

LETTER FROM THE EXECUTIVE BOARD

Greetings Members!

It gives me immense pleasure to welcome you to this simulation of STAKEHOLDERS . We look forward to an enriching and rewarding experience.

The agenda for the session being 'Freedom of speech and expression with special emphasis on sedition and privacy' .This study guide is by no means the end of research, we would very much appreciate it if the leaders are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!

Executive Board

Abhinav Naryan Jha

(Moderator)

Introduction

The freedom of speech is regarded as the first condition of liberty. It occupies a preferred and important position in the hierarchy of liberty, it is truly said about the freedom of speech that it is the mother of all other liberties. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. In modern time it is widely accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all time. The first principle of a free society is an untrammelled flow of words in an open forum. Liberty to express opinions and ideas without hindrance, and especially without fear of punishment plays significant role in the development of that particular society and ultimately for that state.

It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

Freedom of speech is guaranteed not only by the constitution or statutes of various states but also by various international conventions like Universal Declaration of Human Rights, European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights etc. These declarations expressly talk about protection of freedom of speech and expression. It is one of the fundamental rights of the Constitution of India.

Why to Protect Freedom of Speech

Speech is a medium of one's expression. It's a way for a human being to express his or her thoughts. It is what segregates social animals from others and forms the basic foundation of human society. There are many contradictions and similarities between human rights and constitutional rights, but the right to freedom of

expression concentrates on both areas being an important element of social and political life. Nevertheless, the proper implementation and extent of these rights are questioned.

Freedom of speech offers human being to express his feelings to other, but this is not the only reason; purpose to protect the freedom of speech. There could be more reasons to protect these essential liberties.

There are four important justifications for freedom of speech:-

1. For the Discovery of Truth by Open Discussion

According to it, if restrictions on speech are tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.

2) Free Speech as an aspect of Self-fulfillment and Development

Freedom of speech is an integral aspect of each individual's right to self-development and self-fulfillment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth. It helps an individual to attain self-fulfillment.

3) For Expressing Belief and Political Attitudes:

Freedom of speech provides an opportunity to express one's belief and show political attitudes. It ultimately results in the welfare of the society and state. Thus, freedom of speech provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

4) For Active Participation in democracy

Democracy is the most important feature of today's world. Freedom of speech is there to protect the right of all citizens to understand political issues so that they can participate in the smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in decision-making.

Thus we find that protection of freedom of speech is very much essential. Protection of freedom of speech is important for the discovery of truth by open discussion, for self- fulfillment and development, for expressing belief and political attitudes, and for active participation in democracy. The present study is intended to present the provisions of the American and Indian Constitution which recognize the freedom of speech and expression, the basic fundamental rights of human beings. It is also to be examined what is the judicial trend in interpreting the freedom of speech and expression provisions. The study also covers the comparison between the approaches of both countries as far as freedom of speech is concerned.

New Dimensions Of Freedom Of Speech And Expression

● Government has No Monopoly on Electronic Media :

The Supreme Court widened the scope and extent of the right to freedom of speech and expression and held that the government has no monopoly on electronic media and a citizen has under Art. 19(1)(a) a right to telecast and broadcast to the viewers/ listeners through electronic media television and radio any important event. The government can impose restrictions on such a right only on grounds specified in clause (2) of Art. 19 and not on any other ground. A citizen has the fundamental right to use the best means of imparting and receiving communication and as such have access to telecasting for the purpose.

● Commercial Advertisements:

The court held that commercial speech (advertisement) is a part of the freedom of speech and expression. The court however made it clear that the government

could regulate the commercial advertisements, which are deceptive, unfair, misleading and untruthful. Examined from another angle the Court said that the public at large has a right to receive the "Commercial Speech". Art. 19(1) (a) of the constitution not only guarantees freedom of speech and expression, it also protects the right of an individual to listen, read, and receive the said speech.

- **Telephone Tapping: Invasion on Right to privacy:**

Telephone tapping violates Art. 19(1) (a) unless it comes within grounds of restriction under Art. 19(2). Under the guidelines laid down by the Court, the Home Secretary of the centre and state governments can only issue an order for telephone tapping. The order is subject to review by a higher power review committee and the period for telephone tapping cannot exceed two months unless approved by the review authority.

