

**Contribution Of Jurist To The Evaluation Of Right To Freedom Of Speech And Expression
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Abstract

The Universal Declaration has a tremendous impact on the development of both international and national human rights law. Virtually, all human rights treaties adopted by UN bodies since 1948 elaborate principles set forth in the declaration both the American and the European Conventions on Human Rights declare in their preambles that the principles to which they give effect are those set forth in the declaration, and the CSCE states pledged in the Helsinki final Act to act. An English philosopher John Stuart Mill attempted to establish standards for the relationship between authority and liberty. He has started his writing by discussing the historical “struggle between authority and liberty,¹ describing the dictatorship of government, which, according to him, needs to be controlled by the liberty of the citizens.

Keywords: Evolution, Development, Freedom of expression, Human Rights, Restrictions

Introduction

Freedom of speech and expression is live wire of the democracy; it is integral to the expansion and fulfilment of individual personality. Democracy being collective will of the people, personality of individuals shape the society into a cohesive, well knit and viable administrative unit. Milton in his Areopagitica says that without this freedom, there can be no health in the moral and intellectual life of either the individual or the nation“ freedom of speech and expression is more essential in a democratic set up of state where people are the sovereign rulers. In “without freedom of speech” says Ivor Jennings, “the appeal to reason which is the basis of democracy cannot be made” Public discussion of political, economic and social problems being essential to the proper functioning of a democratic government it is imperative that free society should keep the channels of communication wide open to the free circulation of ideas and this is well achieved by the guarantee of freedom of speech and expression. Internal autonomy is very essence of freedom; there should not be any outside intervention in the life of individual. An individual has to form his own opinions, thoughts

¹ Mill, John Stuart (1859), On Liberty (2 ed.), London: John W. Parker & Son pp,7(1850)

and ideas and must be entitled to express them as that alone will result in realization of his character and potentiality as a human being. Among all creatures, man alone has been endowed with reason, which can germinate thoughts.

Role of Jurist in Evaluation of Right to Freedom of Speech and Expression

An English philosopher John Stuart Mill attempted to establish standards for the relationship between authority and liberty. He has started his writing by discussing the historical “struggle between authority and liberty,² describing the dictatorship of government, which, according to him, needs to be controlled by the liberty of the citizens. He divides this control of authority into two mechanisms: important rights belonging to citizens, and the “establishment of Constitutional checks by which the consent of the community, or of a body of some sort, supposed to represent its interests, was made a necessary condition to some of the more important acts of governing power”³

Mill claimed that in order to be right one should have the possibility to be wrong, and that there for liberty is necessary to the investigation and finding of truth. Mill states in his 1859 classic on Liberty. “The peculiar evil of silencing the expression of opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, lose, what is almost as great a benefit the clearer perception and livelier impression of truth, produced by its collision with error.”⁴

As Mill Statist is impossible to find truth without a free and open discourse, if there is no possibility of differing from conventional views, the ideas of the truth cannot be found. The freedom of speech is therefore essential for scientific progress and academic development.

John Lock also gave the importance to the freedom of expression as he stated freedom of expression as the basic right of human beings which helps them to find out the truth. He argued that ideas of freedom of expression include that individual human beings are entitled with liberty and equality to express, receive and transfer ideas, thoughts, feelings, and positions of their own and that of others to reach out informed decisions and choices of their lives and ultimately develop democratic culture as well as society.

John Rawls was a political philosopher who established the Theory of Justice year 1971 through which he attempted to solve the problems of distributive justice from which he

² Mill, John Stuart (1859), *On Liberty* (2 ed.), London: John W. Parker & Son pp,7(1850)

³ Ibid

⁴ www.oxfordreference.com/view/10.1093/acref/...001.0001/q-oro-ed3-00007298

derives his two principles of justice first one is liberty principle and that of second is the principle of difference. According to John Rawls first principle of justice, each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.⁵

Eric Barnett defends the right to freedom of speech and expression on the ground of democracy He says, “Probably that most attractive and certainly the most fashionable free speech theory in modern democracies” on the defense of Eric Barnett.

Thomas I. Emerson widens it by saying that freedom of speech helps to provide a balance between stability and change. Why because freedom of speech and expression acted as „safety valve“ in any democracy to let off steam when people might otherwise be bent on revolution. Further he said that “the principle of open discussion is a method of achieving a more adaptable and at the same time more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus.”⁶

Alexander Meikle John tries to build relationship between right to freedom of speech and expression and democratic system. Freedom of speech is the very basic principle that exists in the democracy Alexander Meikle John argues that the concept of democracy is that of self-government by the people. For such a system to work an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. According to him democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism. He acknowledges that the desire to manipulate opinion can stem from the motive of seeking to benefit society. However, he argues, choosing manipulation negates, in its means, the democratic ideas.⁷

Richard Moon has developed argument that the values of freedom of speech and freedom of expression lie with social interactions. Moon writes, “By communicating an individual forms relationships and associations with others like family, friends, co-workers and countrymen. By entering into discussion with others an individual participates in the development of knowledge and in the direction of the community.”⁸

International Instruments: Freedom of Expressions

This right to freedom of expression also has close similarity with different international Conventions.

⁵ Rawls, p, 53 revised edition; p.60 old first edition, P. 60, (1971)

⁶ Marlin, Randal, Propaganda and the Ethics of Persuasion, Broadview Press, pp. 228–229. (2002)

⁷ Marlin, Randal, Propaganda and the Ethics of Persuasion, Broadview Press, pp. 226–227, (2002)

⁸ Ibid.

International Agreements

At the international level there are some agreements which focus and give the stress on the freedom of speech and expression due to the importance of it in democratic flow of democratic system, which is pointed in the different international agreement as:

Universal Declaration of Human Rights

Adopted unanimously by the General Assembly on 10 December 1948, the Universal Declaration is the most important elaboration of the human rights obligations set forth in the United Nations Charter, while at the time of adoption it was widely viewed as a Statement of Principles, Which has acquired legal significance over the decades.

The proclamation of Teheran, marking the Universal Declaration's 20th Anniversary endorsed by the UN General Assembly, declared that the Universal Declaration states common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.⁹

In 1971 U.N. Secretary-General Observed: During the years, since its adoption, the Declaration has come through its influence in a variety of contexts, to have marked impact on the pattern and content of international law and to acquire a status extending beyond the originally intended for it. In general, two elements may be distinguished in this process: first, the use of the declaration as a yardstick by which to measure the content and standard of human rights, and second, the reaffirmation of the Declaration and its provisions in a series of other instruments. These two elements, often to be found combined, have caused to gain a cumulative and pervasive effect.

The Universal Declaration was the first step in the formation of International Bill of Human Rights, which was completed in 1976 with the entry into force of the two main international human rights treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, social and Cultural Rights. The entry into force of the Covenants did not, in any way, diminish the widespread impact of the Universal Declaration. On the contrary, as stated in a UN manual, The very existence of the covenants, and the fact they contain the measures of implementation required to ensure the realization of the rights and freedom set out in the declaration, give greater strength to the declaration.¹⁰

⁹ Final Act of the International Conference on Human Rights 4 para 2 , UN Doc, A/CONF 32/41 endorsed by the General Assembly in GA Res 2442 (XXIII) 19 Dec. 1968 23 GAOR, Supp No 18 (A/7218) 49.

¹⁰ United Nations Action in the Field of Human Rights, (New York, United Nation, 1983), UN Doc,ST/HR/2 / Rev.2, UN Sales No E83 XIV 2 Chap II Para, 67, 14.

