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FREEDOM OF SPEECH, EXPRESSION AND REASONABLE RESTRICTIONS ON IT AS THE CORNERSTONE OF DEMOCRACY

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ABSTRACT:

Whether the democracy is vibrant or contains some defect or in progress to attain the standard of healthy solely depends on the right to freedom of speech and expression. These rights are very crucial for the vibrant democracy and to make sure that the governing and administration system adopted by the constitution doesn't lose the presence of democracy from time to time and to reach the truth which is most important pillar on which the entire democracy stands. So, it is apparent that this particular right is the driving wheels of democracy. This paper tries to discuss how the freedom of speech, expression and reasonable restriction on it act as a constructor in building strong democracy.

INTRODUCTION:

Freedom of speech and expression are the main pillars on which the most Nations vibrant democracies stand. Democracies and freedom of speech and expression are synonymous one can't stand without each other both are inseparable. Freedom of expression is the foundation of the liberties and the rights. Freedom of speech is the life blood of democracy and freedom to express is essential for every person for his growth and attainment of each person' identity that adds to the power of society. Because right to talk freely and to express enables the citizens to participate in the socio and political life of a nation which result in improving the democratization of the system of governance adopted and arriving at the noble goal which is truth.

The first prerequisites for liberties are these rights. These rights are considered to be the mother of all the liberties due to the significance position they hold in the hierarchy of rights. The right to freely express ones thought and beliefs through speech and writing, as well as through the images and photographs remaining silent and other media is also known as the freedom of speech and expression. It is one of the actions which helps to convey the action belief thought and ideas. So, it is clear that these freedoms play a very important role in maintaining the healthy democracies so it is very imperative to sensibly regulate these freedoms and aspects related to it by allowing freedom and imposing reasonable restrictions for the protection of democracy. The guarantee of these rights is enshrined in constitution of India in article 19(1) (a). In addition to it in international covenant on the political and civil rights. Universal declaration of human rights and European convention on the human rights and fundamental freedoms.

RELATION BETWEEN THE FREEDOM OF SPEECH, EXPRESSION AND DEMOCRACY

Freedom of speech is the most foundational rights which acts as a bridge of conversation between the community and the personal identity. In every democratic society in order to call it as democratic society one of the basic essential is its potential for self-governing one of the tools for self-governing is the right to freedom of speech and expression. In order to achieve this right is to have in place the self-regulatory press and mass media which reflects the characteristics of healthy society. As a society which is capable of self-governing it must be in a stand to take its own decision.

This particular above idea was reflected by Abraham Lincoln in the following way. Let the people know the facts and the country will be tranquil. The role of the media in a democratic society as a means of exercising the right to speak and express freely is very significant. In democratic society right to free speech facilitates in the creation of opportunity for deliberation. Which will facilitate the common people deliver their opinion on the socio, economic and political issues of their country. It includes on public issues, exchange of thought and dissemination of the information that would aid in the creation of one's own opinion and view point. The freedom of speech and expression has been emphasized by justice Bhagavathi by making particular statement where he states in a democratic system only effective available system to correct government is through debate and discussion on public concern. Every citizen has to participate in order to call a democracy as a people's rule, for the people and by the people. For people to make use of vote as a vigilant citizen deliberation of issues of national importance play important role.

The basic question which normally arise in the mind is whether the right to know can be part of the right to freedom of speech and expression. Judiciary has attempted and often expressed its rational opinion to include and to comprehend right to know as part of freedom of speech and expression. Right to receive information is one part of the right to freedom of speech and expression. This is because without receiving sufficient information, a person can't successfully engage in society, politics or culture or create a learned opinion or make a determination. The Hon'ble supreme court of India stated that the constitution gives all the citizen the freedom to speak and express themselves in addition to defending their right to knowledge about issues of public concern.

INTERNATIONAL AND INDIA'S PERSPECTIVE'S WITH REPECT TO FREEDOM OF SPEECH AND EXPRESSION

The Europeans demand for instruction on the state begin first in the England in the context of common law precedents is the freedom to express and spread opinions. Let us have look at some of the constitutions of the different countries which guarantee such freedom of speech and expression.

The first and the fourth amendment to the constitution of the United States, common laws in England.

Section 18(1)(e)(f)(g) of the constitution of Sri Lanka 1972

Section 298 of the government of India act 1935

By the end of the 18th century, the first declaration of fundamental rights had emphasized lot on the freedom of speech. Section 12 of the Virginia bill of rights. Adopted in the 1776, stated that the freedom of press is one of the pillars of the liberty and be restricted by the dictatorial governments in the context of English law. The first amendment of the American constitution by breaking the parliamentary supremacy of the English tradition. Congress is not allowed to pass legislation that restricts pressor the freedom of speech.

The unrestricted sharing of thoughts and opinions was declared to be one of the most precious rights of man in article 2 of the French declaration of man and citizen which was declared in the 1789 which also contains within it the message that all the citizens have the right to write, speak and publish without any restriction provide if he is held accountable to law for any misuse of right.

Within the ambit of criminal, the Germany in the 19th century provided protection for the freedom of speech and expression by prohibiting pure censorship. In 1948 United Nations conducted a conference on the topic knowing information which invited 54 nations to the conference.

When we view about such right in India. Constitution of India under the Art.19(1)(a) enshrines and guarantees the right to freedom of speech and expression. The supreme court of India have ruled in various instances were that right to express and speech extends even to spread of ideas which can be achieved by circulation of publication. Art. 19(2) states the grounds on which it will be restricted. Indian constitution allows both the individual and the corporation to claim and assert their fundamental right. Apart from that it is safe guarded from the intrusion of government as well as from the individual who tries to request the court to issue order which obstructs others freedom of speech and expression.

HATE SPEECH AS THREAT TO FREEDOM OF SPEECH AND EXPRESSION:

According to Michel Rosenfield defines hate speech as speech which designed to promote hatred on the basis of race, religion, ethnicity or national origin. According to him the hate speech can lead to complex problem in society which can lead to curtailment of such rights by the state in order to secure the law and order in the society. Human beings are commonly known and identified as rational being where they are expected to respect others view or opinion which also termed as political willingness.

The words have so much power where its impact can't be measured it can turn hopeless person to hopeful and depressed situation to happy situation and if it is not utilized properly, it can create greater damage to the society such as violence, riots and mob violence etc. India is witness to many of such incidents which lead to destruction of large number of people and property of the society. So having reasonable restriction in place like a break to apply whenever it is necessary it becomes imperative which are enshrined in the constitution of India in Art.19(2) which bestows on the state with the power to impose reasonable restriction on the right to freedom of speech and expression on the following grounds namely security of state, friendly relations with the foreign nations, public order, decency and morality or in relation to contempt of court, defamation, incitement to offence and in the interest of sovereignty and integrity of the India.

There exists a very thin line of difference between the hate speech and the right to speech. So, it becomes complex job to interpret with respect to such matter here where the role of judiciary begins. Where it interprets on the thin line of difference to uphold the right to freedom of speech and expression. Following are some of the cases the judiciary role with respect to right to speech and expression can be witnessed.

In A.K. Gopalan case the court justified the restriction on the free speech which are provided under article 19(2) on the utilitarian grounds: some restrictions are essential on freedom so that others may enjoy their freedom.

Virendra v State of Punjab,

The petitioner challenged the validity of the Punjab special power (PRESS)1956 passed by the state legislature when there was serious communal tensions between Hindus and Akali Sikhs over the question of partition of state on the linguistic and communal basis. Justice Sudhir observed Ranjan das observed "if a newspaper is prevented from publishing its own view or views of its correspondents, it is certainly a serious encroachment on valuable and cherished right to freedom of speech and expression.

In Babu Rao Patel vs State (Delhi admin)

The hon'ble supreme court was faced with the task of distinguishing speech violative of section 153a from political thesis and historical truths, which are what the authors of the two articles before the court claimed. The supreme court examining the two articles held that the first entitled, a tale of two communalisms" was An undisguised attempt to promote feelings of enmity, hatred and ill will between the Hindu and Muslim communities the reference to the alleged Muslim tradition rape, loot, violence and murder and the alleged terror struck into the hearts of Hindu minority in a neighbouring country by periodical killings, in the context of his thesis that communalism is the instrument of a militant minority can lead to no other inference.

Similarly on the scrutiny of the second article entitled “lingering disgrace of history” appears to be protest against the Delhi roads after mogul emperors, the supreme court held that it was convinced that both the articles do promote feelings of enmity, hatred and ill will between the Hindus and Muslims on grounds of community.

In *Joseph Bain D’Souza v State of Maharashtra*

The Bombay high court considered a public interest litigation praying for a writ of mandamus to direct the commissioner of police Bombay to register under section 153A and 153B IPC against the editor and the executive editor of Saamna for the editorials published during section 196(1) for the prosecution of these cases. After examining the various judgments on the section, the Bombay high court determined that while the motive in writing the articles and editorials may be not required but it must be read separately to determine their effect. After perusal and mentioning of necessary paragraphs from the articles the court in the *Joseph D’Souza* concluded as follows:

It is purported that criticism is levelled against anti national Muslims, who at the behest of Pakistan agents, poured poison in the minds of local Muslims and resulted in unprecedented riots. The main thrust of these articles is against anti national Muslims and the attitude of police and the government. In these articles reference is also made to respect Holy Quran which, according to the editor, not only belongs to the Muslims but to the whole humanity. In the said editorial appeal was also made to Muslim to forget the past and to join the main stream of public life in the India. It is true to some of these articles due to the emotional outburst high flown and on the basis of language used per se will not fall within the ambit of mischief of section 153A and 153B.

CONCLUSION:

It is very clear from the study conducted that right to freedom of expression and speech are the sole essence of the sound democracy. Because democracy and such right are inseparable where one can’t exist without the other at the same time it is very important for the government to have reasonable restriction on such freedoms for effective use of these freedom. There exists very thin line between the restrictable speech and right speech so it is the duty of the court to establish a just and defining line of difference which will lead to prevention of abuse or misuse of this particular right.

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