



A PARADOX OF LIBERTY: AN ASSESSMENT OF FREEDOM OF SPEECH AND EXPRESSION IN CONTEMPORARY TIMES

Law

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ABSTRACT

The heated common aspects of Liberty and Freedom in General perspective-“The Paradox of Liberty: An Assessment of Freedom of Speech and Expression in contemporary times” is trending in the spook of the present debate. Many issues faced by the citizens of this country in various lives. The state puts restriction on Liberty and Freedom by bifurcating into two different meanings. As a result of this, Government misuses the very essence of Democracy. Politicians sow the seeds of communal violence for their vote bank and hire many journalists in their prey to get the selfish gain. Further Maneka Gandhi case embarks the relation between Article 19 and 21. Freedom and Liberty are the inherent limbs for a Democracy. It should be widened in a comprehensive terms of Jurisprudence. Reasonable restrictions are required to safeguard the spinal of one's liberty and rights. These two may not become the paradoxical of one another.

KEYWORDS

Liberty, Freedom, Reasonable Restriction.

1) INTRODUCTION

In order to understand the gist of this empirical quest, one may investigate the common aspects of two heavy and conflicting concept of liberty and freedom exposition. The giant irony arose that the suspension of Fundamental rights by a Presidential Order and legitimized the freedom of speech and expression by Former PM Indira Gandhi During emergency becomes the jurisprudence of learning the precise studies of now-a days and this present moment. Right to Privacy is one of the rights to compromise the gulf between Freedom of speech and expression and liberty. In democratic testimonies, liberty is released to all the individuals of its country. Without the high tendered of liberty, democracy won't stand firmly. These two are the two faces of one coin. As we know, Indian constitution enshrines it with no absolute rights, personal liberty at the utmost functioning of the spheres. Now, in today's epoch, the freedom of liberty confines the territory of India and applicable only to citizens of India. Reaction to it, it puts hot water in liberty. It enhances the violation of rights, the person's liberty at the fullest beyond retrievable. Every person has the right to have it. Free speech extends the empirical meaning of liberty on the part of human being, then, it transits to the citizens and non-citizens of its country. Constitutionally and naturally, when a man is born on this marvelous world, he carries all the inherent and inclusive rights of liberty in the spheres of life. It is considered to be one of the most significant rights as it allows a person to attain self fulfillment and strengthen the capacity to fully enjoy freedom. Patanjali Sastri, J., has rightly given his observation that “Freedom of press relies on all democratic spheres and offices, without free political discussion, free political debate and education, it is not possible to function the process of popular government. It is enshrined as the spirit of the democracy in the Indian constitution. It enhances India as the largest democracy in the world. It entails the positive mannerism purported in the conscience of freedom. At the meantime, some outfits and individuals take the advantage of strait jacket ingrained in the modesty of free speech. They earn the plethora of weapons to gain their personal vote bank and vilify the opponent in the saddest and ruckus structure. This time reasonable restrictions and hate speech springs up in making controversy to the free speech. It makes the insulate between Article 21 and 19 which enlightens the insight meaning of freedom and liberty mentioned in Article 21. Many constitutionalist and scholars opined that that it should be restricted in certain area but it should be reasonable just and fair made by law. It further mentions that it sucks the personal liberty when machinery in the greedy works.

2). MEANING OF LIBERTY AND FREEDOM IN ACCORDANCE WITH THE INDIAN CONSTITUTION

The word liberty is a comprehensive one. As per its understanding, Article 21 uses the words personal liberty to protect the personal liberty from the executive as well as the legislative action. It has a wider meaning in the light of personal liberty. The words “personal liberty” is used held as a gigantic understanding, empirical and oceans of education to include all the branches of the rights of a person to pile up the personal liberty of a person. Liberty of a person should always be kept in the form of balance while conflict arises. Again it was

criticized so as to exclude the rights mentioned in Article 21.

Bhagwati, J., has opined that “ Democracy is founded essentially on free debate and open discussion in public, for that is the only remedies of government action in a democratic organization. If Democracy says government of the people by the people, it is undoubtedly that every citizen must be empowered to participate in democratic process and in order to ensure him to intelligently to widen his right of making a choice, free and open discussion in public is absolutely required.”

As all we know, we cannot define the word reasonable. It is very difficult to define it. Even the Indian constitution does not embrace the exact definition of reasonable restriction. The restriction on the rights under Article 19(1) can only be entertained by a law but not by the executive or departmental instructions.

In a nutshell, the restriction mentioned in Article 19(2) should fulfill the reasonable mandates to categorize the prohibition. Each and every case shall be entertained in the light of fair, reasonable and just. The reasonable restrictions protect the very essence of spinal of Fundamental rights of the individuals and its liberty. Here the commitment of private persons pertaining to this article does not fall the concurrence of restriction of the rights.

