

## FREEDOM OF SPEECH AND EXPRESSION

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Freedom of speech and expression is a fundamental right guaranteed to all the citizens residing within the territory of India<sup>1</sup>. It enables and gives opportunity to all the citizens to put forth and express their thoughts and opinions, playing an essential role in enhancing the growth and development of the country. There are reasonable restrictions imposed in the interests of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency, morality and also in relation to contempt of court, defamation and incitement to an offence. The allocation of this right basically helps every person to develop his or her own perception or mindset towards any particular circumstance or situation occurring in the country. In other words we can say that this right permits people, to come forward and voice their opinion, making their ideas and views recognized and known to everyone, without any fear of censorship or governmental vengeance. This right motivates everyone to come ahead, take a stand and actively be a part of all the events happening in the country which indeed plays a major role in the smooth working of the country.<sup>2</sup> But this right merely does not imply that a person can speak anything, anywhere without taking into consideration the time, the place or situation he is in or the impact and the consequences he is going to create on the basis of his speech and expression in the society. Sir Winston Churchill said “Some people’s idea of free speech is that they are free to say what they like, but if anyone says anything back, that is an outrage.”

When we talk about the right to freedom of speech and expression, we can say that the various aspects of media, mainly the television and the internet are playing the role of key contenders especially in this era, in keeping the people informed and updated about everything happening around them. It also plays a vital role in influencing the minds of the

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<sup>1</sup> Article 19(1) (a) of the Constitution of India: All the citizens shall have the right to freedom of speech and expression. . Fourth year student of BLS; LLB from Shri Vile Parle Kelavani Mandal’s Pravin Gandhi Law College, Mumbai.

<sup>2</sup>[http://indialawjournal.com/volume3/issue\\_4/article\\_by\\_dheerajendra.html](http://indialawjournal.com/volume3/issue_4/article_by_dheerajendra.html)

people in a certain manner. Media, today we can say that plays an important role in creating awareness among the people. Various other kinds of media including the newspapers, radio etc in the way of writing or verbal manner definitely make it a point that their thoughts and ideologies reach thousands and millions of people all over the country and even across the world.

Freedom of speech and expression through various kinds of debates on political or socio-legal issues, discussions about the current affairs, talk shows or even through interviewing people instituted in the field of politics and administration, education, health ministry etc, help the citizens of the country to know the truth, the real scenario of the country's development and even keeps them informed of the steps or the precautionary measures to be taken for a better future. It is essential for the media to take into account the repercussions that are going to take place in the country, whether it is writing an article in the newspaper or giving a speech in the public sphere. Now the question which arises is whether a line or to be more specific a boundary be drawn pertaining to their work? And if the answer is yes, then to what extent? It is the need of the hour to discuss this issue. To give a simple example, we can say that a journalist or a news reporter putting forth his conception or approach related to any particular issue, in the newspaper or broadcasting it on radio or on television may not necessarily coincide with the opinion or outlook of the person who is reading or hearing it respectively that very moment. So then ultimately it results in making the reader or the listener feel disappointed or dissatisfied.

But then too it is to be noted that the importance of media cannot be denied today as it undoubtedly serves as an important tool in incorporating every individual to develop a strong understanding related to various issues taking place in the country including education, poverty, crime, growth and development, health and sanitation, politics etc.

The media should essentially take into account, and must ask itself a few questions before writing or speaking about anything in the public realm. Some of them are given below.

- Is the information realistic?
- Is it just a hunch or an assumption?
- What kind of impact is it going to create on the people in the society?

Whenever a media based person puts down his viewpoint or observation concerning a politician, an actor or may be a socialite they must confirm with themselves that the information they are making known to the audience is accurate and free from any kind of ambiguities or vagueness and if not they might be charged for libel or slander .

#### **Section 499 of the Indian Penal Code: “Defamation”**

Whoever by words either spoken or intended to be read or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said except in the cases hereinafter expected to defame that person.

