

(March 2024). ROLE OF THE JUDICIARY IN WIDENING THE SCOPE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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ROLE OF THE JUDICIARY IN WIDENING THE SCOPE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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Abstract:-The Indian judiciary plays a crucial role as the defender and preserver of the Constitution. In a democratic society, where the media and the courts play important and complementary institutional responsibilities, freedom of expression is also essential. The Honorable Supreme Court has in numerous cases deduced certain fundamental features which are not specifically mentioned in Article 19(1)(a) The expansion of the right to freedom of speech and expression has been greatly aided by the judiciary.

Keywords:-Judicial Review, Judicial Perspective, propagate ideas, Commercial Speech, Dissent, Demonstration, dignity.

1. Introduction

As the guardian and keeper of the Constitution, the Indian judiciary holds a significant position. It serves as a safeguard against discrimination, misuse of state power, arbitrary behaviour, and other issues that affect both Indians and non-Indians. It also acts as a watchdog against violations of the fundamental rights protected by the Constitution. I would state that the Indian judiciary is "truly the only defensive armour of the country and its Constitution and laws." Because of the Indian judiciary's proactive role, liberty and equality have flourished in India. One of the most important aspects of good administration in India is the rule of law, which has been maintained in part by the country's independent judiciary. Support and aid from an independent bar that has bravely stood up for the poor, the disenfranchised, and those segments of society who lack awareness or are unable to defend their rights due to various disabilities.

2. Role of an Independent Judiciary in Democracy

The rule of law is arguably the most basic requirement of any civilized society, and an independent judiciary, to which access is available to all citizens, is an essential ingredient of the rule of law. Freedom of expression is also fundamental in a democratic society, in which the courts and the media have vital and complementary institutional roles. Together, they hold power to account, enforce the rights of individuals and shed light on matters of public interest and they also monitor each other. When a judicial system is correctly calibrated, the law is applied by judges fearlessly, without favour and with respect. That is why judicial security of tenure is so fundamental; it ensures that a judge's ability to stay in the post does not depend on pleasing the Government. It is also why judges must be properly paid: otherwise, they may be tempted, or even driven, to accept bribes. And it is why any court system has to have the means to enforce judicial decisions. To have judges who do what the Government tells them, who are corrupt or whose orders are ignored, is almost worse than having no judges at all.

India has a tiered legal system, with the Supreme Court serving as the highest court in the nation. 24 High Courts, each having jurisdiction over a State or a group of States and Union Territories, are one level below. Subordinate courts, such as village courts and people's courts, offer substitute forums for resolving disputes before the District Courts. Administrative

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tribunals are established to offer effective remedies as well. A judge oversees and renders a decision in every court case. In India, the jury trial system was eliminated in the early 1960s. The concept of separation of powers is not strictly followed by the Constitution, but it does provide for the division of powers to make sure that no branch of government overrides the other branches' constitutional authority. The idea of the division of powers is predicated on the existence of a legal system free from both internal and external pressures. The difficult responsibility of defending the Rule of Law and defending the fundamental rights of our citizens has been placed on the judiciary by our Constitution. Perhaps the most important power of the Supreme Court is the power of judicial review. Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court concludes that the law is inconsistent with the provisions of the Constitution, such a law is declared unconstitutional and inapplicable. The Constitution makes no mention of the term "judicial review." Nonetheless, the Supreme Court's ability to overturn legislation that tacitly violates fundamental rights and the fact that India has a written constitution grant it judicial review authority. The judiciary is extremely strong when combined with the Court's review and writ powers. The judiciary's ability to interpret the Constitution and legislatively enacted laws is specifically granted by the review power. Many believe that this characteristic gives the judiciary the ability to successfully defend both the rights of citizens and the Constitution. The judiciary's ability to defend citizens' rights has been strengthened by the practice of hearing PILs.

