

Tolerance and Freedom of Speech in Democracy

Abstract

Man is born free. He continues to be free, if he is free to use his organs as he likes. If he has tongue he should express his views. If he has feet, he should be allowed to move. If he has brain, he should be allowed to think and transform his ideas into words. The above unrestricted freedom is possible, if he is in solitary place. Man is a social animal. He cannot live in isolation. He has certain duties towards the society. Co-existence of man in a society is possible if his freedom ends where others nose begins. This is the precondition for co-existence in a society.

Keywords: Democracy, Human Rights

Introduction

When State comes in between the man and society, the freedom is subjected to state interest. On the other hand society also expects certain degree of recognition of its settled norms of behavior from the individual and state. Now the question arises how far tolerance is needed for smooth functioning of a society and state in a democratic setup of the government? What should be the criteria to put restriction on the freedom of a man and how much tolerance is expected from the society and state machinery? Different society and different states have different interests and norms of behavior. They judge the freedom of expression on their own scale and standards. The purpose of this paper is to evaluate the freedom of speech and expression as considered in different countries and societies and to analyze them in present scenario of global village and scientific developments of electronic media.

We often talk about freedom without knowing what does it mean. Many philosophers and politicians have written about freedom as if it were a word like immortality or monarchy. Aristotle¹ says that if freedom means the absence of constraints, it points to a state of affairs in which each man lives as he likes, a thought from which Aristotle recoils. Rousseau opened his treaties on the social contract with the famous words: 'Man is born free, but he is everywhere in chains.' Lord Acton writes history of mankind in terms of its struggle towards freedom. Thus if we see Acton, by freedom he meant that men were becoming more free than they once were and to Rousseau man had become less free.² Thus both Lord Acton and Rousseau were at variance in what they had understood by freedom. Acton³ seems to have meant by freedom from the constraints of nature, freedom from disease and hunger and insecurity and ignorance and superstitions. In this context, to Rousseau freedom usually meant freedom from the constraints of advanced political institution, from kingdoms, Empires and churches. Freedom from these constraints is called Romantic theory of freedom.

The progressive and the Romantic are thus both employing the same word freedom but they are asking for different things. They are demanding freedom from different constraints. The progressive looks forward. The more civilized and industrialized a society, the more freedom (freedom that is from the constraints of nature),. The industrial revolutions, the progress of science, the spread of education are all seen as liberating forces. Such trends can be seen in England and USA. The Romantic, on the other hand, looks backward, because it argues freedom from political institutions such servitude, he argues, is at least natural. The servitude to political institutions which follows from the existence of the modern state is artificial and for that reason evil. The Romantic admires the communities which live close to the soil, unlettered and poor, but without political masters. Thus the state of affairs, the Progressive sees as servitude, the Romantic calls freedom, and that which the Romantic sees as servitude the Progressive calls freedom.

To Romans freedom meant freedom from the rule of kings. But when that rule ended, freedom was achieved, freedom ceased to be unequivocal. Dr. Wirszubski⁴ writes that the Romans began to shift the reference of the word *libertas* to something positive. *Libertas* meant no



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longer the absence of monarchy, but a concept of popular government embodied in the Republican constitution of the commonwealth. The lesson of Rome is the lesson of history generally. In Europe between 1815-1848 a man who proclaimed liberty would be understood to mean liberty from the Kings and emperors who then occupied the thrones of Europe.

In France, at the end of the 18th century, the call for freedom was a call for freedom from despotic Bourbon rule, as in England during the first half of the 17th century the call for freedom had been a call for freedom from despotic Stuart rule.

Royal definition, the persuasive definition of freedom can be seen in the words of Charles, the first, reported to have said from Scaffold on 31 January 1649,⁵ "For the people; and truly I desire their liberty and freedom as much as any boy whomsoever; but I must tell you, that liberty and freedom consist in having of Government, and those laws by which their life and their goods may be most their own. It is not having a share in Government, sir that is nothing pertaining to them."