Freedom of Press

The fundamental right of the freedom of press implicit in the right, the freedom of speech and expression, is essential for the political liberty and proper functioning of democracy. The Indian Press Commission says that "Democracy can thrive not only under the vigilant eye of legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which opinion can become articulate." Unlike the American Constitution, Art. 19(1)(a) of the Indian Constitution does not expressly mention the liberty of the press but it has been held that liberty of the press is included in the freedom of speech and expression. The editor of a press for the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press. Freedom of press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws or administrative actions, which interfere with it contrary to the constitutional mandate .

Right to Information

The right to know, 'receive and impart information has been recognized within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. The right to know has, however, not yet extended to the extent of invalidating Section 5 of the Official Secrets Act, 1923 which prohibits disclosure of certain official documents. One can conclude that 'right to information is nothing but one small limb of right of speech and expression.

Grounds of Restriction

Clause (2) of Article 19 contains the grounds on which restrictions on the freedom of speech and expression can be imposed:

1) Security of State

Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of State. The term "security of state" refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State.

2) Friendly Relations with Foreign States

This ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardise the maintenance of good

relations between India, and that state. No similar provision is present in any other Constitution of the world. In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest in friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government.

It is to be noted that member of the commonwealth including Pakistan is not a "foreign state" for the purposes of this Constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.

3) PublicOrder

This ground was added by the Constitution (First Amendment) Act. 'Public order' is an expression of wide connotation and signifies "that state of tranquillity which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established."

Public order is something more than ordinary maintenance of law and order. 'Public order' is synonymous with public peace, safety and tranquillity. The test for determining whether an act affects law and order or public order is to see whether the act leads to the disturbances of the current of life of the community so as to amount to a disturbance of the public order or whether it affects merely an individual being the tranquillity of the society undisturbed.

Anything that disturbs public tranquillity or public peace disturbs public order. Thus communal disturbances and strikes promoted with the sole object of causing unrest among workmen are offences against public order. Public order thus implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. Public order also includes public safety. Thus creating internal disorder or rebellion would affect public order and public safety. But mere criticism of government does not necessarily disturb public order. In its external aspect 'public safety' means protection of the country from foreign aggression. Under public order the State would be entitled to prevent propaganda for a state of war with India.

The words 'in the interest of public order' includes not only such utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. Thus a law punishing utterances made with the deliberate intention to hurt the religious feelings of any class of persons is valid because it imposes a restriction on the right of free speech in the interest of public order since such speech or writing has the tendency to create public disorder even if in some case those activities may not actually lead to a breach of peace. But there must be a reasonable and proper nexus or relationship between the restrictions and the achievements of public order.

4) Decency or Morality

The words 'morality or decency' are words of wide meaning. Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fix standard is laid down till now as to what is moral and indecent. The standard of morality varies from time to time and from place to place.

5) Contempt of Court

Restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. According to Section 2 'Contempt of court' may be either 'civil contempt' or 'criminal contempt.'

6) Defamation

A statement, which injures a man's reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. The civil law in relating to defamation is still uncodified in India and subject to certain exceptions.

7) Incitement to an Offence

This ground was also added by the constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offence. The word 'offence' is defined as any act or omission made punishable by law for the time being in force.

8) Sedition

As understood by English law, sedition embraces all those practices whether by words, or writing which are calculated to disturb the tranquillity of the State and lead ignorant person to subvert the government. It should be noted that the sedition is not mentioned in clause (2) of Art. 19 as one of the grounds on which restrictions on freedom of speech and expression may be imposed.

Sedition Laws in India:

The term sedition is not a new term for India, it has been in the midst of political discussion since the days of freedom struggle. The Father of the Nation as well as his political advisor

Bal Gangadhar Tilak have been arrested and imprisoned under this law. The offence under section 124-A of the Indian Penal Code, 1860 has been captioned as sedition which is very closely related to treason i.e offence against the state.

The framers of the Indian constitution were adamant on one thing that India would be democracy. The aim of this article would be to present the views of the author as to whether the law of sedition as established by the imperial government on the people of India should remain the same for today's democratic India or not. And how the judiciary has played a role in determining the law, rendering justice and preventing the arbitrary use of this law for political reasons.

Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavor to subvert the government and the laws of the country.

History Of Sedition Laws in India.

