

Freedom of Expression is a Citizen's Inalienable Right

If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter – George Washington.

'Freedom' – this word is like a double edged sword which gives you the choice you want to make freely but at the same time, could be taken away from you since it is not absolute. As rightly said that 'Freedom is not the right to do what you want rather it is the opportunity to do what is right'. But still, being in the era of social media and advanced technology, can people be trusted to handle an unlimited range of ideas and information without government intervention? Should the right to speech be absolute? Or where should the lines be drawn when we talk about the free speech and expression? The solutions to achieve the right balance also is in the level of tolerance which every citizen has in the country. Since our country is governed by the rule of law, there have been various instances wherein laws have not been framed correctly and therefore they end up being misused. Recently there was a cartoonist who was arrested for creating the national emblem and he was charged under State Emblem of India (Prohibition of Improper Use) Act, 2005. The law was obviously twisted to sustain this charge since the cartoon did not incite or have a tendency to incite violence. But the objective was achieved and the cartoonist was sent to jail for a while. Interestingly, in due course, the charge of sedition was withdrawn against him, but it will not be surprising if the incident had a chilling effect on some political cartoonists. In the early seventeenth century, Baruch Spinoza, a Dutch philosopher of Portuguese Sephardi origin was one of the most modern rationalist and a biblical critique during his time and for ours. His theory of freedom of expression and religion was based mainly on his personal turbulent experiences partly as well as the liberal freedoms which he wished to preserve and defend. He was always in favor of a secular and democratic society and was one of the strongest advocates for freedom and tolerance in the early modern period. According to him freedom of speech and expression is an 'indefeasible right' similar to that of right to property. No one can abdicate one's freedom of judgement and feeling since every man is by indefeasible the master of his own thoughts and it follows that men thinking in diverse and contradictory fashions cannot without disastrous results, be compelled to speak only according to the dictates of the supreme power. He argued that all individuals are to be absolutely free and unimpeded in their beliefs, by right and in fact. "It is impossible for the mind to be completely under another's control; for no one is able to transfer to another his natural right or

faculty to reason freely and to form his own judgment on any matters whatsoever, nor can he be compelled to do so. The main rationale and logic behind his political thinking was that the object of the government is not to change them into beasts or puppets rather to enable them to develop their minds and bodies in security. In fact the true aim of the government is liberty. So long as we respect the rights of others, it doesn't matter why you so, therefore the State should have no concern with your beliefs whether rational, irrational, moral, immoral or heretical.

Secondly he grounded freedom of religion in the broader principle of freedom of speech. Every person whether religious or no has the inalienable right to express his beliefs. But one of the most famous paragraphs and explanations he wrote was "*The most tyrannical governments are those which make crime of opinions , for everyone has an inalienable right over his thoughts. To avoid evils in a state, there is no safer way than to make piety and religion to consist in acts only – that is in the practice of justice and charity, leaving everyone's judgements in other respects free*"¹. Similarly John Stuart Mill, popularly known as J.S Mill was one of the most popular influencer of liberalism and individual liberty during the nineteenth century. He was one of the men responsible for the First Amendment which took place in America and which gave rise to freedom of speech and expression there. The First Amendment of the to the US Constitution states "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances*". It includes freedom of speech, freedom of religion, freedom to assemble, freedom of press etc. In one of the most landmark case of the Supreme Court, *New York Times Co. v United States* it was possible for the New York Times and Washington Post to publish the contents of the Pentagon papers without the risk of government censorship. The Pentagon papers were a top -secret study of the Defense of the US Political and Military involvement in Vietnam from 1945 to 1967. The portions of the Pentagon papers which were published clearly showed and revealed the involvement of Harry Truman, Dwight D. Eisenhower, John F. Kennedy and Lyndon B. Johnson who had all misled the public about the degree of U.S. involvement in Vietnam.²

¹ *Free Thought and Freedom : Spinoza on Freedom of Religion and Speech*, LIBERTARIANISM, (July 2015)

² *First Amendment*, HISTORY.COM (Sept 2019)