3. Judicial Perspective Towards Right of Free Speech and Expression

The Honorable Supreme Court has in numerous cases deduced certain fundamental features which are not specifically mentioned in Article 19(1)(a) on the principle that certain unarticulated rights are implicit in the enumerated guarantee. Thus, judicial craftsmanship owns the credit of widening the horizons of the freedom of speech and expression by including in it certain multifarious aspects. Judicial creativity, judicial wisdom and judicial craftsmanship have widened the scope of freedom of speech & expression by including the following aspects

3.1 Freedom of Open Debate and Discussion

Democracy is Government by the people via open discussion. The democratic form of government itself demands its citizen's active and intelligent participation. It is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. Public discussion on issues relating to the administration had a positive impact. The ultimate good desired is better reached by free trade in ideas. The best test of truth is the power of the thought to get itself accepted in the competition of the market.¹ There must be freedom of thought and the mind must be ready to receive new ideas, to critically analyze and examine them and accept those found to stand the test of scrutiny and to reject the rest." In *Maneka Gandhi v. Union of India*,² As the only means of correcting government conduct in a democratic system, the Supreme Court ruled that democracy is fundamentally built on free debate and open discussion. Free and open debate of public issues is crucial if democracy is to be defined as the rule of the people, by the people. It follows that every citizen must have the

¹ *Abramson v. United States*, 250 U.S. 616

² (1978) 2 SCR

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right to take part in the democratic process and be able to use his right to vote in an informed manner. that a politically mandated public discourse is necessary and that the biggest threat to freedom is an inactive populace. In *Naraindas v. State of Madhya Pradesh*³, "We are bound by our Constitution to the fundamental ideal of a free society, which is that both the thoughts we despise and the thoughts we cherish must be free. This is our strong belief, in fact, our conviction."

S. Rangarajan v. P. Jagjivan Ram,⁴ The Supreme Court decided that the constitutionally protected right to free expression cannot be held hostage by an intolerable minority of people. Under Article 19(1)(a), basic freedom may only be lawfully restricted for the purposes listed in Article 19(2); even in these cases, the restriction must be justified by necessity as opposed to convenience or expediency. Speech that expresses an open disagreement with acts or policies of the government cannot be silenced. We must develop tolerance for the viewpoints of others. Intolerance is a threat to democracy as well as the person. In *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*⁵, Jeevan Reddy, J. spoke "The right of free speech and expression includes the right to receive and impart information". To ensure the free speech rights of the citizens of this country, the citizens must have the benefit of the plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at an informed judgment on all issues touching them. The Delhi Court while dismissing the petition (W.P.(Crl.) No. 355/2019) in a case of *G.S. Mani v. Commissioner of Police Delhi*,⁶ held "The social set-up, the secular thread and fraternity in democratic Indian background cannot be assumed to be that feeble that it would break or get. The court was of the view that the alleged statement "the people of Kashmir are not happy" made by Jaleel can be called his opinion (though unsupported by any authority or survey etc. and is arguably incorrect) and was thus protected by the fundamental freedom under Article 19. Observing that freedom of speech and expression opens up channels of free discussion of issues in a democracy, the Court said the said right embraces within its scope the "freedom of propagation and interchange of ideas, dissemination of information which would help the formation of one's opinion and viewpoint and debates in public.

3.2 Freedom of Speech and Freedom of the Press

Although freedom of the press is not mentioned in Article 19 of the Indian Constitution, it has been a part of freedom of speech and expression as considered by judges of the Supreme Court through decided cases. In the leading case of *Romesh Thappar v. State of Madras*,⁷ it was decided by the Supreme Court that freedom of the press is an intrinsic part of freedom of speech and expression and held that the freedom of speech and expression includes freedom to propagate ideas which are ensured by freedom of circulation of a publication, as publication is of little value without circulation. Patanjali Sastri, J., rightly observed that 'Freedom of Speech and Press lays at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the

³ (1974) 3 SCR 624

⁴ (1989) SCR (2) 204

⁵ (1995) 2 SCC 161

⁶ Available at <https://indiankanoon.org/doc/65295726/>(last visited on 23 January,2023)

⁷ AIR 1950 SC 124

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proper functioning of the process of Government, is possible. In the case of *Brij Bhushan v. State of Delhi*⁸, The Court invalidated the order imposing pre-censorship on an English weekly published in Delhi. The order required newspaper editors and publishers to submit all news and views about Pakistan, including photographs and cartoons, for scrutiny in duplicate before publication. The reasoning behind the order was that it restricted press freedom. In *Sakal Papers v Union of India*, The Supreme Court ruled that all people have the right to publish, disseminate, and circulate ideas, noting that freedom of the press is the species and freedom of expression is the genus. The amount of circulation is also a part of the freedom of speech and expression, so any rule that aims to reduce newspaper circulation is a direct violation of these rights.⁹ In *Bennet Coleman and Cooperation v. Union of India*¹⁰, it was held by the Supreme Court that the newspaper shall be given the freedom to determine the number of pages and the volume of circulation. Government interference in this regard would mean direct infringement of free speech. The press has another important right to conduct interviews with consenting individuals. However, this right is limited such that there is no compulsion on any individual to provide information to the press. In *Indian Express v. Union of India*,¹¹ it has been held that the Press plays a very significant role in the democratic machinery. The courts have to uphold the freedom of the press and invalidate all laws and administrative actions that abridge that freedom. Freedom of the Press includes freedom of publication, freedom of circulation and freedom against pre-censorship.