The section corresponding to section 124A, the law that defines sedition in the IPC, was originally section 113 of Macaulay's Draft Penal Code of 1837-39, but the section was omitted from the IPC as it was enacted in 1860. James Fitzjames Stephens, the architect of the Indian Evidence Act, 1872, has been quoted as saying that this omission was the result of a mistake. Another explanation for this omission is that the British government wished to adopt more wide ranging strategies against the press including a deposit-forfeiture system and general powers of preventive action. Section 124A was introduced by the British colonial government in 1870 when it felt the need for a specific section to deal with the offence.

It was one of the many draconian laws enacted to stifle any voices of dissent at that time

The immediate necessity of amending the law, in order to allow the government to deal more efficiently with seditious activities was first recognized by the British in light of increased Wahabi activities in the period leading up to 1870. With increasing incidents of mutinous activities against the British, the need to make sedition a substantive offence was widely acknowledged, and the insertion of a section pertaining specifically to seditious rebellion was considered exigent.

It was the recognition of this rising wave of nationalism at the turn of the 20th century which led to the bill containing the law of sedition finally being passed. The offence of sedition was incorporated under 124A of the IPC on November 25, 1870, and continued without modification till February 18, 1898. The amended legislation of 1870 was roughly structured around the law prevailing in England in so far as it drew heavily from the Treason Felony

Act, the common law with regard to seditious libels and the law relating to seditious words.

The Treason Felony Act, extensively regarded as one of the defining Acts of the English law pertaining to treason, imposed liability on all those who harbored feelings of disloyalty towards the Queen. Any thought connoting unfaithfulness or treachery towards the Crown, coupled with the presence of an overt act, i.e., an act from which an apparent criminal intention could be inferred, was subject to punishment within the ambit of this legislation.

After the initiation of the law of sedition in 1870, it was allowed to remain in force, unaltered, for a period of 27 years.

Throughout this period, one of the primary objectives of the British Government was to strengthen this law. Therefore, it ultimately approved the enactment of two cognate laws: the

Dramatic Performances Act XIX of 1876 ('DPA') and the Vernacular Press Act (IX) of 1878.

These Acts came to be popularly referred to as 'preventive measures'. While the former law was primarily introduced to keep a check on seditious activities in plays, the latter was formulated to actively suppress criticism against British policies and decisions in the wake of the Deccan Agricultural riots of 1875-76. Since it came into operation in 1870, the law of sedition has continued to be used to stifle voices of protest, dissent or criticism of the government. While the indeterminate invoking of the provision has put it in the media spotlight, there has been very little academic discussion with respect to the nature of the law and its possible repeal.

Victims of Sedition Laws in Pre-Independent India:

Jogendra Chundra Bose (Queen Empress vs Jogesh Chundra Bose)

The initial cases that invoked the sedition law included numerous prosecutions against the editors of nationalist newspapers. The first among them was the trial of Jogendra Chandra

Bose in 1891. Bose, the editor of the newspaper, Bangobasi, wrote an article criticizing the

Age of Consent Bill for posing a threat to religion and for its coercive relationship with

Indians. His article also commented on the negative economic impact of British colonialism.

Bose was prosecuted and accused of exceeding the limits of legitimate criticism, and inciting religious feelings. The judge rejected the defence's plea that there was no mention of rebellion in his article. However, the proceedings against Bose were dropped after he tendered an apology.

Bal Gangadhar Tilak (Queen Empress vs Bal Gangadhar Tilak)

Ironically some of the most famous sedition trials of the late 19th and early 20th century involved Indian nationalist leaders. Of these, the most well known are the three sedition trials of Bal Gangadhar Tilak, which were closely followed by his admirers nationally and internationally. The fundamental moral question that Tilak raised was whether his trials constituted sedition of the people against the British Indian government (Rajdroha) or of the

Government against the Indian people (Deshdroha). Tilak's first trial began in 1897. The government claimed that some of his speeches that referred to Shivaji killing Afzal Khan had instigated the murder of the much reviled Plague Commissioner Rand and Lieutenant Ayherst, another British officer, the following week. Tilak was convicted of the charge of sedition, but released in 1898 after the intervention of internationally known figures like Max

Weber on the condition that he would do nothing by act, speech, or writing to excite disaffection towards the government.

