BLOGS

Freedom of Speech and Expression under the Constitution of India

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Introduction

The legal landscape surrounding freedom of speech and expression in India, enshrined under **Article 19(1)(a)** of the Constitution, is a complex tapestry woven with numerous judicial precedents and legislative considerations.

This fundamental right encompasses not only individual expression but also the vital role of the press, the right to information, and various forms of speech, including commercial advertisements and even the right to silence.

However, this freedom is not absolute, as **Article 19(2)** delineates the grounds on which reasonable restrictions can be imposed, such as safeguarding the sovereignty and integrity of India, maintaining public order, and protecting decency and morality.

Evolution of Jurisprudence on Freedom of Speech

The legal cases discussed herein represent a vital tapestry of jurisprudence surrounding the fundamental right to freedom of speech and expression in India and a fascinating journey through its evolution.

Over the years, these landmark cases have demonstrated how the Indian judiciary has adapted and refined its understanding of this fundamental right. From the early recognition of the press's role to the contemporary challenges posed by the digital age, the jurisprudence surrounding freedom of speech and expression has evolved to address the ever-changing dynamics of Indian

society.

In this article, we delve into these cases, shedding light on how the judiciary's interpretations have shaped and reshaped the boundaries and contours of this cherished constitutional right, reflecting the ongoing dialogue between individual freedoms and the interests of the state and society.

Landmark Cases on the Freedom of the Speech and Expression

Although **Article 19(1)(a)** does not expressly mention the liberty of the press, it is widely accepted that this right includes it. It encompasses newspapers, pamphlets, circulars, and other forms of expression. However, the liberty of the press is on the same footing as an individual's freedom of speech and expression as has been indicated by the Apex Court via a plethora of judgements.

The first case in this regard is the case of ***Romesh Thappar v. State of Madras (AIR 1950 SC 124)***. In this case, a notification that banned the entry, circulation, sale, or distribution of a newspaper called Crossroads in Madras was held invalid. This decision was based on the understanding that **Article 19(1)(a)** includes the right to propagate ideas, which would only be meaningful with circulation.

On similar lines, in ***Printers Mysore Limited v. Assistant Commissioner Tax Officer, 1994*** the Supreme Court held that no sales tax could be imposed on the sale of newspapers in the country; however, the Court clarified that this does not mean that the press is immune from taxes imposed by law.

Similarly, in ***Sakal Papers (P) Ltd. v. Union of India (AIR 1962 SC 305)***, government actions that indirectly affected circulation were also deemed invalid. In this case, the government regulated the number of pages, size, and price a newspaper could publish. The Court ruled that the right to freedom of speech could not be restricted to limit citizens' business activities but only on the grounds specified in Article 19(2).

In the case of ***Brij Bhushan versus the State of Delhi, 1950*** the Supreme Court held that imposition of censorship on a journal before its publication would amount to an infringement of Article 19(1)(a). The Court further held that restrictions can only be imposed on grounds mentioned under Article 19(2).

The Supreme Court held in ***Communist Party of India vs Bharat Kumar and Others 1998*** that calling for and keeping bundh by a political party or organization is unconstitutional as it violates the fundamental rights of citizens under Articles 19(1)(a) and 21, in addition to causing national loss.

The right to protest cannot extend to preventing citizens from exercising their Fundamental Rights. Political parties must refrain from paralyzing the industry and competing in an entire state or nation.

In the case of ***Rajgopal versus the State of Tamil Nadu, 1994*** also known as Auto Shankar case, the Supreme Court held that the government has no authority to impose a prior restraint upon the publication of defamatory materials against its officials. They could act for damages after publishing such material if they prove the publication was based on false facts.

In the pursuit of further expanding the ambit of the restrictions that can be imposed under 19(1)(a) in ***Kameshwar Singh versus the State of Bihar, 1962***, it was held that demonstrations or picketing are protected under Article 19(1)(b), provided they are not violent.

In ***Bijoy Emmanuel vs. State of Kerala, 1986***, the Supreme Court held that no person can be compelled to sing the national anthem. Art. 19(1)(a) includes the right to silence.

Commercial advertisements were initially considered outside the scope of this freedom as they were seen as promoting commercial interests rather than expressing free speech ***(Hamdard Dawakhana v. Union of India, 1960***. However, in ***Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.***, commercial speech was recognized as part of the freedom of speech and expression, subject to restrictions under Article 19(2).

The right to know and receive information is also recognized under Article 19(1)(a) ***(People's Union for Civil Liberties v. Union of India*** and the Right to Information Act, 2005, was enacted to uphold this right. Pre-censorship of films was considered a reasonable restriction on freedom of speech and expression in ***K. A. Abbas v. Union of India***, provided it was not used unreasonably.

This article also considers the right to vote a form of speech. Again, in ***People's Union for Civil Liberties v. Union of India*** , the right to negative voting while maintaining secrecy was recognized as part of Article 19(1)(a), allowing voters to express disapproval of political candidates. Demonstrations and dramatic performances are protected, but strikes are not.

Article 19(1)(a) also covers picketing and the threat to go on a hunger strike. In ***Union of India v. Association for Democratic Reforms***, the Supreme Court held that the people have a fundamental right to know about the candidate they will contest in an election. This information includes their educational qualification or assets, criminal record, pending cases, and liabilities towards the government.

Conclusion

In the diverse and vibrant democracy of India, the right to freedom of speech and expression is a cornerstone of democratic principles. Through a series of landmark judgments and legal interpretations, the Indian judiciary has carved a path that upholds the sanctity of this right while recognizing the need for responsible exercise within the bounds of constitutional restrictions. As society evolves, so does the concept of free speech, adapting to contemporary values and norms. This dynamic interplay between fundamental rights and societal interests underscores the enduring significance of the right to freedom of speech and expression in India's constitutional democracy.