In the case of *Janaki Ballav Patnaik vs Bennett Coleman and Co. Ltd.*,¹² the Supreme Court held that the press does not have the unfettered right to publish any material and there shall not be an infringement of their fundamental right under Article 19(1) of the Constitution of India. In *Shri Surya Prakash Khatri & Anr. v Smt. Madhu Trehan*,¹³ the Supreme Court observed that the freedom of the press is the freedom of individuals to express themselves through the medium of the press. This implies that the freedom of the press is not superior to that of an individual. This freedom is fundamental to the life of an individual. In the words of William Blackstone, "The liberty of the Press is indeed essential to the nature of a free State. Every free man has an undoubted right to lay what sentiment he pleases before the public, to forbid this, is to destroy the freedom of the press. But if he publishes what is improper, mischievous, or illegal he must take the consequences of his temerity", and show evidence of prejudice to the public.

3.3 Right to Information

Over time, the process of interpretation by this highest Court has resulted in the emergence of multiple species of unremunerated rights under Article 19(1)(a). The 'right to information' is one such right. Perhaps, the first decision which has adverted to this right is the *State of U.P. v. Raj Narain*,¹⁴ it was observed by Mathew, J. "The right to know," "which is drawn from the principle of freedom of speech, though not absolute, is a consideration which should make one sceptical, when concealment is claimed for transactions which can, at any rate, have no

⁸ AIR 1950 SC 129

⁹ AIR 1962 SC 305

¹⁰ AIR 1973 SC 106

¹¹ (1985) 1 SCC 641

¹² AIR 1989 Ori 216

¹³ (2001) Cri L J 3476

¹⁴ (1975) 4 SCC 428]

(March 2024). ROLE OF THE JUDICIARY IN WIDENING THE SCOPE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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repercussion on public security". It was quite eloquently noted that "There can be but few secrets under a government of responsibility like ours, where all the public's agents must be accountable for their conduct. The citizens of our nation are entitled to know about every public action taken by their public servants, as well as everything that is done in a public setting."The next milestone which showed the way for concretizing this right is the decision in *S.P. Gupta v. Union of India*¹⁵in which this Court held "No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when people know how the Government is functioning that they can fulfil the role which democracy assigns to them and make democracy an effective participatory democracy."These two rulings have acknowledged that citizens' basic right guaranteed by Article 19(1)(a) stems from their right to information on subjects about public acts. In *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*,¹⁶The court determined that the freedom of speech and expression protected by Article 19(1)(a) of the Constitution includes the right to transmit and receive information. A citizen has the fundamental right to access telecasting to use the most effective means of disseminating and receiving information.

Thus, one facet of freedom of speech and expression is the ability to obtain information. According to several Supreme Court rulings, the freedom of speech and expression also includes the right to acquire information. The Ability to Information Act of 2005 specifically addresses the public's ability to request information from public servants.

3.4 Right to Advertisement (Commercial Speech)

A product or a service may be advertised through a variety of methods such as handbills, circulars, direct mail, billboards, signboards, sky signs, roof signs, loudspeakers, mechanical or electric devices, newspapers and magazines, radio, television, the internet and so on.

In *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*,¹⁷ the Supreme Court held that a commercial advertisement or commercial speech was also a part of the freedom of speech and expression, which would be restricted only within the limits of Article 19(2). The Telephone Nigam permitted the contractors to publish telephone directories in the "Yellow pages" used to be added to the directory published by the Nigam in white pages. The Bombay High Court allowed the appeal of the Nigam, which sought a declaration that it alone had the exclusive right to publish the telephone directory and the Tata Press had no right to publish the list of the telephone subscribers without its permission as it would be a violation of Indian Telegraph Act. The Tata Press appealed to the Supreme Court. Admitting the appeal, the Court said: "The Advertisement as "Commercial Speech" has two facts. Advertising which is no more than a commercial transaction is nonetheless the dissemination of information regarding the product advertised. The public at large benefits from the information made available through advertisements. The open exchange of commercial information is essential to a democratic economy. The general people cannot engage in ethical and cost-effective marketing without first gaining knowledge from the information that is spread through commercials. A democracy's economic structure would be severely hindered if "commercial speech" were not allowed.