Annie Besant

Another famous decision was *Annie Besant v. Advocate General of Madras*. The case dealt with Section 4(1) of the Indian Press Act, 1910, that was framed similar to Section

124A. The relevant provision said that any press used for printing/publishing newspapers, books or other documents containing words, signs or other visible representations that had a tendency to provoke hatred or contempt to His Majesty's government...or any class of subjects (either directly or indirectly, by way of inference, suggestion, metaphor, etc.) would be liable to have its deposit forfeited. In this case an attack was leveled against the English bureaucracy. The Privy Council followed the earlier interpretation of Justice Strachey and confiscated the deposit of Annie Besant's printing press.

Mahatma Gandhi

On March 1922, Gandhi was tried before Mr. Broomfield, I.C.S., District & Sessions Judge of Ahmedabad, for sedition w.r.t. two articles, which he had written in his paper "Young

India". These charges were of bringing or attempting to excite disaffection towards His

Majesty's Government established by law in British India, and thereby committing offences punishable under Section 124 A of the Indian Penal Code.

Sedition Laws : Post Independence:

After India attained independence in 1947, the offence of sedition continued to remain in operation under 124A of the IPC. Even though sedition was expressly excluded by the

Constituent Assembly as a ground for the limitation of the right to freedom of speech and expression, this right was still being curbed under the guise of this provision of the IPC. On three significant occasions, the constitutionality of this

provision was challenged in the courts. These cases shaped the subsequent discourse in the law of sedition.

Following the decision in Niharendu Majumdar, 124A was struck down as unconstitutional in Romesh Thappar v. State of Madras, Ram Nandan v. State, and Tara Singh v. State

(Tara Singh). In Tara Singh, the East Punjab High Court relied on the principle that a restriction on a fundamental right shall fail in if the language restricting such a right is wide enough to cover instances falling both within and outside the limits of constitutionally permissible legislative action affecting such a right. During the debates surrounding the first amendment to the Constitution, the then Prime Minister Jawaharlal Nehru was subjected to severe criticism by members of the opposition for the rampant curbs that were being placed on the freedom of speech and expression under his regime. This criticism, accompanied by the rulings of the courts in the aforementioned judgments holding section 124A to be unconstitutional, compelled Nehru to suggest an amendment to the Constitution. Thus, through the first amendment to the Constitution, the additional grounds of 'public order' and 'relations with friendly states' were added to the Article 19(2) list of permissible restrictions on the freedom of speech and expression guaranteed under Article 19(1)

(a).Further, the word 'reasonable' was added before 'restrictions' to limit the possibility of misuse by the government. In the parliamentary debates, Nehru stated that the intent behind the amendment was not the validation of laws like sedition. He described section 124A as 'objectionable and obnoxious' and opined that it did not deserve a place in the scheme of the IPC.

Constitutionality of Seditious Laws In India:

It is important to note that under the Indian law of sedition, the events at the public meeting, even if completely true, do not even come close to establishing an offence.

In Kedar Nath Singh's Case, 5 judges of the Supreme Court – a Constitution bench – made it clear that allegedly seditious speech and expression may be punished only if the speech is an ‘incitement’ to ‘violence’, or ‘public disorder’. Subsequent cases have further clarified the meaning of this phrase. **In Indra Das v. State of Assam and Arup Bhuyan vs State of Assam, the Supreme Court** unambiguously stated that only speech that amounts to “incitement to imminent lawless action” can be criminalized. In **Shreya Singhal v. Union of India**, the famous 66A judgment, the Supreme Court drew a clear distinction between “advocacy” and “incitement”, stating that only the latter could be punished.

Therefore, advocating revolution, or advocating even violent overthrow of the State, does not amount to sedition, unless there is incitement to violence, and more importantly, the incitement is to ‘imminent’ violence. For instance, in **Balwant Singh v. State of Punjab**, the Supreme Court overturned the convictions for ‘sedition’, (124A, IPC) and ‘promoting enmity between different groups on grounds of religion, race etc.’,(153A, IPC), and acquitted persons who had shouted – “Khalistan zindabaad, Raj Karega Khalsa,” and,

“Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan

Da”, late evening on 31 October 1984, i.e. a few hours after Indira Gandhi’s assassination – outside a cinema in a market frequented by Hindus and Sikhs in Chandigarh. |

Thus, words and speech can be criminalised and punished only in situations where it is being used to incite mobs or crowds to violent action. Mere words and phrases by themselves, no matter how distasteful, do not amount to a criminal offence unless this condition is met.