The Declaration protects all the people and applies to all governments: It is, as its title implies, truly universal in its application and applies to every member of the human family, everywhere, regardless of whether or not his Government accepts its principles or ratifies the covenants.¹¹

The Universal Declaration has a tremendous impact on the development of both international and national human rights law. Virtually, all human rights treaties adopted by UN bodies since 1948 elaborate principles set forth in the declaration both the American and the European Conventions on Human Rights declare in their preambles that the principles to which they give effect are those set forth in the declaration, and the CSCE states pledged in the Helsinki final Act to act. “

International Covenant on Civil and Political Rights, 1966

The international covenant is an extension of the civil and political rights set forth in the Universal Declaration. As of February 1993, 116 countries had ratified or acceded to it. The Human Rights Committee monitors compliance with the International Covenant’s First optional protocol.¹²

The pronouncements of the Committee are among the most authoritative Statements of the obligations imposed by the International Covenant. Art 19 sets forth the Right to freedom of opinion, expression and information. Paragraph 1 asserts the absolute right to hold opinions “without interference”. Paragraph 2 States the positive content of freedom of expression namely: the, “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, or through any other media of his choice. Article 20 requires states parties to prohibit by law (though not necessarily to declare criminal) any propaganda for war and any incitement to discrimination, hostility or violence on national, racial or religious grounds.¹³ Article 21 protects the right of peaceful assembly, and Article 22 safeguards the right to freedom of association, “including the right to form and join trade unions”.

Regional Agreements

Along with the international level, at the regional level in the world there were various attempts made for better and effective protection of the freedom of speech and expression, such attempts could be discussed as follows

¹¹ Ibid

¹² Substantial parts of Declaration have been incorporated in the Constitution of several countries, including Algeria, the Ivory Coast, Madagascar and Cameroon, see UN Action in the field of Human Rights (1983), Chap II F Para 75

¹³ Striking a Balance, Hate Speech, Freedom of Expression and Non-discrimination, Landon, (1992)

The European Convention on Human Rights, 1950

The Council of Europe has developed an extensive body of law, jurisprudence and standards regarding freedom of expression, access to information, and the related rights to freedom of peaceful assembly and association. The primary statement of law is the Convention for the Protection of Human Rights and Fundamental Freedoms. Article 10 of the European Convention protects freedom of expression, and Art. 11 protects freedom of peaceful assembly and association. The European Court of Human Rights (established in January 1959) has issued more than two dozen judgments addressing Art. 10 issues and two judgments concerning Art. 11.¹⁴ Articles 10 and 11 have been further elaborated by reports and decisions of the European Commission of Human Rights. Decisions and recommendations of the Committee of Ministers (political and executive arm of Council of Europe) add additional guidance, particularly concerning access to information. The judgments of the European courts of Human Rights are legally binding only on the State party against which an application has been filed. However, because they constitute authoritative interpretations of the Convention's obligations, they are to be applied by the courts of all States parties to the European Convention (currently 26) whenever questions concerning Convention rights arise.¹⁵ In addition, Art. 10 has implications for the law of the European Union in the exercise of their powers,¹⁶ and the European Court of Justice has consistently held that Fundamental human rights, especially as set forth in the European Convention, are “enshrined in the general principles of Community Law”.¹⁷ The European Convention also has considerable influence outside Europe. Its provisions are consulted in construing similar provisions of International Covenant;¹⁸ the American Convention,¹⁹ and National Constitutions and Laws.²⁰

The American Convention on Human and People's Rights and American Declaration of Rights and Duties of Man

¹⁴ J. Polakiewicz, V. Jacob Foltzer, “The European Human Rights Convention in Domestic Law: The Impact of Strasbourg case-law in States where Direct Effect is given to the Convention”, 12 Human Rights LJ (1991), As of 31 Dec. 1990, the Court had delivered a total of 235 Judgments.

¹⁵ List of parties to the ECHR, Units its Dissolution (1992)

¹⁶ See the Preamble to the Single European Act and Art. F of Title of the Maastricht Treaty on European Union,

¹⁷ Society for the protection of unborn children, (SPUC) V. Grogan, Case No, C-159/90 (1991)

¹⁸ D. McGoldrick, *The Human Rights, the Human Rights Committee*, Oxford Clarendon Press, 1991

¹⁹ The compulsory Membership of a Journalists Association case, The Inter-American Court of Human Rights ruled that a restriction on freedom of expression, “necessary” within the meaning of Art. 13 (2) of the ACHR had to comply with the test of necessity articulated by the European Court Concerning Art. 10 (2) of the, ECHR

²⁰ A Lester, “Freedom of Expression” in R Macdonald, F Mather & H Petzold (ed.), *The European System for the Protection of Human Rights*, The Hague (1993)

The General Assembly of the Organization of American States (OAS) adopted the American Declaration of the Rights and Duties of Man on 2 May 1948, several months before the UN adopted the Universal Declaration. The American Convention on Human Rights, adopted in 1969, elaborates and expands upon the obligations set forth in the American Declaration, grants additional powers to the Inter-American Commission and establishes the court of Human Rights. All 35 Members of the OAS are obliged (though not legally bound) to comply with Declaration of those (but not United States or Canada) are states parties to the Convention. Art. 13 of the Convention set forth the positive protection of and permissible restriction on, the right to freedom of expression in five subparagraphs. Paragraph 1 states the positive right in terms nearly identical to those of the International Covenant. Although it does not specify that everyone is entitled to hold opinion without interference, that the protection is assumed to be implicit. Paragraph 2 explicitly prohibits prior censorship and sets forth the grounds upon which subsequent liability may be imposed. In an advisory opinion, the Inter-American Court ruled that a requirement that journalists be licensed violates the prohibition of prior censorship.²¹ Paragraph 3 is unperfected among the human rights treaties examined here, in that it expressly prohibits indirect methods of restricting expression, such as unfair allocation of newsprint or broadcasting frequencies, and prohibits such methods by private persons as well as by government. It, thus, imposes a positive obligation on governments to restrain private action that might impair the free exercise of the rights to seek, receive and impart information and ideas. Paragraph 4 permits prior censorship of “public entertainments” for the sole purpose of protecting the morals children any youths and only if prescribed by law. Paragraph 5 requires States parties to prohibit war propaganda and advocacy of national, racial or religious hatred. Art. 14 also has no parallel among the human rights treaties. It requires States parties to ensure that anyone injured by “inaccurate or offensive statements” published by the mass media has a right to reply or make correction using the same media organ. Art. 14(3) require that every organ of mass communication shall have a person who may be held liable for violations of honor or reputation. The Inter-American Court, in an advisory opinion, has declared that Article 14 obliges States parties to adopt such legislative or other measures as may be necessary to give effect to the right of reply.²²

Conclusion

²¹ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion (1985)

²² Enforceability of the Right of Reply or Correction, Advisory Opinion (1986)

Right to freedom of speech and expression is the human rights which is guaranteed in the almost all the written Constitutions of the democratic countries which include freedom of press also. The freedom of speech and expression is a very important fundamental right. It is essential for the development of one's own individuality and for the success of parliamentary democracy. It is said that, the right to free expression is not only the right of an individual but rather a right of the society to hear and be informed in a democracy. The right to freedom of expression is recognized as a human right under article 19 of the Universal declaration of Human Rights and acknowledged in International Human Rights law in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR States that "Everyone shall have the right to hold opinions without interference "and" everyone shall have the right to freedom of expression; 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, or through any other media of his choice". Article additionally States that the exercise of these rights carries "special duties and responsibilities" and may "therefore be subject to certain restrictions, when necessary for respect of the right or reputation of others or for the protection of national security or of (public order), or of public health or morals". Concept of freedom of speech can be found in early human rights documents. England's Bill of Rights 1689 legally established the Constitutional right of „freedom of speech in Parliament“ which is still in effect. The Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789, specifically affirmed freedom of speech as an inalienable right.