Most often, though, Mill appeared as a progenitor of First Amendment absolutism: “*If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind*”³. He argues that the only check against our own fallibility is to promote the free expression of ideas. In other words, he thinks that the only way we can have confidence in our opinions and judgments is by testing them in the fire of free expression. So censorship doesn’t merely assume an implausible infallibility it also undermines the only means we have at our disposal to overcome our fallibility. His argument for free speech is as follows “*the peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error.*”⁴ The right to freedom of speech and expression is wider in its scope and is not susceptible to any precise definition. It is a phenomenon through which one conveys his ideas to others. If we take into account this definition, then right to information is only a step that helps an individual to get himself well informed, so that he can exercise his right to freedom of speech and expression effectively.⁵ The casting of vote is a facet of the right to freedom of expression of an individual and the said right is protected under Article 19(1)(a) of the Constitution. Fundamental rights are guaranteed to every citizen of the country right from the day they are born. They do not have to reach any ‘legal age’ to exercise them. Article 19(1)(a) includes a list of rights like freedom of press, right to communicate, print and advertise information, right to access information etc. Any violation of the said rights gives the aggrieved person the right to approach the Supreme Court under Article 32 of the Constitution.⁶ Freedom of speech is guaranteed not only by the Indian Constitution but also by international statutes such as the Universal Declaration of Human Rights the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms, etc. But it is considered as a negative right as well since freedom of speech and expression has its own limits and cannot be absolute even in a democracy. Other countries like Ukraine and Russia represent broad restrictions

³ Leonard Williams, *The First Amendment Encyclopedia*, MTSU (2009)

⁴ *Mills Argument for Free Speech : A Guide*, PHILOSOPHICAL DISQUISITIONS (Nov 2018)

⁵ *M. Narayan Reddy v Government of India* 2011 (4) RCR 418

⁶ *PUCL v Union of India* (2013) 10 SCC 1

of freedom of speech and expression. There only 10% of the total screenings of films in Ukraine can be in a language other than Ukrainian, and at least 50% of books published and distributed in Ukraine must be in Ukrainian. Ukrainian legislation further authorizes the banning of “films containing the propaganda of an ‘aggressor state,’ including positive images of the workers of the aggressor state, Soviet state security bodies, and films justifying violation of the territorial integrity of Ukraine.”⁷

Freedom of expression did not exonerate the business tycoon and Infosys founder, Mr. Narayan Murthy. Once Mr. Murthy was travelling from Nis to Bulgaria in a local train wherein he started a conversation with his fellow lady passenger who started sharing her problems about meeting her husband once in six months after her marriage as both belonged to different countries. He started sympathizing with her and expressed his views on issues like marriage, job, choosing a life partner and freedom of expression is something which should not be curtailed irrespective of it being a capitalist or a communist country. Suddenly there were two fierce gentlemen who came and dragged both Mr. Murthy and the lady passenger and locked him in a small, dingy room for around four days without food. Later, he was dragged and dropped on the station with his passport stating that since he belonged to a friendly country like India, he was left. When he asked the guards about his offence, they said that it was against their rules to discuss such issues openly. Mr. Murthy who was a firm believer about the ideas of Karl Marx, Lenin and Mao as well, started to rethink his ideals after this incident. Suddenly he was made to realize the ruthless system which denied basic freedom to its citizens as well as passengers visiting their country. That’s when he realized the value of freedom and vowed to be a socialist capitalist which led him to build Infosys.⁸ The art of ‘agreeing to disagree’ has not been anchored in our country due to which “Religion now has become a tool rather an asset for politicians in to promote Hindutva’. Every individual has the freedom to express their personal views but it does have some sort of censorship which is required specially in liberal democratic countries. India, being a secular state, has no official religion which it follows but every person has the right to practice any religion they want without hurting the sentiments of others.

⁷ Ruth Levush, *Limits on Freedom of Expression: Comparative Summary*, LOC

⁸ Sudha Murthy, *The Old Man and His God*, PENGUIN (2006)

Recently one of the famous stand up comedians Munawar Faruqui was arrested from a café in Indore where he was supposed to perform. He was released after spending thirty five days in jail for a crime he did not commit. He was arrested, along with four others, for “indecent” and “vulgar” jokes about Hindu gods. The complainant was Eklavya Singh Gaud, son of a BJP legislator and convenor of the Hindu Rakshak Sangathan. Police acknowledged that they have no video evidence of Faruqui insulting Hindu gods rather they were informed that he was going to perform the same in his show. Comedy is a genre which involves truth mixed with sarcasm and people could relate with the same issues together. Democracy allows you to develop your own thoughts which you can share and discuss it with people till the time it is not anti-national. The problem in this case was that Munawar was not allowed to even express himself before being arrested nor was there any kind of evidence which proved that he had made derogatory remarks against Hindus or even Hindu Gods. With such actions taken by the authorities, it encapsulates the rising violence and discrimination done towards Muslims and other minorities in our country. Last year when the journalist Arnab Goswami was granted bail, he argued that courts remain “the first line of defence against the deprivation of liberty of citizens”, that “bail, not jail” was fundamental to the legal system, and that “deprivation of liberty even for a single day is one day too many”.⁹

Freedom of Speech and Expression has been misused rather abused by every person in the country, be it a politician or an actor. Our very popular actor Salman Khan once said in an interview while describing his experience on working as a wrestler, “It felt like a raped woman”. Our own BJP Spokesperson Sambit Patra has openly in debates insulted his opponents by warning him that ‘If you don’t sit down, we will change the name of any mosque to Lord Vishnu and then you keep shouting. Yogi Adityanath has called Muslims “A crop of two legged animals that needs to be stopped”. Well as rightly said that with freedom comes responsibility. In our country, the irony is that democracy was laid down for the people, by the people and of the people and not against the people. With power comes responsibility as well but the power in wrong hands often gets misused, which in our case happens both ways. The expression of dissatisfaction towards one’s own government is a part of what democracy is, but the nation’s maladies is that it involves an entire concoction of individuals who do not want to take responsibility for their actions nor do they understand the people’s perspective. With the rising riots and protests specially for Legislatures in

⁹ Editorial, *A big step back*, Indian Express (Jan 2021)

matters of CAA and the NRC, there have been various comments and posts of citizens who expressed dissatisfaction and rather justifications for the purpose and reason behind such a step, but the government has made it into a seditious issue and has arrested numerous individuals who have questioned the law. But the government itself cannot be blamed always. The hate speeches and the involvement of social media has led to a lot of fake news which eventually gets misused by the public. During the Republic Day ceremony, groups of people fled into the processions and started rioting and protesting with tractors and anti-national slogans which showed the power and misuse of democracy at the same time. The law of sedition of India has assumed controversial importance largely because of change in body politic and specially because of the constitutional provision of freedom of speech and expression guaranteed as a fundamental right under article 19(1)(a) of the Constitution. The section has a chequered history which it has undergone through legislative amendments and judicial interpretation. Before Independence it was introduced by the colonial master who wished to penalize anybody who was trying to overthrow the state. Sedition is nothing but libel(defamation) of the established authority of law i.e Government. Hence it is called as seditious libel in England. In other words, sedition includes all the acts and practices which have for their object to excite discontent or dissatisfaction towards the Constitution or the Government or the Parliament to create disturbance and generally all endeavours to promote public discord and disorder.

¹⁰ In the year 1922, Mahatma Gandhi, who was the editor of the paper ‘Young India’ was charged under Section 124A of IPC for bringing or attempting to bring into hatred or contempt or attempt to excite dissatisfaction towards his Majesty’s government established by law in British India by means of the written words contained in the articles “Tampering with Loyalty”, “The Puzzle and its Solution” and lastly “Shaking the Manes” which was published in Ahmedabad. Instead of contesting the charge, he pleaded guilty for the same. In his written statement he expressed his dissatisfaction towards the government and stated that ‘*Sedition Law is the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen*’ and declared that some of the most loved of India’s patriots have been convicted under it and therefore I consider it as a privilege to be charged under that section.¹¹ But the landmark judgement of Kedar Nath Singh v State of Bihar, the Supreme Court had upheld sedition as constitutional. Kedar Nath

¹⁰ Webster, Third New International Dictionary, G.C Merriam Co. (1976)

¹¹ K.D Gaur, *Indian Penal Code*, Reprint 2015

Singh had made an intemperate speech about Congress Leaders and used certain derogatory words against them. He was charged with sedition, and ultimately his case went up to the Supreme Court, where the constitutionality of the provision itself was challenged. To uphold sedition, the Supreme Court was obliged to indulge in a degree of textual acrobatics, since at least on the face of it, “disaffection”, “hatred”, and “contempt” did not fit within any of the clauses of Article 19(2). Therefore sedition was declared as a crime against public order. Section 124A makes no mention of public order. Effectively, to protect the provision’s constitutionality, the court had to read into it a phrase that was absent from the text, and indeed, never meant to be part of the definition. This perhaps explains why Section 124A remains one of the most misused and abused provisions of the penal law. The court held that the term “in the interests of” was so wide that it allowed the state to criminalize both forms of expression, without any need to distinguish between the two.