As such Section 124A states that,

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Sedition Laws In Practice:

- **Manoj Shinde, Journalist, August 2006:**

As editor of the Surat Saamna, the Gujarat police alleged he used “abusive words” for Chief Minister Narendra Modi while criticising him for his handling of the Surat floods.

- **Binayak Sen, Doctor, May 2007:**

A staunch critic of Chhattisgarh’s vigilante army, the Salwa Judum, Sen was convicted for life in 2010 for helping the Maoists. An international uproar resulted in an abrupt order from the Supreme Court granting him bail.

- **Bharat Desai, Editor, June 2008:**

Gujarat Chief Minister Narendra Modi’s government filed a case of sedition against the editor of the Times of India because it had published articles in the newspaper which questioned the appointment of the city police chief and alleged he was linked to an erstwhile underworld don.

- **Arundhati Roy, Writer, November 2010:**

A private complaint was filed against Roy for delivering a speech that the complainant alleged was anti-India.

- **Aseem Trivedi, Cartoonist, January 2012:**

Sedition charges were slapped against him for allegedly insulting national symbols using his cartoons.

- **Kudankulam Protests, March 2012:**

11 Kudankulam protesters were charged with sedition for leading a protest against a nuclear power plant which they felt would pose an environmental threat.

Right to Free Speech and Peaceful Assembly

The Right to free speech and expression transforms into the right to freely express an opinion on the conduct of the government.

The Right to association is required to form associations for political purposes — for instance, to collectively challenge government decisions and to even aim, peacefully and legally, to displace the government, to not merely check abuse of power but to wrest power.

The Right to peaceably assemble allows political parties and citizenship bodies such as university-based student groups to question and object to acts of the government by demonstrations, agitations and public meetings, to launch sustained protest movements.

Democracies everywhere are founded on two core political rights.

The first, the right of every citizen to freely elect their government and when dissatisfied with its performance, to vote it out of power in a legitimately held election (Article 326).

Any form of public action to challenge the government's proposals or decisions is also constitutionally legitimate, as long as it is done peacefully, Any arbitrary restraint on the exercise of such rights — for instance, imposing Section 144 — shows the inability of the government to tolerate dissent.

A ROAD AHEAD

A colonial legacy like sedition law, which presumes popular affection for the state as a natural condition and expects citizens not to show any enmity, contempt, hatred or hostility towards the government established by law, does not have a place in a modern democratic state like India. The case for repealing the law of sedition in India is rooted in its impact on the ability of citizens to freely express themselves as well as to constructively criticise or express dissent against their

government. The existence of sedition laws in India's statute books and the resulting criminalization of 'disaffection' towards the state is unacceptable in a democratic society. These laws are clearly colonial remnants with their origin in extremely repressive measures used by the colonial government against nationalists fighting for Indian independence.

The use of these laws to harass and intimidate media personnel, human rights activists, political activists, artists, and public intellectuals despite a Supreme Court ruling narrowing its application, shows that the very existence of sedition laws on the statute books is a threat to democratic values. We recommend the following changes to bring this aspect of Indian laws in tune with most modern democratic frameworks including the United Kingdom, USA, and New Zealand.

Right to Protest: Constitutional Provisions

The Right to protest peacefully is enshrined in the Indian Constitution—Article 19(1)(a) guarantees the freedom of speech and expression; Article 19(1)(b) assures citizens the right to assemble peaceably and without arms.

Article 19(2) imposes reasonable restrictions on the right to assemble peaceably and without arms.

These reasonable restrictions are imposed 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 relation to contempt of court, defamation or incitement to an offence.

In Ramlila Maidan Incident v. Home Secretary, Union Of India & Ors. case (2012), the Supreme Court had stated, "Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action."

Public Protest in India: Historical Context

The background of the Indian Constitution is formed by its anti-colonial struggle, within which the seeds of a political public sphere and democratic Constitution were sown.

The Indian people fought hard and long to publicly express their views on colonial policies and laws, to dissent from them, to shape minds and form public opinion against them, to speak to and against the government, to challenge it.

People not only signed writ petitions but staged dharnas, held large public meetings, peaceful protests and demonstrations and even, for instance in Gandhi's satyagraha, launched civil disobedience movements.

Protests have also offered points of inclusion and participation to the voices that are not part of the mainstream as seen in the protests for creation of Andhra or the Chipko movement.