¹⁵ (1981) Suppl. SCC 87

¹⁶ (1995) 2 SCC 161

¹⁷ 1995 AIR SC 2438,

(March 2024). ROLE OF THE JUDICIARY IN WIDENING THE SCOPE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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Commercial speech is allowed to be heard by the general public. The freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution, which also safeguards a person's right to hear, read, and receive the speech in question. The Supreme Court ruled unequivocally that the Government could not be granted a monopoly to deny the right under Article 19(1)(a). Only the reasons specified in Article 19(2) of the Constitution may be used to restrict it. In the case of *Dabur India Ltd. v. Colgate Palmolive India Ltd*,¹⁸ The Court noted that it is equally unacceptable to degrade a competitor's product generically without mentioning the competitor by name. Indeed, shrewd advertising can make a point about a competitor's product without mentioning it directly. No one may criticise a product's class or genre that a complaining plaintiff belongs to and claim that the plaintiff hasn't been named in the complaint.

3.5 Right to Dissent

A democratic society can only function well when the government is willing to accept criticism. Government policies ought to be analyzed, and discussed and the flaws are to be pointed out and criticized. Expressing dissent to government policy should not be met with unreasonable State action as it is protected by free speech and expression under Article 19(1)(a).

In *Kedar Nath Singh v. The State of Bihar*,¹⁹ According to the Supreme Court, merely critiquing the government is not sedition unless it incites violence or violates the law. Nevertheless, he was freed after the court determined that Article 19(1)(a) of the Indian Constitution guaranteed the right of criticism for the people of India. In *Director General of Doordarshan v. Anand Patwardhan*,²⁰ The Supreme Court ruled that the government cannot censor speech just because it strongly disagrees with the government. In *Baldev Singh Gandhi v. State of Punjab*,²¹ it was held by the Supreme Court that criticism of the government measure even by an elected representative shall not be considered misconduct. Dissension does not always have to be directed towards the government. Dissension may be directed against something that is accepted in society. The dissent could be against something which is socially agreeable. In *Kushbu v. Kanniamal*,²² the right of an individual to hold beliefs that are unpopular or at odds with prevailing social norms was upheld by the Supreme Court. In *Srishti School of Arts Design and Technology v. Central Board of Film Certification*,²³ it was held by the Supreme Court that the constitutional framework of the freedom of speech and expression as enshrined in Article 19(1) (a) of the Constitution provides democratic space for a citizen to put forth a view which may be unacceptable to others but does not on that score alone become vulnerable to excision by way of censorship. We are aware that in a monarchy, the people are the king's subjects and that he is paramount. In a democratic system of governance, this relationship system is reversed. The people are in charge, and the government exists to serve them. In another case of *S. Rangarajan v. P. Jagjivan Ram*,²⁴ It was

¹⁸ AIR 2005 Delhi 102

¹⁹ AIR 1962 SC 955

²⁰ (1996) 8 SCC 433

²¹ (2002) 3 SCC 667

²² (2002) 3 SCC 667

²³ (2011)123 D.R.J.

²⁴ AIR 2001 Delhi 126

(March 2024). ROLE OF THE JUDICIARY IN WIDENING THE SCOPE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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decided that everyone is entitled, by the Indian Constitution, to express their opinions on any matter of public interest.

3.6 Right to Portray

In *Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana*,²⁵ The Supreme Court ruled that one of the fundamental rights protected by Article 19(1)(a) is the ability of a citizen to screen films on the government-run channel Doordarshan. The court determined that this right was comparable to a citizen's ability to express his opinions in any other kind of media, including hoardings, magazines, newspapers, and ads. In this instance, the petitioners contested the Doordarshan serial "Honi Anthoni" because they said it promoted viewers' superstitious and naive beliefs. The petition was dismissed as the petitioner failed to.

