

## **Freedom of press and challenges of new scientific development**

### **Introduction**

#### **Constitution and freedom of speech and expression -**

Freedom of speech and expression is guaranteed by Indian constitution under article 19(1) (a). The people of India have given themselves the constitution of India which secure to all its citizen liberty of thought and expression. Preamble is reflected in art 19 (1) (a) given in the Part III of the constitution which deals with the fundamental rights. Fundamental rights are those rights which cannot be curtail by the government except due procedure of law. In case of violation of these rights an aggrieved person can approach directly to the Supreme Court under Article 32 or to the High court under Article 226 for the restoration of these rights and remedies as required for justice.

Extensive scope of this right is as much as Article 21 of the constitution i.e. Right to life and liberty because a right to life and liberty cannot be fully exercisable without exercise of right to speech and expression. The right as per Article 21 without the right under Article 19 (1) (a) makes a human being as a slave. Who does not have a right to speech or express himself. Hence right to speech and expression is essential as equal to right to life and liberty to express him fully. Nevertheless, this right has limited scope as it is available to citizens only. Only Citizens can exercise this right. This right is not available to foreigner, idol, corporation, legal entity etc, only a natural born person can exercise this right. This non natural entity can exercise this right under the veil of manager or owners of a company those who are citizen of India. When one citizen exercise his Right to speech and expression, it shall not violet the others right to speech and expressions means his exercise of this right shall not extend to cause harm to another's right to

speech and expression a since civilization and other fundamental rights.

In a landmark judgment, the Supreme Court in *Maneka Gandhi v. Union of India*<sup>34</sup> held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.

Article 19(2) have provided restriction on article 19(1) (a). It is not absolute right. Article 19(2) have provided restrictions on freedom of speech and expression. The right to freedom of speech and expression is subject to limitations imposed under Article 19(2) i.e. morality obscenity etc. these can be imposed only by making legislation and not by judicially. This is regarding healthy survival of democracy that one should not encroach over the others right.

Freedom of speech and expression means and includes express ones views, opinions, ideas timely by words of mouth, Privilege pictures signs gestures etc. or through any communicable medium audio or visual i.e. radio television broadcasting or by way of publication and circulation i.e. news paper, magazines,

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<sup>34</sup> AIR1978 SC 597

articles, book etc. press is one of the way propagation of ideas and hence coming under art.19.(1) (a).i.e. Press broadcasting, right to protest, right to criticize, film, advertisement, etc.

### **Freedom of speech: Print Media, broadcasting and telecasting.**

It is necessary to mention here that, this freedom under Article 19(1) (a) is not only confined to newspapers and periodicals but also includes pamphlets, leaflets, handbills, circulars and every sort of publication which affords a vehicle of information and opinion. Forms of free speech include the use of symbols, orderly public demonstrations, and radio and television broadcasts. Freedom of speech is an essential characteristic of a constitutional democracy because by exercising this right, individuals can communicate opinions both to other citizens and to their representatives in the government. Through this free exchange of ideas, government officials may become responsive to the people they are supposed to represent.

### **Freedom of speech and Print Media**

Although Article 19 of the constitution of India does not express provision for freedom of press but the fundamental right of the freedom of press implicit in the right the freedom of speech and expression. In the famous case *Express Newspapers (Bombay) (P) Ltd. v. Union of India*<sup>35</sup>, court observed the importance of press very aptly. Court held in this case that “*In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible*

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<sup>35</sup> (1985) 1 SCC 641

*in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”*

The Freedom of Press and the Freedom of Expression can be regarded as the very basis of a democratic form of government. Every business enterprise is involved in the laws of the nation, the state and the community in which it operates.

Where as In *RomeshThapar v. State of Madras*<sup>36</sup>, entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as “without liberty of circulation, publication would be of little value”.

Freedom of Speech and expression means the right to express one’s own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one’s idea through any communicable medium or visible representation, such as gesture, signs, and the like. This expression connotes also publication and thus the freedom of press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. This propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication

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<sup>36</sup> (1950) S.C.R. 594

would be of little value. The freedom of speech and expression includes liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people; otherwise this freedom would not include the freedom of press.