Protests: Making Public as the Watchdog of the Government

People act as watchdogs and constantly monitor governments' acts, which provides feedback to the governments about their policies and actions after which the concerned government, through consultation, meetings and discussion, recognizes and rectifies its mistakes.

However, resorting to violence during the protest is a violation of a key fundamental duty of citizens. Enumerated in Article 51A, the Constitution makes it a fundamental duty of every citizen "to safeguard public property and to abjure violence".

Fake news in India

Combating fake news is a growing narrative of the technology platforms like Facebook, Google, the news media, the government and an informed citizenry. Fake news affects free speech and informed choices of the subjects of the country, leading to the hijacking of democracy.

Freedom House's Freedom on the Net 2017 report

Online manipulation and disinformation tactics played an important role in elections in at least 18 countries over the past year, including the US.

The Chinese and Russian regimes pioneered the use of surreptitious methods to distort online discussions and suppress dissent more than a decade ago, but the practice has since gone global.

Paid Government Commentators: Venezuela, the Philippines, and Turkey were among 30 countries where governments were found to employ armies of "opinion shapers" to spread government views, drive particular agendas, and counter government critics on social media.

Both state and non-state actors are increasingly creating automated accounts on social media to manipulate online discussions.

In Mexico, an estimated 75,000 automated accounts known colloquially as Peñabots have been employed to overwhelm political opposition on Twitter.

Bots drown out activists with hate speech on the web. Fake news is overwhelming and eclipsing the truth.

The Scale of the Problem in India

Misinformation and disinformation spread in media is becoming a serious social challenge. It is leading to the poisonous atmosphere on the web and causing riots and lynching on the road.

In the age of the internet (WhatsApp, Facebook, Twitter,) it is a serious problem as rumors, morphed images, click-baits, motivated stories, unverified information, planted stories for various interests spread easily among 35 crore internet users in India.

There have been many instances of online rumours leading to killings of innocent people. In some cases, ministers have deleted tweets after realizing the fake news which they shared earlier.

In India, WhatsApp is the platform most vulnerable to fake news. Millions of Indians (a vast percentage is uneducated) using mobile internet innocently forwarding 'good morning' messages every day are seen as most vulnerable to fake news.

In the recent Karnataka Assembly elections (2018) fake news about rival parties and candidates flooded the media.

It may not be a coincidence that India has the highest number of selfie deaths (person dying while trying to take a selfie) in the world (76 deaths out of 127 reported globally between March 2014 and September 2016). Use and abuse of mobile and internet remain a concern.

Government Response and its Withdrawal, April 2018

On 2 April 2018, the government amended the 'Guidelines for Accreditation of Journalists', to tackle fake news across media by providing for cancellation of accreditation of journalists even before the completion of proposed 15-days inquiry.

It was withdrawn in fifteen hours after protests by media for being authoritarian. Note that

India's rank is 136 out of 180 countries in the World Press Freedom Index (2017).

The Rajiv Gandhi government also had to withdraw the 1988 Defamation Bill aimed at curtailing press freedom. In the wake of Bofors and other corruption reporting in media, the bill sought to create new offenses of 'criminal imputation' and 'scurrilous writings'.

Media Trials

There have been numerous cases where the media had taken the cases into their own hands and declared an accused as a convict, even much before the court had already given its decision. There have been quite infamous cases that would have led the court to declare the accused as innocent, had it not been the wrath of the media in shaping the opinions of the people as well as impacting the judgment of the Judiciary. A few of such cases are- The Jessica Lal case, 2010, The Priyadarshini Mattoo case, 2006 and The Bijal Joshi rape case, 2005. This phenomenon of declaring the accused as a convict even before the court had given its judgment, is called media trials. It is the widespread coverage of the guilt of the

accused and imposing a certain perception about him, regardless of any of the verdict given by the court of law. Where there has been high publicity of court cases, the media has often played an important role in creating hysteria among the viewers, making it nearly impossible for the trial to result as a fair one. There have been reasons why the attention of the media around certain cases is sensationally high. The reasons are:

1. Cases could involve children or they could be so horrific or gruesome that the media considers it necessary to sensationalize such cases.
2. The case could be of a leading celebrity either as a victim or as an accused.

In the cases where big celebrities are involved, the influence of the media could drastically change the opinion of the so-called “fans” of such influential celebrities.