3) MANEKAGANDHI CASE: A CRITIQUE a) CONNECTION BETWEEN ARTICLE 19 (FREEDOM) AND ARTICLE 21 (PERSONAL LIBERTY)

Mostly when we discuss about these two articles, we can treat them separately but after Maneka Gandhi's case, these Articles are corresponding each other. Article 21 can be co-related with Article 19. Every case should fulfill the procedure and criteria of one's home. According to K. Iyer, J., His body is made from the combination of different body parts. Similarly Article 21 and 19 are the sub part of a body. Likewise, if Article 21 is split into various particles without conforming the provision of Article 21, that cannot be validated by the court. As per the knowledge of Justice Bhagwati, he has made the observation in Maneka Gandhi's case that “the words personal liberty in Article 21 is of the broader umbrella and it contains the plenty number of rights to cover one's personal liberty giving straightforward to the platform of rank of fundamental rights and protection under Article 19”. Freedom of speech and expression is the sub part of personal liberty which is subject to certain rational restriction. It cannot set off outside the philosophy of procedure recognized by law. It is the beauty and harmony lies in the heart of personal liberty.

b) MANIFESTATION OF U.S.A

The U.S. Constitution prescribed the due process of law which extends both the procedural and substantive protections to life, liberty and property. It has a wider meaning and more scope than the Indian constitution of Article 21 which entails the procedure established by law. Here the word due means fair, just and reasonable. However it is missing in the Indian Constitution. It makes the more controversy in regards to the decision of reasonable restriction. Under A.K. Gopalan

case, a person could also be impoverished the personal liberty.

c) THE MERITS OF MANEKA GANDHI CASE

Post Maneka Gandhi's case, the Indian constitution has changed a lot in regards to the death penalty, right to privacy, detention, right to life etc. each and every case should not be arbitrary and non reasonable. Article 21 starts with the word "no" but it are not inclined to the negative implications. It has synonymous looks both the Procedural established by law and Due process of law. Even the state cannot intervene the personal's right without reasonable approbation, fair and just. It is mentioned the color of natural justice delivering to the entities who necessitate it. Simply we can say that Maneka Gandhi's case is the landmark judgment and remarkable achievement in the field of personal liberty. It safeguards the soul and spirit of the rights of the individuals.

4) CRITICISM

Personal liberty is the backbone of the democracy. The beauty and harmony is the liberty of dissemination of speech and expression without any hurdles and restrictions. As for the fulfillment of this, Maneka Gandhi embarks Article 21 is extended in the broader terms which pertain to the natural justice. It is declared as the Fundamental rights of the person. The person should be detained in reasonable, fair and Justas well as it should not be arbitrary. Here the question arises whether the restrictions on Liberty and Freedom are absolute or not, according to the Indian Constitution, it is not absolute. The corroboration of procedure established by law and due process of law is not clear and precise. It relies on the state to decide whether that is reasonable, fair and just. As we all know, human beings are prone to make mistakes won't let the innocent person be punished. Sometimes the executive manipulates the law and misuse the spirit of the constitution. For instance, during the time of former late PM Indira Gandhi, the Indian Government declared the whole country as an emergency and put it under her control and deprives the person's liberty and bans the freedom of speech and expression. It makes Article 21 and 19 becomes the defeated person and dormant for a while in 1975. It is the dark hour and moment for a country like India. In a nutshell, The Indian Government and legislature needs to jump off the page or provision to heighten the erection and trajectory of liberty and freedom. That is the user of law and executor who manipulates and makes the paradox of liberty with freedom.

5) CHALLENGES

The ironical we find here is that the abuse of Government machinery. Nowadays most of the news channel, Akashvani becomes the tool for politician instead of nurturing them as an independent organ functioning in public interest. They ban the advertisement and influence the news article and editorial page for their selfish gain. For instance, the three news channel got show cause notice from the government in connection with the violation of the program code under the Cable TV Network Rules in Yakub Menon execution. Moreover, the rise of fundamental and communal forces increases day by day. For getting the vote bank, the politicians sow the seeds of communalism and create the gulf between different religions. On the other hand, most of the journalists are hired under contract basis for their market agency and profit gain by the contractor. Deliberately yellow journalism is growing like a gigantic way. These are the challenges faced by the people in the hands of manipulations of executive in regards to the freedom of speech and expression.

6) SUGGESTIONS

- a. Separation of power between the three organs and the fourth pillar of the government.
- b. The antique law should be changed according to the present functionaries.
- c. Lessen the feeling of fanatical and communalism amongst the people and the government because India is a secular country having diverse religions and traditions.
- d. News agency, Journalists should get the protection from the different threats and give them the independent work structure of freedom and liberty to increase the transparency and accountability.

7) CONCLUSION

Democracy enshrines the freedom and liberty is an inherent trait of every man. It ensures the openness and rights of a person. Sometimes the hurdles arise in between freedom and liberty mentioned in Article 19 and 21. It promotes participation in the political room and

transparency among the government administration and functions. It is enshrined as the spirit of the democracy in the Indian constitution. It enhances India as the largest democracy in the world. These two are the brothers of one parent who cannot be made into a separation. Every person should get a chance to have the freedom with the proper reasonable restrictions for the national security and peace, which is not unjust, unfair and unreasonable. At a nutshell, Maneka Gandhi's case turned the era of enlightenment for the rights of personal liberty and changed the epochal of arbitration government in restricting the freedom of speech and expression.