The media derives its rights from the Fundamental Right to free speech and expression guaranteed to every citizen under Article 19(1) (a) of the Constitution. There are two facets to the legal rights involved. One is media's own rights under Article 19 (1) (a) which it enjoys like any other citizen. The Supreme Court has held in successive judgments on press freedom that the media has no special rights, no higher than that of any citizen. If it enjoys any special position, it is in the nature of a public trustee, entrusted with the duty of facilitating the right to information guaranteed to the citizens. The second facet of media rights is, therefore, the right to collect and transmit to the citizen information of public importance.

### **Freedom of speech and broadcasting**

This right also coming under the purview of right to freedom of speech and expression .with the advent of satellite technology broadcasting is the way to disseminate the views, opinions information via television, internet news channel etc. this right cannot be fully exercise without dissemination of information though broadcasting. Supreme Court has held that this right is a fundamental right subject to article 19(2). Explaining the scope of freedom of speech and expression Supreme Court has said that the words "freedom of speech and expression" must be broadly constructed to include the freedom to circulate one's views by words of mouth or in writing or through audiovisual instrumentalities. It therefore includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this

country therefore has the right to air his or their views through the printing and or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution.

### **Freedom of speech and telecasting.**

There are hundreds of Television (hence forth T.V.) channel in Indian. They are playing a great role to educate people and generate the public opinion. T.V news channels has a great impact an minds of people and may help change his view are after watching certain programme on T.V channels. Most of the T.V channels are operated from foreign land; with the help of satellite they are telecasting the news and T.V serials. The satellite communication boosted the Radio and Television broadcasting.

After the *Hero cup*<sup>37</sup> judgment in 1994 India is marked as top most market for telecasting. With the advent of satellite world became a Global village. In India more than 500 T.V channels are available to Indian viewer from domestic as well as foreign private broadcasters. Today television is not limited to urban area, we can easily find out it in rural area also i.e. telecasting in T.V set, video conferencing can join any two part in the world or country within a minute and we are more nearer to each other by using of internet facility. Broadcasting is one of the medium to exercise the right to speech and expression. Without adopting the technology of broadcasting no nation can make progress in the present era.

Right to freedom of speech and expression include publication, printing, circulation etc. broadcasting is play a role to circulate, disseminate information to large number of masses which is sine que none to exercise the right to freedom of

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<sup>37</sup> Zee Telefilms Ltd. And Ors. V. Union Of India And Ors. on 4 June, 1999

speech and expression. Broadcasting is a way to disseminate the views opinion information via television, internet, and news channel etc. i.e. we can see a live telecast of cricket match or news from England it is possible only through broadcasting. This communication mode also play very important role by creating awareness of social issues or by education notes.

Every citizen have right to air his views ,opinion through the printing or electronic media subject to reasonable restriction provided under art 19(2) case laws.(Hero cup case)

If we want to give a message to larger population then we can do it easily through radio or television. It is possible only because of broadcasting of message through satellite. It shows that how broadcasting is very much important to disseminate information and exercise the right to speech and expression.

Broadcasting help to provide a message to larger population and it is left to people what to do with them, now the replay system is developed by which people can answer the question with the use of internet or 3G systems.

Right to broadcast is a fundamental right coming under the umbrella of right to speech and expression u/Art 19(1) (a). (*Sakal paper*<sup>38</sup> case)Hence the entire constitutional safeguard provided to other fundamental right are also provided to this right also. There can be no doubt that the freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by freedom of circulation it has also given liberal contention to fulfill the object behind art 19(1)(a) hence broadcast also coming under the purview of Art.19(1)(a). (*Ramesh thapper*<sup>39</sup> case.)

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<sup>38</sup> AIR 1961SC 305

<sup>39</sup> (1950) S.C.R. 594

Right to speech and expression includes publication dissemination writing circulation etc, and broadcasting is way to exercise these things hence it is essential to exercise this right.

**Broadcasting** is the distribution of audio and video content to a dispersed audience via any audio visual medium. Receiving parties may include the general public or a relatively large subset of thereof. It could also be for purposes of private recreation, non-commercial exchange of messages, experimentation, self-training, and emergency communication such as amateur (ham) radio and amateur television (ATV Broadcasting is the distribution of audio and video content to a dispersed audience via any audio visual mode degum. Receiving parties may include the general public or relatively large subject of there of it could also be for the purpose of private recreation, noncommercial exchange of massages.