The king by proclaiming himself in favour of freedom stole the shorthand sign 'freedom' which they had made to stand for freedom from Stuart rule, and made that sign stand instead for freedom from anarchy.

Belligerents of civil war of America in 1860 said that they were fighting for freedom. In fact, each side was making an incomplete pronouncement, but both were speaking the truth. The South was fighting for freedom of state governments from federal interference; the North was fighting, among other things, to free the Negroes of the South from slavery. Abraham Lincoln began to detect to what was happening when he said in a speech at Baltimore in 1864: 'The world has never had a good definition of the

word 'liberty'-----in using the same word; we do not mean the same thing.'⁶ Another no less thoughtful President, Franklin D. Roosevelt, is remarkable among the Statesmen of history in having seen that it is not enough to speak of 'freedom' unless you explain what you wish to be free from or free for. Thus, when he proclaimed as the goals of Allied policy in the Second World War, four freedoms-freedom from fear, freedom from want, freedom of worship and freedom of speech -Roosevelt made his program meaningful.

Thus when you talk of freedom, you cannot be sure of making your meaning clear by putting an adjective in front of substantive. The expression economic freedom has at least two meanings in current use. Sometimes the expression is used to denote what is also called a 'free economic system'-an economic system free from the control of the state. Sometimes it is used to denote the freedom of the individual from economic hardship. In the political writings economic freedom for conservative usually mean the freedom of the national economy from the controls of the state. Socialist refers the economic freedom of the individual from economic hardship. Similarly freedom of speech and expression has different connotations in different societies and system of government. There is no unrestricted

freedom; there are certain corresponding duties also. State looks freedom of speech keeping in view its superiority, on the other hand people in general habitual to obey the settled customary norms of behavior, consider freedom of speech in their own terminology. Now let us see the practice and trends followed by the different countries.

There cannot be genuine democracy without free expression; nor there genuinely free expression without democracy. In most countries, ministers and officials believe that it is essential for the public good that they should control the supply of information about the workings of the government and suppress or punish the public expression of 'subversive' ideas.

Palestinian security officials banned a pro-Jordan news paper an-Nahar, the Arabic daily circulating in east Jerusalem and the self rule areas. The paper wrote on the coverage of a Washington committee meeting between the Israeli Prime Minister, Yitzhak Rabin, and the King Hussein of Jordan. Mr. yaasir Arafat explained that the news paper (an-Nahar) had to respect his laws, the news paper should have taken license first from the Palestinian authority before writing something that contradicted the national interest of the Israeli people.⁷

Miss Taslima Nasreen faced criminal charges of insulting Islam in series of essays including Lajja in which she wrote, " I detest fundamentalism.....the mullas who would murder me, will kill everything in Bangladesh, if they are allowed to prevail."

Another kind of censorship⁸ on cultural rather than political or religious grounds can be seen when the fate of a French law designed to purge English from the French language. The so-called 'Toubon law' makes it an offence to use unapproved foreign words on television, the radio and in the press. The French constitutional court- the Constitutional Council- scraped the most provision in the law as being contrary to the guarantee of free expression in the French Declaration of Rights of Man of 1789. An opinion poll showed that generally people in France feel threatened by Anglo Saxon hegemony. On the other hand, the intellectual and business classes have ridiculed the law as a linguistic Maginot Line. In Britain⁹ for a half century it has been the practice of British publishers of American classic novels, such as Scott Fitzgerald's "The Great Gatsby", Faulkner's "Light in August, to censor the texts by treating offensive racial remarks. Britain also has a criminal law of blasphemy to protect its state religion against scurrilous vilification, but the offence of blasphemy is restricted to the Christian religion. It does not protect other religions and their adherents against even the intentional stirring up of religious hatred by the use of threatening, abusive or insulting language.

An unsuccessful attempt was made by Muslim minority community in England to persuade the English courts to extend the blasphemy law to protect the Islam by persecuting Salman Rushdie for the alleged blasphemy of his novel, the Satanic Verses.¹⁰ The English Divisional Court accepted the argument of the publisher that an extended law of blasphemy would encourage intolerance, divisiveness, and unreasonable interferences with freedom of expression. Fundamentalist Christians, Jews or Muslims could then seek to invoke the offence of

blasphemy against each other's religion, doctrines, tenets, commandments, or practices. An extended law of blasphemy which applied to all religions could be used as a weapon between Protestants and Catholics in Northern Ireland, or by fringe relations, such as the Church of Scientology.

