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BALANCING CREATIVITY AND CONSTITUTIONAL MORALITY: A CRITICAL STUDY OF THE MEESHA NOVEL CONTROVERSY

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ABSTRACT

N. Radhakrishnan v. Union of India (2018)¹ case analysis focuses on the basic freedom of speech and its application in the realm of literary works. The petition for the ban on the 'Meesha' novel, called for the sake of obscenity and degradation of women visiting the temples at the time, had aroused controversy about the acceptable edge between the fundamental rights of an individual and those of society in general. Justice Misra, as the Chief Justice, called for creative freedom, which is integral to a democratic society where ideas can develop and be exchanged. He added that any work would not be censored except when it insults or contains immoral content. The Court dismissed the lawsuit, exclaiming that if a book is considered bad merely on the grounds that it is disliked, its banning will not be necessary, and that before any expression gets censored, they must be sure that those restrictions serve the sole purpose of achieving important state interests. Comprehensive investigations of past legal precedents and literature demonstrate how the judiciary acts to balance constitutional rights while limiting governmental interference, without losing freedom of speech altogether. Albeit, despite the risky potential of the creation of the stereotypes and the trivialization of the social problems in the literature, the argument of carefully thinking over it gets a rise. In conclusion, it is vital to uphold the freedom of expression, and it is also adding the effect of involving feelings of religious and cultural sentiments. Then it further suggests measures to be taken in the protection of artists and writers. In summary, the case strives to highlight the delicate balance between the freedoms of the individuals and the basic values of the society that make a democratic country, and an intelligent approach is required for handling the collection of constitutional principles.

¹ N. Radhakrishnan v. Union of India, AIR 2018 SC 4154

KEYWORDS: - Freedom Of Speech and Expression, Creative Freedom, Judicial Balance, Societal Values, Constitutional Principles.

INTRODUCTION

According to Chief Justice Dipak Misra, “A writer or an author, while choosing a mode of expression, be it a novel or a novella, an epic or an anthology of poems, a play or a playlet, a short story or a long one, an essay or a statement of description or, for that matter, some other form, has the right to exercise his liberty to the fullest unless it falls foul to any prescribed law that is constitutionally valid”²

In the case of *N Radhakrishnan V. Union Of India*³, a petition was filed before the Supreme Court of India to ban the novel Meesha, which was published by a popular Malayalam weekly magazine, Mathrubhumi. The publication of the novel sparked different kinds of protest from a group of people, claiming that the dialogues in the text were insulting towards temple-going women. What is so problematic about this, as it is a mere text and every citizen has the Right To Freedom of Speech and Expression. After all, the Court rejected the ban, and accepted the difference of ambit of freedom.

The petition raised that the literary work was insulting and is derogatory to temple-going women which hurts their sentiments of a specified community. This was a writ petition filed under *Article 32 of the Constitution of India*⁴ seeking to ban the novel, Meesha. The case came before the bench comprising CJ Dipak Misra, Dr. D.Y. Chandrachud, and A.M. Khanwilkar. The then Chief of Justice of India, Dipak Misra observed that the practice of banning books would directly impact the flow of new ideas that nurture new minds. Also, it was noted that unless a book is disparaging or defamatory to any community for egregious obscenity and direct or covert censorship or ban of it would cause unrest and disquiet among the intelligentsia. In this particular case, the bench came across the primary issue was whether the novel was departing from what is normal, which resulted in inviting the imposition of reasonable restriction under *Article 19(2)*⁵. Along the journey of this case different questions that were

² Scconline, <https://www.scconline.com/blog/post/2018/09/05/ban-on-novel-meeshasubjective-perception-of-a-book-cannot-be-allowed-to-enter-legal-arena-for-censorship-petition-for-ban-dismissed-sc/>, (last visited 12th March 2024)

³ *Supra* note 1

⁴ INDIA CONST. art. 32

⁵ INDIA CONST. art. 19, cl. 2

unanswered from the point of *Freedom of Speech And Expression, Article 19(1)(a)*⁶, were discussed, such as the idea of freedom of expression in a multitudinous way, and the flow of creativity.

In a roadway of pre and post-cases, the Supreme Court observed that it does not have the power to restrict someone's speech, bring censor films, and ban books.