In art forms such as cinema, there may be instances where the makers will have to show social evils in the film as it is happening in society. In *K. A. Abbas v. Union of India*²⁶, the Supreme Court held that restriction cannot be imposed on a film merely on the fact that social evils such as violence, and rape were portrayed in it. However, it is to be seen how the theme has been handled by the makers and whether the depiction of evil is necessary for the development of the plot. The Supreme Court in *Bobby Arts International v. Om Pal Singh*,²⁷ observed that in the film Bandit Queen- the biopic of Phoolan Devi, there were extremely graphic sequences depicting the horrid experiences of Phoolan Devi including rape at a very young age. The Court held that those specific scenes needed to be portrayed to build the plot and that it is the gruesomeness of these scenes that makes the audience feel for the protagonist. An artist or a filmmaker has the right to present a historical event and merely because of the possibility that the recall of the event could result in tension in society, it shall not be subjected to censorship. In *Srishti School of Art Design and Technology v. Central Board of Film Certification*²⁸, it was held by the Supreme Court that a documentary depicting the visuals of the Babri Masjid incident cannot be censored on the ground that the documentary had a difference of opinion with States' version of the whole incident.

3.7 Right to Silence

Included in the freedom of speech and expression is this right as well. People became aware of this right following the ruling in a significant case of *Bijoe Emmanuel v. State of Kerala*²⁹ the National Anthem case is another name for this one. In this instance, the school administration punished three pupils for their refusal to play the National Anthem. Nevertheless, when the national anthem began to play, these kids got up from their seats out of respect. The Kerala High Court heard a challenge to the legality of the expulsion of minors. The Court affirmed the expulsion of pupils because singing the national anthem was their fundamental responsibility. The Supreme Court ruled, however, that the students had not violated any provisions of the 1971 Prevention of Insult to National Honour Act upon their subsequent appeal. Furthermore, no legislation existed that might limit their fundamental rights guaranteed by Article 19(1)(a) of the Indian Constitution. Additionally, it was decided that Article 19(1)(a)'s guarantee of the freedom not to speak was breached by kicking kids out of school.

3.8 Right to Demonstration

²⁵ AIR1988 SC 1642

²⁶ AIR 1971 SC 481

²⁷ (1985) 1 SCC 641

²⁸ (2011) SCC OnLine Del 1234.

²⁹ AIR 1987 SC 748

(March 2024). ROLE OF THE JUDICIARY IN WIDENING THE SCOPE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

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It has been made categorical that opposition to the government is not prohibited. Further, as long as the method of expression is not barred under any law which furthers the objectives under Article 19 (2) they cannot be curtailed. A peaceful and orderly demonstration to show its anguish against the government is protected by our Constitution.³⁰ Right from Anna Hazare's movement for Lokpal Bill to the protest against the Farm Bill in 2020 our country has seen its fair share of demonstrations in the past decade. Now, we must understand that though demonstrations are allowed, Article 19 does not provide a right to a bandh. The Supreme Court had stated that a citizen has the right to be protected from a bandh or a strike.³¹ This does not prevent a citizen from going on a hunger strike which is covered under the protection of freedom of speech and expression.

Three fundamental rights are typically involved in demonstrations: the right to free expression, the right to assemble, and the right to travel. One could consider demonstrations to be instances of free speech and expression. These are peaceful methods of persuasion. The rights to make a peaceful demonstration take out a procession hold out banners arrange Public meetings, etc are democratic rights which the Constitution of India has recognized, with reasonable restrictions. In another case of *Kameshwar Prasad v. State of Bihar*,³² where the government of Bihar ruled it prohibited all government employees from participating in demonstrations of any type. The Supreme Court held that a government job cannot take away the fundamental right to freedom of speech and expression, which includes the right to initiate or participate in demonstrations. In the case of *Ramlila Maidan Incident v. Home Secretary*,³³ The court determined in the Ramlila Maidan case that the fundamental components of a democratic society include freedom of expression, the ability to congregate, demonstrate by conducting dharnas, and the right to peaceful agitation. In a democratic nation like ours, the populace has the right to voice opposition to the policies and actions of the government or even to express dissatisfaction over those actions and on any issue of social or national significance. The government is required to uphold these rights and to promote their exercise. The State has a huge responsibility to support the exercise of the right to free expression in its broadest sense.

