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FREEDOM OF SPEECH AND EXPRESSION AND OBSCENE AND INDECENT ADVERTISEMENTS AND DISPLAYS

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INTRODUCTION

The ability to think and speak freely, as well as obtain information from others through publications and public discourse, without fear of retribution, restriction, or repression by the government, is the essence of free speech. Article 19(1) (a) of the Constitution of India states, “right to freedom of speech and expression.”

The philosophy underlying this Article can be found in the Constitution’s Preamble, where a solemn resolve is made to guarantee liberty of thought and expression to all of its citizens. The exercise of this right, however, is subject to “reasonable restrictions” for specific purposes imposed by Article 19(2) of the Indian Constitution.

Nothing in subclause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restriction on the exercise of the right conferred by the said subclause, all citizens shall have the clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality , or in the interests of the republic of India.

Main elements of right of freedom of Speech and Expression:

1. This right is available only to Indian citizens, not to foreign nationals.
2. According to Article 19(1)(a), freedom of expression includes the right to express one’s views and opinions on any issue through any medium, such as words of mouth, writing, printing, picture, film, movie, and so on.
3. This right, however, is not absolute, and it allows the government to enact laws to impose reasonable restrictions in the interests of India’s sovereignty and integrity,

security, friendly relations with foreign states, public order, decency, and morality, and contempt of court, defamation, and incitement to an offence.

4. This restriction on any citizen's freedom of speech may be imposed by the State's action as well as its inaction. Thus, failure on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of Article 19(1)(a).

Meaning of Freedom of Speech and Expression

The Indian Constitution guarantees its citizens a number of fundamental rights. Article 19's right to freedom is one such important right. This includes the right to free speech and expression, the right to assemble peacefully and without arms, the right to form associations and unions, the right to move freely throughout India's territory, the right to reside and settle in any part of India's territory, and the right to practise any occupation, trade or business.¹

The right to freely express one's own conviction and opinions through words of mouth, writing, printing, pictures, or any other mode is referred to as freedom of speech and expression. Thus, it includes the expression of one's idea through any communicable medium or visible representations such as gesture, signs, and so on. The expression also implies publication, so press freedom is included in this category. The freedom of the press is regarded as a species, with freedom of expression as a subspecies. The free dissemination of ideas is a necessary goal, which can be accomplished on the platform or through the press.

Importance of Freedom of Speech and Expression

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all the liberties". – John Milton²

John argued that without human freedom, no progress in science, law, or politics could be made, which he believed required free debate. Mill's *On Liberty*, published in 1859, became a classic defence of the right to free expression. According to John, truth drives out falsity, so free expression of ideas, true or false, should not be feared. The truth is neither stable nor fixed, but rather evolves over time. John also argued that free debate is required to avoid the "deep

¹ B, L. Freedom Of Speech And Expression. Retrieved August 13, 2022, from <https://www.legalserviceindia.com/legal/article-77-freedom-of-speech-and-expression.html>

² B, L. Freedom Of Speech And Expression. Retrieved August 13, 2022, from <https://www.legalserviceindia.com/legal/article-77-freedom-of-speech-and-expression.html>

slumber of a decided opinion.” The discussion would propel the march of truth forward, and by considering false views, the foundation of true views could be re – affirmed.

Case:- John Rast v. Deman & Lewis Company

In this case Mr. Justice Mckenna, dealing with advertisement said:-

Advertising is simply the identification and description of quality and location. Its sole purpose is to draw attention to the article to be sold, and the acquisition of the article to be sold is the only inducement to purchase it. “The above advertisement adopts the same characteristics as the object it seeks to promote or bring to the public’s attention to be used by it. There are numerous examples that demonstrate that advertisements dealing with trade and business are related to the item “business or trade” rather than “free speech.” Because an opinion only has intrinsic value to the person who holds it, silencing the expression of the opinion is an injustice to a fundamental human right. According to Mill, the only time speech can be justifiably suppressed is to prevent harm from a clear and direct threat. Neither the economic or moral implications, nor the speaker’s own well – being, would be justify speech suppression³.

Today, a new era of advertising has emerged that is both cost – effective and efficient on a global scale. Online advertising is the fastest growing advertising medium, and it has proven its effectiveness and stability in the advertising world. Advertising has a profound impact on how people understand life, the world, and themselves in a developing economy like India, particularly in terms of their values, choices, and behaviour. Advertising is regarded as the bedrock of our socioeconomic system, serving as the lifeblood of free media by covering costs and making media widely available. Before creating and displaying advertisements for a specific audience, advertising agencies conduct extensive research. Few platforms dominated the advertising market, providing an opportunity for advertisers to spread their message and market their product.