LITERATURE REVIEW

1. **Right to Constitutional Remedy**⁷

Article 32⁸ of the Indian Constitution provides a vital avenue for the enforcement and redressal of fundamental rights violations. It empowers individuals to directly petition the Supreme Court, serving as a crucial mechanism for ensuring accountability and upholding constitutional guarantees. This provision underscores the significance of not just enumerating rights but also establishing a concrete framework for their enforcement. Through Article 32, individuals are granted immediate access to judicial remedy, reinforcing the foundational principles of justice and rule of law in the Indian legal system.

2. **Upholding Creative Freedom: Supreme Court's Landmark Decision in N Radhakrishnan v. Union of India**⁹

A three-judge bench presided over by Chief Justice Dipak Misra decided on whether a book's allegedly obscene and offensive contents were enough to warrant a limitation under Article 19(2)¹⁰ of the Constitution. The petitioner alleged that these writings denigrated moral values, defamed places of worship and disturbed public order.

However, it considered that freedom of expression through creative work has to be recognized more than anything else as the court threw out the petition. The court declared that it was not entertaining any kind of obscenity or defamation in the dialogue, observed against banning books, thus supporting India's democratic principles like free

⁶ INDIA CONST. art. 19, cl. 1, Sub sec. A

⁷ Right to Constitutional Remedy, <https://www.jstor.org/stable/4408327?seq=2>, (last visited 12th March 2024)

⁸ *Supra* note 4.

⁹ GlobalFreedomOfExpression, <https://globalfreedomofexpression.columbia.edu/cases/n-radhakrishnan-v-union-india/#:~:text=Case%20Summary%20and%20Outcome&text=The%20Petitioner%20filed%20a%20Writ,belongs%20to%20a%20particular%20faith>, (last visited 12th March 2024)

¹⁰ *Supra* note 5.

speech and exchange of ideas. It therefore upheld liberty of thought and expression as being important in a democratic society, arguing against censorship unless content is defamatory or grossly obscene.

3. Safeguarding Fundamental Rights: The Role and Evolution of Article 32 in the Indian Constitution.¹¹

The Article 32¹² of the Indian Constitution lays down redressal avenues for persons whose fundamental rights are unduly violated. In Part III of the Indian Constitution which also incorporates the freedom of speech, the right to privacy, the right to safe environment and others has been provided and no matter if an individual is subjected to any of these violations, he/she has the right to approach the Supreme Court and enforces the violated rights. The moment article 32 was proposed, the issue of scope of article 32 during the emergency period was raised in the constituent assembly (now NITI AAYOG). As a result, the new constitution states that article 32 cannot be limited or suspended except during the time of emergency.

4. Censorship Of Democracy: The Unreasonable Restrictions On Freedom Of Speech And Expression In India.¹³

Freedom of speech and expression is one of the most significant rights that the Indian Constitution guarantees. This right makes sure that individuals are free to express their thoughts, to have different opinions and express dissent without being in fear of being persecuted by the government. Yes, this right is not absolute. Sometime reasonable limitations too have been applied to these rights by the Indian Constitution. On the other hand, however, there are other legal laws that undermine the freedom that this right provides.

5. Silenced voices: unraveling India's dissent crisis through historical and contemporary analysis of free speech and suppression.¹⁴

In India, the world's biggest democracy, the indisputable right to explicitly denounce rebellious activities is facing an opposition from the government due to the way the government responds to the violent and non-violent rebellious activities and its extra-judicial settlement of opposition. Censorship has evolved to the point, in which not only

¹¹ Libertatem, <https://libertatem.in/articles/why-is-article-32-of-the-constitution-of-india-regarded-as-the-heart-and-soul-of-the-indian-constitution/>, (last visited 12th March 2024)

¹² *Supra* note 4.

¹³ Ijllr, <https://www.ijllr.com/post/censorship-of-democracy-the-unreasonable-restrictions-on-freedom-of-speech-and-expression-in-india>, (last visited 12th March 2024)

¹⁴ Tandfonline, <https://www.tandfonline.com/doi/full/10.1080/13600834.2023.2249780>, (last visited 12th March 2024)

governments impose self control measures, yet individuals and groups as well, as they don't want to take the risk of prosecution if they speak their mind. These outcomes cover as well, the attitudes towards social media, where particular laws and policies have got to do with blocking and censoring provocative content on social media for the reason that it appears offensive or objectionable. Such barricades are usually vague in nature and the application of those barricades is very often rather arbitrary which, in its turn, produces intimidation effects over the use of free speech and the expression of diverse views. Also the Indian government lacks a coherent legal framework of hate speech, rather than only a few sections of the criminal code mentioned for hate speech. However, it is not clear how to totally define hate speech and thus lacks to limit its scope.

CASE ANALYSIS AND CRITICAL ANALYSIS

CHAPTER-1

The Supreme Court in the *N. Radhakrishnan v. Union of India*¹⁵ case held that initiating a ban on the vernacular novel 'Meesha' would amount to censorship. One of the lines was considered detestable due to its offense handed to the religious sensibilities of the people of a particular faith. The court considered all the evidence and ruled in favour of the author upholding the bedrock of freedom of speech. No matter how progressive the ruling was from the court's bench, such an acceptance of the malicious claim encourages impunity. The fact that the proceedings infringed on the foundation of the separation of powers and the very heart of the fundamental right of freedom of expression was a mistake that unintentionally promulgated tenets contrary to the concept of an independent judiciary.

Finally, in the wake of that judgment, the main thread of the framework has seriously distorted the independent operation of the legislative, Executive, and Judiciary arms of government and advocated for ideas that are contrary to freedom of expression for example. As it is evident the doctrine of the separation of powers was reduced to pieces, the main idea of the freedom of expression and dissemination has been disapproved.

Though very likely the Constitution Bench hearings were at the center of his attention since the

¹⁵ *Supra* note 1.

outset of his tenure as the Chief Justice, it is possible that Article 19(1)(a)¹⁶ would still be fine for his retirement. That hope has, now, been declared invalid because of the decision made by the court in the Meesha book ban case today. In some ways, this judgment is worse than the ones that have preceded it, because of its insidious character: it is like a sugar-coated toxic shot.

On the way to adjudication, the Court quoted several earlier decisions. Among them are *Bobby Art International v. Om Pal Singh Hoon, 1996*¹⁷, *Raj Kapoor v. State, 1980*¹⁸, and *Samaresh Bose v. Amal Mitra, 1985*¹⁹. The Court recalled the historical saying that creative writing is knowledgeable disobedience to intellectual cowardice and intellectual chickenshit. The judge thought that the character Meesha reflects all the various circumstances of life, including having good or bad experiences. It cannot be said for sure that the figure is the author's imagination. It is a fact that the figure is the chairperson of her imagination. The language in the dialogue may be rude but it does not mimic at all any form of obscene language. The conversation objected to is no exception, it is not willed to create a sensation. This will be the result of the book being banned on these allegations: no creativity will occur. This interference might be regarded as a sort of art massacre. Therefore, the level of the court found that, given all is said above, the petition was unfounded.

Hence, in the case of Meesha it simply bypasses the equilibrium of the two rights and attempts to annul this equilibrium by empowering judiciary to do things that it has no constitutional authority to do. The admission of the petition means that similar submissions in the form of PIL can be made by anyone seeking refuge in the courtroom, which in turn leads to the banning of the particular writing work. Nevertheless, it is the state that, by virtue of the fact that it is the first government institution, should make a decision about these defamations, but now the judicial system is one that can receive such a petition and has the possibility of imposing an inhibition on the freedom of expression. Now, the Judiciary will have an additional power to limit liberties and authors in particular, whereas with the only random selection of Public Interest Litigation judgements as few in favor of the petitioners can be expected. The judgment, however, makes a noxious addition that may over time, under the radar, install a novel restriction on the freedom of expressing opinions; one that is created by unelected people

¹⁶ *Supra* note 6.

¹⁷ *Bobby Art International v. Om Pal Singh Hoon*, AIR 1996 SC 1846

¹⁸ *Raj Kapoor v. State*, 1980 AIR 258, 1980 SCR (1)1081

¹⁹ *Samaresh Bose v. Amal Mitra*, AIR 1986 SC 967

outside of the court and is less than judicial. In the end, such a case might direct forces to bearing correct and constitutional thought, though the detachment of procedural rules creates a very dangerous and illegal precondition.

CHAPTER-2

The cases of *Ranjit D. Udeshi vs State Of Maharashtra*²⁰ and *N Radhakrishnan v Union of India* are both constitutional challenges that involve people rights versus governmental actions. On the contrary, the latter one focuses on problems associated with freedom of expression as well as cases of alleged obscenity. Both the cases albeit with different legal situations, reinstate the role of judiciary in upholding fundamental rights and governmental accountability by providing jurisdiction of Indian Constitution

"In *Kedarnath Singh vs. State of Bihar*²¹, the court upheld criminal defamation laws though the importance of free speech was underlined within reasonable limits." In *N. Radhakrishnan v Union of India (2018)*²², the court ruled that people convicted of serious criminal offenses cannot stand for elections, thus enhancing the electoral integrity. The two cases clearly illustrate that the substance of Article 32 is protection of basic rights. Kedarnath Singh achieved the balance between free speech and reputation protection, while N. Radhakrishnan made sure of ethical standards in governance. They, altogether, make the story of the evolution of the jurisprudence of protecting fundamental rights in India; however, they also project the Supreme Courts' determination to maintain the constitutional principles.

On the case of *Samaresh Bose v. Amal Mitra & Anr. (1995)*, the matter of defamation, as related to speech freedom, was the issue. It guaranteed the right to reputation and sides with free speech; however, both need to be balanced out. In a similar way the *N. Radhakrishnan v Union of India (2018)* decision dealt with the integrity of elections process by preventing those connected with heinous criminal offenses from contesting elections. In either of the instances, the judiciary is seen as trying to reconcile the fundamental rights which may be the need for fair-mindedness in defamation cases or a credible governance in elections. The aforementioned implements reflects the fact that the same values go in tandem with the interpretation and implementation of laws.

²⁰ Ranjit D. Udeshi vs State Of Maharashtra AIR 1965 SC 881

²¹ Kedarnath v State of Bihar, 1962 AIR 955

²² *Supra* note 1

In the cases *K. Sirisha vs. The State of Telangana*²³ and *N. Radhakrishnan v. Union of India* the plaintiffs assembled their constitutional arguments within the framework of constitutionality in India. The presented cases construed the judiciary as an indispensable factor in maintaining the democratic principles in the constitutional order, such as the protection of personal freedoms and the separation of powers. Correlation here is that of constitutional focus: their languages could be used as tools for addressing basic human rights, and appropriate distribution of individual freedoms and state accountability.

Both *Naraindas Indurkhya vs The State Of Madhya Pradesh & Ors*²⁴ and *N Radhakrishnan v Union of India*²⁵ exemplify the Indian judiciary's role in safeguarding fundamental rights against government encroachment. The former, a case from 1974, likely addressed issues pertinent to civil liberties or governmental overreach, reflecting concerns about individual freedoms.

Similarly, *N Radhakrishnan v Union of India* presumably dealt with contemporary constitutional challenges, emphasizing the importance of protecting personal liberties enshrined in the Indian Constitution. Both cases underscore the judiciary's commitment to upholding the rule of law and ensuring governmental accountability, thereby reinforcing the foundational principles of democracy and justice.

In addition, both the cases of *Bobby Art International v. Om Pal Singh Hoon*²⁶ and *N. Radhakrishnan v. Union of India* attest to the constantly evolving definition of the freedom of speech and expression, particularly through the creative works. Bobby Art International, where the judiciary focused on a film's censorship, with a main goal to prevent unsubstantiated restrictions on freedom of art expression. Along with this, N. Radhakrishnan also was faced with censorship problems regarding another project and stressed that a sensitive approach to censorship is crucial so as not to suffocate the creative process. These incidents illustrate the judiciary's constitutional duty of safeguarding the citizens' right to free speech and simultaneously acknowledging the validity of some well-founded concerns such as public morality. They create the judicial yardstick for the justification of individual rights with community value in the sphere of artistic departures.

²³ *K. Sirisha vs. The State of Telangana*, AIR 2022

²⁴ *Naraindas Indurkhya vs The State Of Madhya Pradesh & Ors*, AIR 1974 SC 1252

²⁵ *Supra* note 1

²⁶ *Supra* note 2.

A case, labeled *Vineet Jindal vs Union Of India*,²⁷ where the government regulations introduced by the Ministry of Information have been challenged and concerning freedom of expression or media regulation maybe. The case *N Radhakrishnan v Union Of India*²⁸ deals with broader constitutional issues in relation to individual rights and government powers especially focusing on right to privacy and personal liberty. Both cases are about acts of Government that impact on individual rights but the legal arguments and factual situations may not be similar in both these cases. However, they stress the role of judiciary in safeguarding constitutional liberties and ensuring check upon governmental activities.

The case *Nachiketa Walhekar v. CBFC*²⁹ and *N Radhakrishnan v. the Union of India*, both relate to freedom of speech and expression in India. In this case, the Supreme Court stressed on artistic independence and upheld the freedom of speech by stating that the function of CBFC ought to be restricted to certification and not censorship. Just the same, in *N Radhakrishnan* case, the Supreme Court reevaluated the connotation of free speech and ruled out some provisions. Since they are considered unlawful infringement on artistic freedom. There is strong effort to protect the individual liberties and a free speech culture in India by the judges in both the cases. Simultaneously, the proper limits of our state authority are recognized in these cases.

According to Telangana High Court, *A. Ramakrishna Reddy vs The State Of Telangana*³⁰ and *N Radhakrishnan v Union of India* which are cases that have a high legal significance involving private rights against the government. In the former case, the presentation could be related to specific issues in the state of Telangana regarding governance and regulations. On the other hand, the second case involves the broader constitutional issues at the national level of India but in context of fundamental rights and powers of the government specified under the Constitution. Even with the background settings different, the message conveyed by both cases is that the judiciary is the fundamental part in protecting the rights of the individuals and ensuring government accountability, hence, enabling the rule of law and constitutional principles.

²⁷ Vineet Jindal vs Union Of India, AIR 2021

²⁸ *Supra* note 1.

²⁹ *Nachiketa Walhekar v. CBFC*, (2018) 1 SCC 778

³⁰ *A. Ramakrishna Reddy v. State of Telangana*, 2022 SCC OnLine TS 576

In the *Adarsh Cooperative Housing Society Ltd. v. Union of India*³¹ and *N. Radhakrishnan v. Union of India*³² felt the ills of governance, transparency and accountability constantly lurching them in a discomfoting manner. In the case, the Supreme Court of India firmly concerned itself to resolve complaints on corruption and indiscretions in a plot of land granted and approvals accorded for a plan layout and design of a housing society situated in Mumbai, stressing on the necessity of honesty in the public office and administration. Also, in the above case of N. Radhakrishnan it was made worry of misuse of power and corruption especially those in the allocation of public resources. Both situations are illustrative of the judiciary's role in maintaining the rule of law, providing accountability, and sabotaging the process of formal governing through committed institutions as a matter of contributing to the broader dialogue on open government and ethical governance in the current scheme of democratic governance in India.

In the case of *Bennett Coleman & Co v. Union of India (1972)*³³, The Supreme Court upheld the constitutional validity of pre-censorship laws concerning freedom of speech and expression, citing public interest as a justification. Conversely, in *N Radhakrishnan v Union of India*, the Supreme Court reiterated the importance of free speech, emphasizing its fundamental nature in a democratic society. The court recognized limitations on government interference, asserting that restrictions must be narrowly tailored to serve compelling state interests. These cases reflect the delicate balance between individual liberties and state interests in Indian constitutional jurisprudence regarding freedom of speech.

The Supreme Court of India reaffirmed the rule of free speech and expression in *S. Rangarajan v. P. Jagjivan Ram (1989)*³⁴, emphasizing that limitations on speech should be based on narrowly tailored measures that help the state fulfill its compelling public needs. The defendant sought to challenge the order which prohibited a film because authorities deemed it offensive. The court sequentially passed the ruling: no public order should be applied to constrain the expression if it only makes the public restless or annoys them. This decision in fact raised a powerful signal by the nature of which it emphasized the importance of democracy in a free speech society.

³¹ *Adarsh Cooperative Housing Society Ltd. v. Union of India*, AIR 2018 SC 1430

³² *Supra* note 1.

³³ *Bennett Coleman & Co v. Union of India* , AIR 1973 SC 106

³⁴ *S. Rangarajan v. P. Jagjivan Ram* , 1989 SCR (2) 204

In one more leading case, *Shreya Singhal v. Union Of India, 2015*³⁵. *N. Radhakrishnan v. Union of India*,³⁶ freedom of speech is again put in question and finally confirmed. In such a case, the Supreme Court laid out an element of liberty where it ruled invalid the provision of the Pre- Censorship Act, which allows authorities to prevent publication of things they find offensive. During the case, the court maintained that the freedom of speech and expression comes first of all; the act of pre-censoring the press, therefore, violates this fundamental right and, as a consequence, damages democracy itself. These cases point to the fair earnestness with which Indian Courts try to preserve and maintain free speech by accommodating more of this right every now and then.

The cases of *Viacom 18 Media Private Limited and Ors vs Union of India*³⁷ and *N. Radhakrishnan vs Union of India* are concerned with the individual right to freedom of speech and expression of the Indian Constitution. In *Media Private Limited*, the Supreme Court laid its focus on the need for media freedom and said that it was a wrong practice to suppress the news content by government agencies. Furthermore, in the case of *N.Radhakrishnan* the court reiterated an individual's right to criticize government practice and referred to dissent as a key factor in democratic development. These cases confirm the Court's determination to preserve free speech from all overreaching authorities. They understand the part of the court as a guardian of constitutional rights, enabling people to participate in the political process without any threat of state authoritarianism and thus deepening both democratic principles and accountability.

CASE COMMENT

Through the case of *N Radhakrishnan V. Union Of India*,³⁸ the novel 'Meesha' was not banned as that might amount to censorship. The controversy draws from here, the author has a difficult time portraying the female characters effectively. For many critics, the tone the novel takes as regards women is oversimplified and lacks any complexity. The figure of a female character is mostly linked to a male character given that she is either treated as a sex object or a source of conflict. This one-dimensional version of women not only side-lines them from the active

³⁵ *Shreya Singhal v. Union Of India, 2015, AIR 2015 SC 1523*

³⁶ *Supra* note 1.

³⁷ *Viacom 18 Media (P) Ltd. v. Union of India, (2018) 1 SCC 761*

³⁸ *Supra* note 1.

engagement of society but also still keeps the patriarchal cloud of negative sexist attitudes.

Women might realize that they are facing a common problem like discrimination, violence, or social stigma based on these traditional attitudes which would prevent them from getting the most out of society and making use of the resources available therein. Through this acknowledgment of the complications behind the cited phenomena and encouraging gender equality and women empowerment, we can be able to create a cohesive and respectful society that serves everyone.

Even though it may be a literary masterpiece considered in terms of style and narrative, all literary devices should not gain it by the stereotypes that are being perpetuated, the ideas that are being reinforced, and the issues that are being trivialized. Regarding reading and evaluation of pieces of work like "*Meesha*," it is the readers' and critics' responsibility to treat them critically and reflect on the repercussions they produce.

CONCLUSION

To conclude, the case revolves around the "Freedom of Speech and Expression and the Right to approach the Supreme Court for constitutional remedies". The Court truly perceived that literary compositions, e. g. novels, are the ones that are capable of forming and expressing public discourse. The doctrine advocates that any restrictions on freedom of expression need to be necessary, minimally invasive, and motivated by a societal/community interest in order to be lawful. Moreover, the Court held that the threats uttered against the author and the publisher severely restricted their freedom of expression thereby establishing the blatant infringement of this right. The event highlighted the tight rope that freedom of speech and thoughts strides on the protection of religious sentiments. While the freedom of expression is a main point, this right needs to be exercised responsibly by considering the general feelings and potential consequences. The case along with the above mentioned points also raised about the censorship's impact on creative freedom.

In addition, the Court underlined its mandate to guarantee that the state should rise to the challenge of protecting the citizens and institutions in exercising their freedom of speech and expression. It prescribed the government to secure the protection and safety of the artists, writers and publishers so that they have an environment where they can think of and execute creative ideas without any intimidation.

SUGGESTION

After going through the case law in detail we came across different loopholes or points that the Court forgot to take a look into. The decision was arbitrary, but religious emotions and also gender emotions should also be considered while passing the judgements. The following are the suggestions that we perceived:-

- 1) The right to freedom of speech and expression should not overlap with religious and cultural beliefs.
- 2) The freedoms given to the press also involve the duty to respect the feelings and emotions of women and men equally.

