

Freedom of Speech Legal Prospective

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Introduction

Freedom of speech is considered as one of the most precious liberties of human beings. This right is guaranteed by almost all civilized nations (for example: India, USA, UK, Canada, Australia) and also by various international conventions (for example: ICCPR – International Convention on the Civil and Political Rights, ICERD – International Convention on the Elimination of Racial Discrimination etc.).

There are various reasons for protecting free speech. The most important of them is the need to ensure free flow of ideas. Because where the ideas flow freely there exists a public debate which would eventually lead to the discovery of truth. And when the truth is out and open the people can make informed choices and regulate their conduct accordingly. Furthermore, despite its universal acceptance, freedom of speech is not absolute. It carries with it a lot of limitations which are designed to ensure that this right is not being misused. History has provided us with ample examples where the right to free speech was used to discriminate people or to for propaganda against the state.

Regulation of Free Speech

Every country has its own set of limitations for regulation of free speech. However there exists a common thread which runs amongst all these limitations. These commonalities are reflected in Article 19 of the International Convention on the Civil and Political Rights, 1966 which requires three elements to be satisfied before restricting free speech. These elements are: Firstly, free speech can only be restricted by a codified law; secondly, such restrictions must be provided only with respect to certain limited grounds such as public order, morality, decency, defamation and others; thirdly, the punishment for violating such restrictions must be proportional.

Indian Jurisprudence on Free Speech

The Indian judiciary is well acclaimed throughout the world for its contributions in the field of free speech. Various judgments of the Supreme Court of India have balanced the right of freedom of speech with the inherent limitations that the right poses. In the case of Cricket Association of Bengal (1995) 2 SCC 161 the apex court ruled that ‘the freedom to receive and communicate information and ideas without interference is an important aspect of the freedom of free speech and expression’. Recognizing the need of this right in political context the Court ruled in the case of S. Rangarajan (1989) 2 SCC 574 that ‘in democracy it is not necessary that everyone should sing the same song’.

With respect to reasonable restrictions under Art.19(2) of our Constitution the Supreme Court ruled in the case of Romesh Thapar, AIR 1950 SC 124 that 'very narrow and stringent limits have been set to permissible legislative abridgement of the right of free speech and expression.' This way the Indian Supreme Court has ensured that the freedom of free speech is not very easily interfered with. At the same time the Court did not take a lenient view when it came to those persons who have deliberately incited the public to take actions which are unruly and against public order.

USA's Jurisprudence on Free Speech

The United States of America is considered as the champion with respect to free speech. The United States Bill of Rights, First Amendment guarantees freedom of expression. In this country, free speech receives a very high degree of constitutional protection. In one of the earliest cases, the United States Supreme Court ruled in the case of Schenck v. United States that there needs to be a clear and present danger before free speech can be regulated. This test was extended in the case of Debs v. United States wherein the court interpreted the phrase 'clear and present danger' broadly so that the right of free speech is effectively shaped in such a manner that the right is continuously protected but at the same time it is also not being misused.

Freedom of Speech and the Electronic media

In the case of Shreya Singhal v. Union of India the Supreme Court has struck down section 66A of the Information Technology Act. The Court did so because the terms used in this sections such as 'insult', 'annoy' etc are of very wide scope and ambit and the same can be left for the implementing authorities to interpret. Hence lack of sufficient guidance has led to the misuse by the executive machinery of this section. Furthermore, this section provides punishments which are more stringent when compared to the same offence which is committed outside the electronic medium. It is however argued by many that despite the Court's protective nature towards the freedom of expression it is necessary to have stricter laws that govern the internet because of the wide spread abuse that it can lead to and the immense reach that it has.

Incitement and Hate Speech

A speech which incites hatred is absolutely prohibited. Because such speech has no value for a society nor does it contribute to any public debate. The same applies to a speech which incites violence. In this regard almost all the regulations governing the freedom of speech around the world have a similar stand. In today's context, the need to prohibit hate speech and incitement of violence, especially on the virtual media is more important than ever.

Conclusion

A right must always be coupled with responsibility. Freedom of expression is one of the most valuable right that a citizen can have. Hence every citizen must ensure that this right is being used in such a way that it contributes to the public debate and the discovery of truth. One must always ensure that their speech shall never venture into the areas that are barred by Art.19 (2) of our Constitution.