#### **Section 500 of the Indian Penal Code: “Punishment for defamation”**

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both.

#### **Section 501 of the Indian Penal Code: “Printing or engraving matter known to be defamatory”**

Whoever prints or engraves any matter knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine or both.

In *Khushwant Singh And Anr. Vs. Maneka Gandhi*<sup>3</sup> the appellant Mr. Khushwant Singh was a very famous author. He was very eager to publish his autobiography and later it was recommended to be published in a book which was titled “Truth, Love and a Little Malice.” This autobiography was containing a chapter headed ‘Gandhi’s and Anands. The respondent tried to cease the publication of a few sections of the autobiography and she being a public figure claims to have filed the suit as according to her the material in his autobiography was irrelevant and the words and the sentences were disrespectful. So according to her she was justified on her part to have filed the suit of defamation as her sentiments were hurt and also felt offended. The respondent further stated that such an allegation would pose a threat to her as well as her family’s self-respect and position in the society. Later, the court allowed the appeal by Khushwant Singh and the matter was decided in the favour of the author. The court took the view that, the freedom of press was prolonged to engage itself in any kinds of debates comprising of any public official or crisis. Therefore, the author was set free to publish his autobiography . In, *Taj Hargey vs Muslim Weekly*<sup>4</sup>, the claimant was the chairman of the Muslim Educational Centre of Oxford who was also very renowned for his thoughts and ideologies about various issues in Islam. He was a strong supporter of the muslim women when it came to addressing various matters in Islam. He had initiated the proceedings in the High Court of London against the Muslim weekly, who claimed that his conceptualizations did not portray him as a true muslim. Later, Mr Hargey won the case, and he was also awarded monetary compensation which was a five figure sum.

In *Berkoff v Burchill*,<sup>5</sup> the journalist Julie Burchill, had depicted actor Steven Berkoff, as a ‘terrifying’ and an ugly looking person. The court argued that usually such observations are

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<sup>3</sup> From the order of the Delhi High Court on 18<sup>th</sup> September, 2001. Equivalent citations: AIR 2002 Delhi 58. <https://indiankanoon.org/doc/1203848>

<sup>4</sup> By Tom Whitehead Home Affairs Editor, 5:35 PM BST 08 APRIL 2009. Available at <http://www.telegraph.co.uk/news/religion/5126155/Imam-wins-landmark-battle-against-Muslim-McCarthyism.html>

<sup>5</sup> {1996} 4 ALL ER 1008. Available at [http://catalogue.pearsoned.co.uk/assets/hip/gb/hip\\_gb\\_pearsonhighered/samplechapter/140825414X.pdf](http://catalogue.pearsoned.co.uk/assets/hip/gb/hip_gb_pearsonhighered/samplechapter/140825414X.pdf)

not constituted to be defamatory, but taking into consideration the occupation of the plaintiff ( who was an actor himself), and this profession helped him to earn his bread and butter, it took the view that such a remark by Burchill had made a mockery of the actor in the public. Therefore, the court later constituted this as a ‘defamation suit.’ In *Tolly v JS Fry and Sons Ltd*,<sup>6</sup> the claimant was an amateur golf player. The defendant was a chocolate manufacturing firm, who without the consent of the plaintiff had used it’s picture to advertise Fry’s chocolate. According to the claimant, his reputation was at stake because of the advertisement which characterized him of being guilty and regretful about his profession as an amateur golf player. The court later, gave the verdict in the favour of the plaintiff and awarded him damages. Media although spreads knowledge and information and keeps everyone aware regarding the various happenings all over in the the world, but at the same time it is necessary on their part to ensure that their work does not hurt people’s sentiments or cause them or any kind of mental agony and leave them traumatized. The audience often targets the media for “Making a mountain of a molehill” that is hyping up small things and presenting it as a big issue by broadcasting it all over in the public domain. So in order to avoid any conjectures or unnecessary hassle or animosity between people , it should take utmost care when it comes to their work. Sometimes they are even asked to publish an apology in the newspaper for the respective errors made by them or even pay some amount of costs and damages.