Cultural and national identity¹¹ has been the basis to clean English language from French language. The argument raised by the French authorities was that widespread use of English, combined with global satellite television and telecommunication system, have created legitimate fears of loss of cultural of national identity. Thus there should be limit on such access. It is one thing for state authorities to seek positively to encourage cultural and national identity by promoting national and regional broadcasting system in their own language and with local content. It is another plea for state authorities to interfere with the freedom to communicate and to receive information and opinions through television.

In India today we have reached a stage where expression of a different point of view is viewed with resentment and hostility and there is demand for bans. Sikhs are offended by certain words in the title of a movie, the Da Vinci Code, banned because some portion was found harmful to the community. The ban was struck down by the Andhra Pradesh High Court. The American Author James Laine, the author of the biography of Shivaji was sought to be prosecuted which was quashed by the Supreme Court. The exhibition of M.F Husain's paintings was stopped by miscreants. The Vishwa Hindu Parishad women' wing considered the nude and naked art as obscene. The musical performance by teenage girl rock band in Kashmir was considered as un-Islamic by popular religious leader.

Exhibition of movie is included in the fundamental right of freedom of speech and expression guaranteed by the constitution of India. The movie Bandit Queen was banned on the ground of obscenity because of the very brief scene of frontal nudity of the bandit Phoolan Devi in the movie. The Supreme Court struck down the ban and ruled that nakedness is not per se obscene. Similarly Mani Ratnam's latest movie Kadal has come under fire on account of Christian ire that it has hurt the feelings of the community.

Another incident of intolerance attitude of the society can be seen in Kamal Hassan's Vishwroopam and Ashish Nandi's remark¹² against SC/ST and Other Backward Classes of the society. Vishwroopam could be screened when Kamal Hassan deleted objectionable portions from the film and in case of Nandi the Supreme Court while staying the arrest of Nandi opined that 'He (Nandi) cannot continue making statements like this. Whatever may be your intent, you cannot go on making statements. We are not at all happy, Nor are SC/ST and OBC's.' Ashish Nandi remarked that the OBC and SC/ST people are "the most corrupt"

The well-known actor Khushboo faced several criminal prosecutions on account of her remarks on premarital sex and its prevalence in metropolitan cities which were considered to be against the dignity of Tamil women and ruined the culture and morality of the people of Tamil Nadu.

Moral policing has become culture of the day. Delhi police have forced closure of exhibition of an eminent photographer Sunil Gupta at Alliance Françoise in the Capital following an anonymous complaint that its content was obscene.¹³ Similarly Chandar Mohan, the gay painter of M S university of Baroda was assaulted and arrested on the ground of hurting religious feelings of the Christians and the Hindus. His paintings of Shiva linga, Goddess Durga and Jesus Christ were thought to be vulgar. Artist Bhupendar Khakhar's work dotted with homosexual references and sexual imagery has also earned the wrath of moral policing.

Judicial Response

The judiciary of the country has been lenient towards giving more freedom of speech and expression. As far back as November 2000, the Supreme Court in K M Shankrappa's case categorically ruled that "once an expert body has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situationIn such a case, the clear duty of the government is to ensure that law and order is maintained by taking appropriate actions against persons who choose to breach the law".