Right To Advertisement As A Part of Freedom of Speech and Expression

Advertising which is nothing more than a commercial transaction, is nonetheless the dissemination of information about the advertised product. The information made available through advertising benefits the general public. A free flow of commercial information is

³ Advertisement and Freedom of Speech and Expression. Retrieved August 10, 2022, from <http://www.legalservicesindia.com/article/1317/Advertisement-and-Freedom-of-Speech-and-Expression.html>

essential in a democratic economy. Without being educated by the information disseminated through advertisements, there can be no honest and economical marketing by the general public.

The economic system of a democracy would be hampered if there was no freedom of “commercial speech,” and when viewed from another perspective, the public at large has a right to receive “commercial speech.” Article (19) (1) (a) not only guarantees freedom of speech and expression, but it also protects an individual’s right to listen to, read, and receive the said speech. In terms of a citizen’s economic needs, the information disseminated through advertisements must guide their fulfilment⁴. An advertisements providing information about a life – saving drug may be far more important to the general public than to the advertiser, who may be motivated solely by commercial considerations.

An advertisement is, without a doubt, a form of speech, but it’s true character is reflected by the object for which it is used. It assumes the characteristics and elements of the activity under Article 19(1), which it seeks to aid by bringing to the public’s attention. When it takes the formal of a commercial advertisement with an element of trade or commerce, it no longer falls under the concept of free speech because the object is not the propagation of ideas’ social, political, or economic, or the advancement of literature or human thought; but, as in this case, the commendation of the efficacy, value, and importance in the treatment of specific diseases by certain drugs and medicines. In this case, advertising is a necessary part of doing business.

The supreme court of India has held that hosting the National Flag by citizens is a form of freedom of speech expression in **Union of India v. Naveen Jindal and Anr.**

Case:- Virender v. State of Punjab and Sakal Paper v. Union of India

In this case, it was held that, there is no separate grantee of freedom of press, and it is included in the freedom of expression, which is conferred on all citizens. This decision also established that the freedom of the press under the Indian Constitution is not superior to the freedom of the ordinary citizen.

⁴ Advertisement and Freedom of Speech and Expression. Retrieved August 10, 2022, from <http://www.legalservicesindia.com/article/1317/Advertisement-and-Freedom-of-Speech-and-Expression.html>

Case:- Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal (1955) 5 SCC 161, SC

In this case, the Supreme Court held that, while commercial advertising is a form of speech, its true character is reflected by the object for which it is employed. Only when an advertisement is concerned with the expression or propagation of ideas can it be said to be concerned with the expression and speech. The determining factor is the object and purpose for which the advertisement is published. When dissemination of ideas and thoughts is insignificant, but the real purpose and object is the promotion of sales of goods and services and personal benefit without any social purpose, commercial advertisement cannot have the same constitutional protection as social or political speeches⁵.

Case:- Mahesh Bhatt and Anr v. Union of India, 147 (2008)

This was the another landmark decision on the subject – in this case, the Writ Petitions challenged the legality and validity of some provisions of the Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply, and Distribution) Act, 2003, under which “advertisement” was defined to include any visible representation by way of notice, circular, label, wrap⁶.

Case:- Tata Press Limited v. Mahanagar Telephone – Nigam, 1955 AIR 2438

In this case it was held that, it cannot be said that every advertisement is a matter of free speech or an expression of ideas. In each case, the nature of the advertisement and the activity covered by Article 19(10) must be considered. The advertisement in this case are about commerce or trade, not about spreading ideas; and advertising of prohibited drugs or commodities whose sale is not in the best interest of the general public cannot be speech under the definition of free speech and would not fall under Article 19(1)(a). The main purpose and true intent and aim, object and scope of the Act is to prevent self – medication or self – treatment, and advertisements endorsing specific drugs and medicines have been prohibited to that end.

⁵ Advertisement and Freedom of Speech and Expression. Retrieved August 10, 2022, from <http://www.legalservicesindia.com/article/1317/Advertisement-and-Freedom-of-Speech-and-Expression.html>

⁶ Advertisement and Freedom of Speech and Expression. Retrieved August 10, 2022, from <http://www.legalservicesindia.com/article/1317/Advertisement-and-Freedom-of-Speech-and-Expression.html>

OBSCENITY

Obscenity is a global and complex issue because it is linked to other issues such as decency and morality, which differ from society to society. What is immoral for one person may not be for another. Because of the cultural, religious, and social diversity in our society, it is difficult to provide a precise and particular definition of obscenity. It is true that the definition of obscenity. It is true that the definition of obscenity varies from time to time. What is obscene today should not be considered obscene in the future. Both Indian laws and the Supreme Court were unable to define obscenity. Indian courts initially adopted the Hicklin test, but later deviated to another test to define obscenity.

The first condition of liberty is freedom of speech and expression. It has preferred position in the liberty hierarchy, providing support and protection to all other liberties. It truly has been said that it is the mother of all liberties. It has been referred to as a “basic human right,” “natural right,” and other terms.

The preamble to India’s constitution resolves to guarantee citizens’ liberty of thought, expression, and belief. Article 19(1)(a) of India’s constitution guarantees citizens freedom of speech and expression, from which the media derives its right to “freedom of press.” However, because this right is not absolute, it is subject to certain limitations, the parameters of which are defined by the Constitution itself. These restrictions are commonly referred to as “reasonable restrictions,” and they are outlined in clause 2-6 of Article 19 of the Indian Constitution. These grounds are the state’s sovereignty and integrity, security, friendly relations with foreign countries, public order, decency and morality, contempt of court, defamation and incitement to an offence. The State may, by law, limit the enjoyment of the freedoms enshrined in Article 19(1). The use of the state’s power to limit freedoms through legislation is known as executive action.

Grounds For Restriction

In a democracy, it is necessary to maintain and preserve freedom of speech and expression, but it is also necessary to limit this freedom in order to maintain social order. There can be no absolute or completely unrestricted freedom. Article 19(2) specifies the grounds for imposing reasonable restrictions on freedom of speech and expression:

a) Security of State:

In the interest of state security, reasonable restrictions on freedom of speech and expression can be imposed under Article 19(2). The term ‘security of state’ refers only to serious and aggravated forms of public disorder, such as rebellion, war against the state, and insurrection, rather than ordinary breaches of public order and public safety, such as unlawful assembly, riot, and affray.⁷

b) Public Order

The Constitution (First Amendment) Act of 1951 also included this ground. The concept of ‘public order’ is broader than state security. Public order is a broad expression that refers to the state of tranquillity that exists among members of political society as a result of internal regulations imposed by the Government that they have established. Public order is more than just keeping the law and order.⁸ The test for determining whether an act affects law and order or public order is to see if the act causes disturbances in the community’s current life, amounting to a disturbance of public order, or if it affects only an individual, leaving the society’s tranquillity undisturbed.

Anything that disrupts public tranquillity or peace disrupts public order. Thus, communal disturbances and strikes organised solely to cause unrest among workers are violations of public order. Thus, public order denotes the absence of violence and an orderly state of affairs in which citizens can go about their daily lives peacefully. As a result, causing internal disorder or rebellion would have an impact on public order.

c) Decency or Morality

These are terms with variable content that have no fixed meaning for ideas about decency or morality; they vary from society to society and over time depending on the moral standards that prevail in the current society. Thus, the term morality and decency have a broad range of meanings. Section 292 – 294 of the Indian Penal Code provide examples of restrictions on freedom of expression in the name of decency or morality. These sections make it illegal to sell, distribute, or display obscene words, etc. in public places.⁹

⁷ Kumar, A. Freedom of Speech and Expression [Article 19(1)(a)] - Indian Polity. Retrieved August 16, 2022, from <https://byjus.com/free-ias-prep/freedom-of-speech/>

⁸ Kumar, A. Freedom of Speech and Expression [Article 19(1)(a)] - Indian Polity . Retrieved August 16, 2022, from <https://byjus.com/free-ias-prep/freedom-of-speech/>

⁹ B, L. Freedom Of Speech And Expression. Retrieved August 13, 2022, from

CONCLUSION

It is easy to conclude that the right to free expression is one of the most important fundamental rights. It includes expressing one's opinions verbally or in writing, as well as through audio – visual media, advertisements, or any other form of communication. It also includes the right to information, freedom of the press, and so on. As a result, this fundamental right has a broad scope. According to the preceding case law analysis, the Court has always placed a broad interpretation on the value and contents of Article 19(1)(a), making it subject only to the restrictions permitted by Article 19(1)(a)(2). Attempts by intolerant authorities to curtail or choke this freedom have always been rebuffed, especially when public officials have betrayed tyrannical tendencies.