Media Trials vs. Fair Trials

Media trials have always given rise to a certain kind of problem as it involves the tug-of-war between two different principles which are the free trial and the free press, both in which the public at large is generally invested. The freedom of the press is a part of democracy in any country. This is the kind of justification, given to investigative journalism.

But at the same time, the right to have a fair trial is a basic right that is given to every accused and the victim alike which is uninfluenced by any external source and is thus, recognized as a basic tenant of justice. There are many provisions which talk about this basic tenant, where the Contempt of Court Act, 1971, and the Article 129 and Article 215 (which talk about the power of the Supreme Court and the High Courts to punish itself for any contempt, respectively) of the Indian Constitution, play an important role. Thus, a journalist may be liable for the contempt of the court, where he decides to publish anything which might go

against the “fair trial” of the accused or which may impair the impartiality of the court of justice during any proceeding.

The right to a fair trial is an absolute right that is provided to any individual, within the territory of India vide Article 14, Article, 19, Article 20, Article 21 and Article 22 of the Constitution of India.

The media trials have also pressured the lawyers not to take up cases where the public deems certain individuals as guilty, without actually being proven due to the media trials, thereby forcing the accused to withdraw his right to have an advocate. But, it also dissuades the advocates who actually take up such cases. For example, in the case where the senior advocate Ram Jethmalani had defended the accused Manu Sharma in Jessica Lal’s case, it was during this time, that one of the senior editor of a TV News channel had stated it to be a “defence of the indefensible”, thereby, declaring that the accused was already guilty of the crime he had not yet been proven of. The assumption of the media clearly encroaches upon the right of the accused to have a fair trial as well as his right to have a good advocate.

Right to Privacy

Generally understood that privacy is synonymous with the right to be let alone.

The Supreme Court described privacy and its importance in the landmark decision of K.S. Puttaswamy v. Union of India in 2017 that - Right to Privacy is a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/ she makes.

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.

Restrictions (as stated in the Judgement):

The right may be restricted only by state action that passes each of the three tests:

First, such state action must have a legislative mandate;

Second, it must be pursuing a legitimate state purpose; and

Third, it must be proportionate i.e., such state action- both in its nature and extent, must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends.

Government Steps to protect Right to privacy

Draft Personal Data Protection Bill 2019:

The Bill regulates the processing of personal data of individuals (data principals) by government and private entities (data fiduciaries) incorporated in India and abroad. Processing is allowed if the individual gives consent, or in a medical emergency, or by the State for providing benefits.

B N Srikrishna Committee:

Government appointed a committee of experts on data protection under the chairmanship of Justice B N Srikrishna that submitted its report in July 2018.

The draft bill recognises the 'right to privacy' as a fundamental right.

The law does not have retrospective effect.

The draft has recommended setting up a Data Protection Authority to prevent misuse of personal information. The draft Bill also provides for setting up an Appellate Tribunal.

The penalty would be Rs.15 crore or 4% of the total worldwide turnover of any data collection/processing entity, for violating provisions.

The three facets – the individual, the state and the industry – is considered in the bill with respect to data.

The government will notify a certain type of data as critical data, which must be stored within the country. This is known as data localisation. Non-critical data can be stored outside the country subject to some conditions, as long as one copy of the data is available within India. Failure to take prompt action on a data security breach can attract up to Rs.5 crore or 2% of turnover as a penalty.

'Data principal' refers to the individual or the person providing their data. Processing of sensitive personal data should be on the basis of "explicit consent" of the data principal which should be given before the commencement of the processing.

Information Technology Act, 2000:

The IT Act provides for safeguard against certain breaches in relation to data from computer systems. It contains provisions to prevent the unauthorized use of computers, computer systems and data stored therein

Conclusion

The government should make a thin line between freedom of speech and expression and reasonable restrictions and The Right of citizens to protest

and gather peacefully without arms is a fundamental aspect of India's democracy. While it is also the obligation of the government to protect civilians from violent protests, certain essential principles need to be kept in mind. The Right to protest is one of the core principles on which democracy survives and thrives. However, when a protest turns violent, as seen in some places in recent protests, it defeats the very purpose of the protest. While enjoying the rights, one must adhere to one's duties and responsibilities in a democratic society. State must put a robust personal data protection mechanism in place in this digital age. Recognition of privacy as a fundamental freedom is an essential deterrent against intrusion into personal space. Protection to citizens against surveillance and a Balance must be maintained to protect privacy and to promote national interest.