In *Kasabova v. Bulgaria*<sup>7</sup> the applicant was a journalist by profession, who was working at *Compass*, which was a newspaper of major importance in Burgas( her hometown).In the education system of Bulgaria, the pupils studying there had an option of continuing their studies in a secondary school which was specialized. Now, to get into a specialized secondary

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<sup>6</sup> [1931] AC 333; (1931) 1 All ER Rep 131

House of Lords ©(1931). <http://mavrkydefamationcaselaw.blogspot.in/2007/01/tolley-v-j-s-fry.html>

<sup>7</sup> <https://globalfreedomofexpression.columbia.edu/cases/case-of-kasabova-v-bulgaria/>

school, the pupils had to clear various difficult examinations or else they need to have certain prescribed medical conditions which would lead them directly into the school without giving any kind of other competitive exams. In 2000 somewhere, in the month of June, certain parents complained that the students who were medically quite fit and healthy were granted admissions in this specialized secondary school without giving any kind of other exams after they were diagnosed with illness pertaining for a long time. After this complaint , an inspection was carried on which discovered many violations in the admission procedures which also included of granting admission to the students into these specialized schools without passing any exams and suffering from any kind of illness. Later an investigation procedure was initiated by the prosecutor's office on the possibility of bribe taking. The conclusion of the investigation was that there was no proper proof and evidence to show that the officials were guilty of accepting the bribes. In the month of September 2000, this journalist published an article headed "Corruption in Burgas Education! Four Experts and a Doctor Sacked Over Bribes?" . The article mainly spoke of the investigation process which was held and also about the bribe taking. Simultaneously the members of the committee wrote to the publication stating that the applicant should be imposed with a heavy penalty and the members refused to accept any allegations . Later other two articles were published by the journalist on the same issue which portrayed the committee members again guilty of the offence of bribe taking. According to the committee members this was a case of severe defamation , and therefore they filed a criminal complaint against the journalist and the editor of the publication, and also were requesting compensation of 30,000 ( Bulgarian Levs). At the trial court, the journalist was ordered to pay certain damages as he was found guilty of having committed the act of defamation. Later, he moved to the European Courts Of Human Rights for an appeal. The European Court of Human Rights gave the final judgment stating that the allegation of bribe taking was very and intense in nature, it requires proper

verification, analysis and scrutiny rather than mere supposition on the part of the journalist. According to the court, the applicant had violated the provisions of Article 10 of the European Court of Human Rights . The court also stressed on the statement that the right to freedom of speech and expression must be at par with the member's right to personal and private life. It also ordered the applicant to pay certain sum as compensation and damages. But this cannot be a permanent solution. So it can be concluded that there should be at least some limitations or restrictions put on the freedom of speech and expression so that people do not take this right for granted, there is less violence, people start self- policing themselves and it will also help in maintaining uniformity, discipline, stability and order in the country. An access to free speech plays a crucial role in regulating the country's progress by giving liberty to everyone in the nook and cranny of the country by providing them the exposure to express their convictions and even make it visible to all, which in turn will motivate the others to come forward and also support in improving the democracy. Even though the Constitution of India provides the right to free speech as a fundamental right, it is important for us to realize that we are expected to proceed in a reasonable manner, that is in a way which is not hazardous in nature and does not cause any grave harm or affect the dignity and reputation of anyone. Also the fact that the Right to Freedom of Speech and Expression is of great significance today cannot be neglected. But as we all know that there are two sides to every coin. Therefore we can say that if this right is taken away from the people, it will hamper the growth and developmental progress of the country. On the contrary, if this right is taken for granted it will ultimately lead to chaos and confusion everywhere. To put it more poetically, in the words of George Washington "If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter."