforti.com/legal-news/reasonable-restrictions-article-19/> visited on 12/1/2022