



Constitutional Perspective of Freedom of Speech and Expression An Analysis

By

Some One who wanna become A Friend, Philosopher
and Guide of Each one of YOU

Do YOU think that you have
Freedom of
Speech and Expression?

Lets see it through Two
REAL STORY

YOUR FACEBOOK STATUS AND FREEDOM OF
SPEECH AND EXPRESSION



First

A 21 years old Mumbai Girl(Shaheen Dhada) and her friend (Renu Srinivasan)was held by cops for Facebook status update expressing her view against Bandh after Balasaheb's death and her friend arrested for liking her status. Reportedly,one of local Sena leaders filed a complaint claiming this statement of the girl as 'hurting religious sentiment'!Shiv Sena supporters thereafter vandalized the clinic of the girl's uncle.The girls were later released on bail of Rs 15000 each.The incident brought immense criticisms for the Sena and the police but both girls and their family have apologized for the incident,! Come on 'Mango People', the 'Aam Admi' , by now you must understand 'Freedom of Speech' requires you to get an 'Anticipatory Bail' along with if you dare to speak against any leader. It was your fault you made a leader and he/she hates criticisms!



Second



A CARTOONIST AND HIS FREEDOM OF SPEECH AND
EXPRESSION

Some Dimensions about Freedom of Speech and Expression



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Some Dimensions about Freedom of Speech and Expression



Right To Freedom under Art.19: Mother of All Rights

- Positive Freedoms
- Basic, Fundamental and Inalienable
- Aspects of Natural Justice (W.B. State V. Subodh Gopal Bose AIR 1954)
- Not ABSOLUTE but subject to Reasonable Restrictions
- For Welfare State and Egalitarian System
- Not only Rights but are democratic values

Freedom of Speech
and Expression



With Reasonable
Restrictions as legal
and social restraints
on this freedom



For the object of
Welfare- Egalitarian
State

Freedom of Speech and Expression

Freedom under Art.19

○ Clause A to Clause G of Article 19 guarantee to the citizen of India six freedoms:

1. Of Speech and Expression
2. Peaceful Assembly
3. Association
4. Free movement
5. Residence
6. Practicing any profession and carrying out any business

Reasonable Restrictions on the freedoms

○ Art 19(2)

1. Security of state and Public Order
2. Sovereignty and Integrity of India
3. Friendly Relations with the Foreign State
4. Incitement of an Offence
5. Contempt of Court
6. Defamation
7. Decency and Morality

Freedom of Speech and Expression :

Certain Propositions

- Freedom of Speech and Expression covers a wide area : both EXPLICIT & IMPLICIT Rights (Kharak Singh V. State of U.P.)
- No right to Foreigner or non-citizen of India State Trading Corporation V. CTO)
- In case of conflict between freedom of speech and expression under 19(1)A and the privileges of the Parliament under Art 105 and 194 , the freedom of speech will give way to accommodate the legislative privileges (M S S Sharma V. Union of India)
- Article 19(1)A includes right to acquire information and right to disseminate the information through any available media whether print, electronic, audio-visual and even includes advertisement. (State of U.P. V. Raj Narain)

Speech and Expression

- Express one's views and opinions at any issue through any Medium :
 - WORDS : by mouth , writing , audio
 - PRINTING
 - PICTURE
 - MOVIES
- It includes freedom of communication and right to propagate and express opinions
- *“Democracy is based essentially on free debate and open discussions for that is the only corrective of Government actions in a democratic setup. If democracy means government of the people by the people its obviously that every citizen must be entitled to participate in 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.”*

Maneka Gandhi V. Union of India (Jus. Bhagvati)

How Reasonable Restrictions Are??



Freedoms are not absolute but are subject to regulations



Individual Point of View

put the limitation on the power of a legislature to restrict these freedoms



State Point of View

1. The restrictions can be imposed only by or under the authority of law . No restriction can be imposed on executive action alone

2. Each restriction has to be **REASONABLE**

3. Restriction has to comply with any of the **PURPOSE** mentioned in

Three Tests of Reasonableness

WHO??



Can't be by Executive Action

WHY ??



purpose should be of the restriction

HOW ??



Restriction has to be Reasonable

AUTHORITY TEST

- Legislature has to make law from one of the restrictions, Executive can not take it through administrative order

REASONABILITY TEST

- Each case to be judged upon its own merit, standards and impact.
- Both substantive and procedural reasonableness is to be judged
- Burden of proof to show the reasonableness lies on State

PURPOSE TEST

- Nexus with the object legislation and purpose defined in the restrictions
- Subject matter and effect should have direct linkage

SUPPOSE A

If you are watching a INDIA- PAKISTAN MATCH on Doordarshan and then ESPN takes away the legal right to telecast in a bid for upcoming matches and you do not have cable connection or you can't afford it.

Will this right under Art 19(1) A stand by you

Give two arguments : valid-legal and descriptive?

Suppose B

You are artist in a famous art film produced by XYZ production company. You got national award for your acting and you want that film to be telecasted on popular network and even the popular network is willing to pay on market rate to the producer. But producer denies

Will this right under Art 19(1) A standby you

Give two arguments : valid-legal and descriptive?

THANKS

ENJOY YOUR TEA BUT
KEEP MEDIA LAW IN
YOUR MIND

WITH YOU AND FOR YOU

PANCH RISHI DEV SHARMA