The same fear of breach of law and order and violence was raised by the state of Tamil Nadu regarding exhibition of the movie, Ore Oru Gramathile. The Supreme Court in the case of Rangrajan, 1989 held, "Freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to the negation of the rule of law and surrender to blackmail and intimidation". The court further said, "It is the duty of the state to protect freedom of expression. The state cannot plead its inability to handle the hostile audience problem. It is obligatory duty to prevent it and protect the freedom of expression." It is noteworthy that the supreme court absorbed the celebrated dictum of the European Court of Human Rights, "Freedom of expression constitutes one of the essential foundations of a democratic society, It is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Freedom of Expression.....is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any interference must be convincingly established."¹⁴ The above line of thinking has been applied by the European court in series of cases so as to liberate freedom of speech from unnecessary fetters. In Sunday Times v. United Kingdom¹⁵ The European Court ruled that the Supreme judicial authority of the United Kingdom- the Law Lords breached the free speech guarantee in the European Convention on Human Rights¹⁶ by using contempt of court law and breach of confidence law¹⁷ to impose unnecessary prior restraints on free speech and a free press. The European court in a landmark judgement¹⁸ following the approach of American Court have recognized the vital link between democracy and free speech, and the chilling effect of strict liability libel law on the right of the media and of the individual citizen to communicate

and of the public to receive information and criticism about the way in which governments use their public powers on behalf of the people. The decision rejects the undemocratic practice of so many so called democratic governments of using civil or criminal libel laws at the expense of taxpayer to ruin those who dare to criticize their rulers for abusing their powers.¹⁹

Justice Brandeis, the American judge emphasizing the importance of the freedom of speech opined "The men who won our independence believed that the final end of the state was to make men free to develop their faculties.....they believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are indispensable to the discovery and spread of political truth..... they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought , hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the faith of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for civil counsel is good ones."²⁰

With the forgoing discussion it can be concluded that our tradition teaches tolerance; our philosophy preaches tolerance; our constitution practices tolerance; let us not dilute it.²¹ In the recent decades we find rising menace of intolerance striking at various fields of human endeavour and creativity: writings, music, drama, paintings, and SMS. Intolerance stems from an invincible assumption of the infallibility of one's beliefs. An intolerant society cannot tolerate expression of ideas contradictory to current doctrines and conventional wisdom.

It is true that right to dissent is the back bone of a mature democracy. A liberal democracy is one in which all groups in the country accept the fact that in a free country, people can have different opinions and beliefs and shall have equal rights in voicing them without fear of legal penalties or social sanctions. It is also true that society cannot be run by the law alone. Spirit of bulk of the society should also be respected if it is not against human values. Law should run with the current of the public opinion. Law grants freedom of opinion but freedom of one person ends where other's nose begins. Any interference with the deep-rooted norms of society is bound to create resentment. No society has monopoly on knowledge but a new idea must have reasonable nexus with the object sought to be achieved. It is irony of time that the modern intellectuals express their wisdom making either culture or religion as theme of their discussion. Religion is the time tested norms of behavior for getting salvation and material gain as well. Making comments on religious books with their shallow knowledge for gaining cheap popularity is the sign of cynical attitude of modern intellectuals. Culture is not developed in a day, but a few people take trouble to introduce new norms of culture in the name of gay marriage, live-in relation which is again sign of mental bankruptcy. We cannot live in fancy. If nudity is so relevant why do majority of the world population like to cover their body? There was a time when people used to live in jungle in naked form they were called as

uncivilized. When he used to dress his boy, they became civilized but now again they are going towards nakedness to become modern intellectual. However freedom of speech and expression should be used keeping in mind the duty towards society and the government. Rights are guaranteed to establish peace in the society, to make the society healthy in body and mind. Ideas expressed should be such as people like to read and see. The expression of ideas should not take jerk in the society.

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5. The Works of King Charles, London, 1662, p.454.
6. Lincoln was unjust when he went on to suggest that liberty for his own side in the war meant 'liberty for each man to do as he pleases with himself, while for his enemies the word meant liberty for some men to do as they please with other men'. His enemies could truly claim that they used the word 'liberty' to mean liberty for each American State to rule itself as it pleases.
7. Quoted by Lord Lester of Herne Hill QC, Law and Justice, vol. 1:1. P.17. Lord Lester is a human rights advocate and a Liberal Democratic peer. He has argued many cases of free speech including the 'Thalidomide' injunction, the Spycatcher, injunction, the Satanic Verses, blasphemy, and the Tolstoy libel damages cases.

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