This right has wide scope subject to article 19(2) which provides a reasonable restriction on right to speech and expression regarding morality decency security etc, broadcasting at presently coming under the ministry of information and broadcasting govt. of India. There is Prasar Bharati Act 1990 which are also formed a rules and regulation for broadcasting. the new draft bill 2007 is still pending which envisage to make changes in present system and policy related to broadcasting no one can broadcast or telecast any news or film etc. which is a against any of the provision mention u/art 19(2).

Definition of Broadcasting under section 2 (c) of the Prasar Bharati (Broadcasting Corporation Of India) Act, 1990 -"broadcasting means the dissemination of any form of the communication like sign, signals, writings, pictures, images sound of all kinds by transmission of electromagnetic waves through space or through cables intended to be received by general public either



directly or indirectly through the medium of relay, stations and all its grammatical variation and cogent expression shall be construed accordingly.”

Broadcasting is the process of sending information to distant places is called broadcasting but whereas telecasting refers to broadcast the programs on television i.e. the broadcasted information.

The term ‘broadcast media’ covers a wide spectrum of different communication methods such as television, radio, newspapers, magazines and any other materials supplied by the media and press. Definition of broadcasting is wide enough to cover not only traditional broadcasting but also internet broadcasting as well as mobile broadcasting. However, the broadcasting services listed in the Bill are traditionally under the administrative and regulatory.

### **Reasonable Restrictions**

The freedom of speech and of the press does not confer an absolute right to express without any responsibility. Lord Denning, in his famous book Road to Justice, observed that press is the watchdog to see that every trial is conducted fairly, openly and above board, but the watchdog may sometimes break loose and has to be punished for misbehavior. With the same token Clause (2) of Article 19 of the Indian constitution enables the legislature to impose reasonable restrictions on free speech under following heads:

1. security of the State,
2. friendly relations with foreign States,
3. public order,
4. decency and morality,
5. contempt of court,
6. defamation,

7. incitement to an offence, and
8. Sovereignty and integrity of India.

Reasonable restrictions on these grounds can be imposed only by a duly enacted laws and not by executive action. The restriction must be reasonable. In other words, it must not be extreme or disproportionate. The procedure and the manner of imposition of the restriction also must be just, fair and reasonable.

### **Right to strikes, *hartal* and *bandh*.**

Today, in each country of world whether it is democratic, capitalist, socialist, give right to strike to the workers. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry. This would ultimately affect the economy of the country. Every right comes with its own duties. Today, most of the countries, especially India, are dependent upon foreign investment and under these circumstances it is necessary that countries who seeks foreign investment must keep some safeguard in their respective industrial laws so that there will be no misuse of right of strike.

#### **5.2.2.1. Right to Strike**

In India, right to protest is a fundamental right under Article 19 (1) (a) of the Constitution of India. Though strike is a way to show protest but right to strike is not a fundamental right. It is held in the case of *Kameswar Prasad vs. State of Bihar*<sup>40</sup>.

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## **Right to strike and Constitution of India**

The right to strike is organically linked with the right to collective bargaining and will continue to remain an inalienable part of various modes of retort or expression by the working people, wherever the employer-employee relationship exists, whether recognized or not. Article 19(1) (a) provides freedom of speech and expression and strike is a way to express some kind of negation, protest toward industry until the industry accept the demands of worker-it flow from the fundamental right to form union. As every other fundamental right is subject to reasonable restrictions, the same is also the case to form trade unions to give a call to the workers to go on strike and the state can impose reasonable restrictions.

The right to strike is not fundamental in India. It is a legal right, available after certain pre-condition are fulfilled. The right to strike is a relative right which can be exercised with due regard to the rights of others. The strike as a weapon has to be used sparingly for redressed of urgent and pressing grievances when no means are available or when available means have failed to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilized to work hardship to the society at large so as to strengthen the bargaining power. Every dispute between an employer and employee or Government and his servants or any other bodies like Advocates, lawyers etc. has to take into consideration the third dimension, viz. the interest of the society as whole.

In *Harish Uppals* case<sup>41</sup> the Supreme Court held that advocates have no right to strike. However the court also opined “in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts

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<sup>41</sup> 1973 AIR 258, 1973 SCR (2)1025

may ignore (turn a blind eye) to a protest abstention from work for not more than one day”. The court, therefore, acknowledges that the right to strike exists and which can be exercised if a rare situation demands so. The apex court has only tried to restrict the right to strike of advocates with regards to the significant role they play in the administration of justice. For all others’ this sacred right holds good force. The judgment especially recognizes the right with regard to industrial workers where it states that advocates do not have a right to strike as “strike was a weapon used for getting justice by downtrodden, poor persons or industrial employees who were not having any other method of redressing their grievances.