Another recent example for the same was the famous “Tool Kit” case of the climate activist Disha Ravi for which she was arrested by the Delhi Police. She was arrested for her involvement in the circulation of the Toolkit, a digital kit created and shared during the farmers’ protests against Farmers Bills in 2020. She was accused of offenses punishable under several sections of the Indian Penal Code out of which one of them was Sedition with criminal conspiracy. She argued that the investigating agency had maliciously invoked allegations of sedition under Section 124A IPC to portray a minor offence as a grave offence. Further, the investigating agency maliciously used terms such as “global conspiracy” to sensationalise the case and prejudice the personal liberty of the applicant. The applicant argued that the Toolkit represented an expression of free speech rights which are protected under Article 19(1)(a) of the Constitution of India. No offence of sedition was made out as the applicant was merely exercising her freedom of speech and expression to oppose the farm laws enacted by the government. The applicant relied on the Supreme Court decision in *Kedar Nath Singh v. State of Punjab*,¹² to argue that actual violence or incitement to violence associated with the words in question, the necessary conditions for establishing a case under Section 124A of the IPC, were absent in the present case. Mere involvement of the applicant in the creation or sharing of the Toolkit cannot be construed as an offence. Finally the Court gave her a bail citing that, “*Citizens, the conscience keepers of government in a democratic nation, cannot be put behind bars simply for their disagreement with the State politics*,”. The difference of opinion,

¹² AIR 1962 SC 955

divergence, dissent or even disapprobation are recognised legitimate tools to infuse objectivity in state policies. In fact, “an aware and assertive citizenry, in contradistinction with an indifferent or docile citizenry, is indisputably a sign of a healthy and vibrant democracy.” Therefore, the “offense of sedition cannot be invoked to minister to the wounded vanity of the governments. Accordingly the fundamental right of a citizen is to use the best means of imparting and receiving communication, as long as the same is permissible under the four corners of law and as such have access to audience abroad. A century after the famous trial, dissentors are still suffering to fight for their freedom to express their dissatisfaction towards their own government.

In a country like India, two individuals of the same sex cannot get married but instead they could marry a tree or a cow for that matter. In the year 2018, when the Supreme Court struck down Section 377 of the IPC which criminalizes homosexuality, it was one step further taken towards humanity and the right to express themselves. It was a 158 year old provision which was laid down during the reign of King Henry VIII in the year 1533. During his reign it was known as the ‘Buggery Act’. The word buggery was derived from the old French word ‘bougre’ which meant anal intercourse. The Buggery Act, 1533, which was enacted by Henry VIII, made the offence of buggery punishable by death, and continued to exist for nearly 300 years before it was repealed and replaced by the Offences against the Person Act, 1828. Buggery, however, remained a capital offence in England until 1861, one year after the enactment of the IPC¹³. In 2009, the Delhi High Court had ruled in favour of decriminalising section 377 - a decision which was overturned only to by a two-judge Supreme Court bench in 2013, in the *Suresh Kumar Koushal v Naz Foundation* case. Maneka Guruswamy had quoted instances of discrimination faced by members of the LGBT community and said the petitioners sought emancipation of a “class of people left out of the promises of our Constitution.¹⁴ The Constitution of India begins by saying We, the people of India and not we the heterosexual people of India. This was a five bench judgement given in the year 2018 wherein the then Chief Justice of India, Mr. Dipak Misra and Justice AM Khanvilkar quoted various iconic philosophers right from Oscar Wilde to Wolfgang von Goethe. They cited the relationship between Oscar Wilde and his lover Lord Alfred Douglas criticising the archaic laws based on a conservative notion of morality to stand for love, individual freedom, privacy and a human being’s right to live with dignity. the German thinker, Johann

¹³ *Supreme Court Scarps Section 377; Majoritarian Views cannot Dictate Rights*, THE WIRE (Sept 2018)

¹⁴ Shaswati Das, *Section 377 Verdict by Supreme Court: 5 Key Things to know*, MINT (Sept 2018)