In the *All India Bank Employees Association v. The national industrial tribunal*<sup>42</sup>, Supreme Court held that, “the right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations.”

Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike. Under the Industrial Dispute Act, 1947 the ground and condition are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal.

The Trade Union Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union in furtherance of a trade dispute which otherwise breach of common economic law. Now days a right to strike is recognized only to limited extent permissible under the limits laid down by the law itself, as a legitimate weapon of Trade Unions.

### **Provision of strike under the Industrial Dispute Act, 1947**

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<sup>42</sup> [1962] 3 SCR 269

Section 2(q) of said Act defines the term strike, that “strike” means a cassation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment. Whenever employees want to go on strike they have to follow the procedure provided by the Act otherwise there strike deemed to be an illegal strike. Section 22(1) of the Industrial Dispute Act, 1947 put certain prohibitions on the right to strike. It provides that no person employed in public utility service shall go on strike in breach of contract:

- (a) Without giving to employer notice of strike within six weeks before striking; or
- (b) Within fourteen days of giving such notice; or
- (c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

It is to be noted that these provisions do not prohibit the workmen from going on strike but require them to fulfill the condition before going on strike. Further these provisions apply to a public utility service only. The Industrial Dispute Act, 1947 does not specifically mention as to who goes on strike. However, the definition of strike itself suggests that the strikers must be persons, employed in any industry to do work.

Besides the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 also recognizes the right to strike. Sections 18 (xiii) and 19 (xiv) of the Act confer immunity upon trade unions on strike from civil liability.

## **Strike prohibited on some grounds**

The provisions of section 23 are general in nature. It imposes general restrictions on declaring strike in breach of contract in the both public as well as non- public utility services in the following circumstances mainly: -

- (a) During the pendency of conciliation proceedings before a board and till the expiry of 7 days after the conclusion of such proceedings;
- (b) During the pendency and 2 months after the conclusion of proceedings before a Labour court, Tribunal or National Tribunal;
- (c) During the pendency and 2 months after the conclusion of arbitrator, when a notification has been issued under sub- section 3 (a) of section 10 A;
- (d) During any period in which a settlement or award is in operation in respect of any of the matter covered by the settlement or award.

### ***Hartal and Bandh***

Strike, Bandh and hartal are Indian versions of mass strikes. They were powerful expressions of popular discontent during the independence movement. ***Hartal*** was M K Gandhi's adaptation of an existing weapon to his unique idea of non-violent protest against colonial rule. It involved the closing of schools and shops, offices, courts of law and other work. Hartal was essentially a powerful moral argument against imperial rule.

A ***bandh*** in independent India, however, is a subversion of the original idea of hartal. The action is seldom voluntary. Political parties who call for a bandh enforce it ruthlessly. Forced shutdown of social and economic activity backed by the implicit threat of violence is how bandhs are claimed to be 'successful'

In 2004, the Supreme Court of India fined two political parties, BharatiyaJanata Party (BJP) and Shiv Sena for organizing a bandh in Mumbai as a protest against bomb blasts in the city. The state with the maximum Bandhs in India is Communist Party of India (Marxist) controlled West Bengal where the average number of bandhs per year is 40-50 (ranging from a couple of hours to a maximum of 2 days per bandh).A bandh is not the same as a Hartal, which simply means a strike: during a bandh, any business activity (and sometimes even traffic) in the area affected will be forcibly prevented by the strikers. However, in states where bandhs are banned, Hartals may be identical to bandhs except for the name.

The main affected are shopkeepers who are expected to keep their shops closed and the public transport operators of buses and cars are supposed to stay off the road and not carry any passengers. There have been instances of large metro cities coming to a standstill. Bandhs are powerful means for civil disobedience. Because of the huge impact that a bandh has on the local community, it is much feared as a tool of protest. The Supreme Court of India tried to ‘ban’ bandhs in 1998, but political parties still organize them.”

Everything is supposed to be closed on a day when a bandh is ‘called’ for. In college terms it’s similar to mass-bunking the class due to a problem with a lecturer.

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