Wolfgang von Goethe, had said, *'I am what I am, so take me as I am'* and similarly, Arthur Schopenhauer had pronounced, *'No one can escape from their individuality'*. *The emphasis on the unique being of an individual is the salt of his/her life. Denial of self-expression is inviting death. Irreplaceability of individuality and identity is grant of respect to self. This realisation is one's signature and self-determined design. One defines oneself. That is the glorious form of individuality.* Sexual orientation is one of the many biological phenomena which is natural and inherent in an individual and is controlled by neurological and biological factors. The science of sexuality has theorized that an individual exerts little or no control over who he/she gets attracted to. Any discrimination on the basis of one's sexual orientation would entail a violation of the fundamental right of freedom of expression. The choice of a partner, the desire for personal intimacy and the yearning to find love and fulfilment in human relationships have a universal appeal, straddling age and time. In protecting consensual intimacies, the Constitution adopts a simple principle: the state has no business to intrude into these personal matters. Nor can societal notions of heteronormativity regulate constitutional liberties based on sexual orientation. The LGBT persons deserve to live a life unshackled from the shadow of being 'unapprehended felons'.¹⁵

Conclusion

There is an undeclaring emergency with respect to the privacy laws for which the Data Protection Bill was introduced two years back by the retired judge Justice B.N Srikrishna. There was a face off between the central government and the social media platforms like WhatsApp and Twitter with respect to the intermediary guidelines for right to privacy. There had been various instances wherein the government has instructed the Delhi Police who visited the Twitter Office when the company had failed to remove tags on specific tweets by ruling party politicians as well as the FIR's which were filed against people for criticizing the government on social media. The idea behind the PDP Bill was to have it all under one statute, so that "persons who have been affected can have a recourse, the governments under certain circumstances can have a resource, and there could be a regulator who would constantly monitor it. All developed countries, be it Australia or the EU have privacy policies which empower them to get companies like Google to agree to

¹⁵ *Freedom from Fear: What the SC Judges said in their historic verdict on Section 377*, HINDUSTAN TIMES (Sept 2018)

certain demands from the State. The balance or where the line should be drawn when it comes to freedom of speech and expression should be decided by the judiciary by interpreting what the legislatures intended for the same. The principles laid down in the Library Bill of Rights and Code of Ethics Freedom of expression is an inalienable human right and the foundation for self-government. Freedom of expression encompasses the freedoms of speech, press, religion, assembly, and association, and the corollary right to receive information without interference and without compromising personal privacy. When citizens criticize the government for issues like not handling the COVID situation or shortage of oxygens, it does not make them anti-national nor a criminal. The right of privacy and free expression are not derived from any claim of political, racial, economic, or cultural hegemony. These rights are inherent in every individual. They cannot be surrendered or subordinated, nor can they be denied, by the decree of any government or corporate interest. True justice and equality depend upon the constant exercise of these rights. Our fundamental rights cannot be absolute and so the constitution has placed a few reasonable restrictions on the exercise of the right to free speech and these include restrictions placed in the interests of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence. Yet, it is important to note that these restrictions can be imposed only by law enacted by parliament and the restrictions have to be reasonable. The pandemic has generated a tremendous amount of fake news in our country and worldwide and the latest going around is that corona were can be cured by snorting cocaine, drinking alcohol and bleach. There is no doubt that fake news must be countered effectively and quickly, but surely, a charge of sedition is not the answer. Apart from a vague definition of fake news and its subjective interpretation, it shows that the establishment prefers to act against the weak and defenceless with what was recently described as an 'iron hand' rather than against the privileged who can get away with saying anything. The fundamental right of freedom of speech cannot be applied arbitrarily. L.K. Advani's observation was that that during the Emergency journalists were merely asked to bend but they chose to crawl. There needs to be two questions raised while dealing with freedom of press; first one is that everyone is hearing and seeing what is going on, but is anybody listening? The other question to be asked in this context is can any serious journalist function fearlessly if an opinion expressed, however absurd or bizarre, leads to arrest and a charge of sedition followed by a long-drawn battle in the courts? The gradual

erosion of one of our most precious fundamental rights – the inalienable right to freedom of speech and expression – is leading to the gradual destruction of our human right to dissent and protest. It is time for the establishment to realise that the people of this country mean well and as in any democracy, there are bound to be different points of view. These must be respected – otherwise the fabric of our society might disintegrate, and fraternity, one of the key words in the preamble to our Constitution might just become another dead idea. As rightly said by Albert Einstein “*Laws alone cannot secure freedom of expression , in order that every man present his views without penalty there must be a spirit of tolerance in the entire population.*”

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