3.9 Right to Choose Medium of Instruction

It is an accepted fact that learning in one's mother tongue helps a child to learn things quickly and efficiently. A child can relate better when the medium of instruction is the same as that of the language spoken in his day-to-day life and at home. Emphasizing the role of the mother tongue, Gandhiji said that it was more important to use the mother tongue at the elementary level to lay a strong foundation for the children. He found that it would be a waste to struggle and learn in a foreign language and sideline a language to which the child is culturally and spiritually more connected.³⁴ The first case involving the State's educational policies was *State of Bombay v. Bombay Education Society*,³⁵ In this instance, the Honourable Supreme Court struck down a Bombay government decision that prohibited certain pupils whose home tongue or primary language was not English from enrolling in English-medium schools under

³⁰ *Kameshwar Prasad v. State of Bihar*, AIR 1962 SC 1166

³¹ *Communist Party of India v. Bharat Kumar*, AIR 1998 SC 184

³² AIR 1962 SC 1166

³³ (2012) 5 SCC 1

³⁴ *English Medium Students Parents Association. v. State of Karnataka*, (1994) 1 SCC 550.

³⁵ AIR 1954 SC 561

(March 2024). ROLE OF THE JUDICIARY IN WIDENING THE SCOPE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

International Journal of Economic Perspectives,18(03) 31-41

ISSN: 1307-1637 UGC CARE GROUP II

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the guise that doing so would promote the use of Indian languages. In the case of *D.A.V. College Bhatinda v. State of Punjab*³⁶, The Supreme Court ruled that "While the University may require Punjabi as a language of instruction, it may not require it as the only language or compel affiliated colleges run by members of the public who want to preserve their language and culture, or by linguistic or religious minorities, to teach in Punjabi or require students to take exams in that language using Gurmukhi script. In the *State of Karnataka & Another v. Associated Management of (Government Recognised Unaided English Medium) Primary & Secondary Schools & Others*,³⁷ the Karnataka High Court held that the right to choose a medium of instruction is implicit in the right to education. It is a fundamental right of the parent and the child to choose the medium of instruction even in primary schools and is included in the Right to freedom of speech and expression includes the right to choose a medium of instruction.

3.10 Right to Fly National Flag

Thus, our flag serves as both a blessing and a call to action. The blessings of all those wonderful beings who helped us achieve freedom are contained within. However, it also calls us to realise their goal of creating a just and cohesive India. We must respond to this flag's call to recommit ourselves to the creation of that peaceful and just order where all Indians, regardless of creed, caste, or sex, will fulfil themselves as we face significant threats to our security, unity, and integrity. The adoption of the Flag was one sign that India's war for freedom had come to an end, and it played a crucial role in that struggle. But given the culture of today, it is much more than just a representation of freedom.³⁸ In *Naveen Jindal v. Union of India*³⁹ the Court held that flying the National Flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1) (a) of the Constitution of India being an expression and manifestation of his allegiance and feelings and sentiments of pride for the nation

3.11 Right to Travel Abroad

In *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government, New Delhi & Others*,⁴⁰ that the definition of personal liberty in Article 19 is the broadest and encompasses a range of rights that contribute to a person's liberty, some of which have been elevated to the status of distinct fundamental rights and granted further protection. The right to travel overseas is included in the definition of personal liberty under Article 21. As a result, no one's freedom to travel abroad may be restricted until the legal process is followed. In *Priya Parameshwaran Pillai v. Union Of India and Ors.*⁴¹ The right to go abroad is not included in the right to freedom of speech and expression but the curtailment of the right to travel abroad could impact a citizen's right to free speech and expression. Having regard to the above, it is quite clear that it can no longer be argued that the right to travel abroad is not a fundamental right. Although it's possible that in some circumstances the freedom to travel overseas does not extend to the freedom of speech and expression, restricting a citizen's ability to go overseas may have an effect on that freedom.

³⁶ AIR 1971 SC1731

³⁷ (2014) 9 SCC 485

³⁸ Constituent Assembly Debates, 22nd July 1947, p. 766

³⁹ 1995 (35) DRJ 598

⁴⁰ 1967 AIR SC 1836

⁴¹ 2015 SCC OnLine Del 798

(March 2024). ROLE OF THE JUDICIARY IN WIDENING THE SCOPE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

International Journal of Economic Perspectives,18(03) 31-41

ISSN: 1307-1637 UGC CARE GROUP II

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3.12 The Right to Know About the Candidate Standing for Election

Democracy must always be regarded as something of the people, by the people, and for the people. In a democratic republic, the people's will takes precedence and serves as the foundation for the government's power. A secret ballot is used to cast votes in elections held regularly under the principles of universal adult suffrage. Voters express their preferences or choices for a candidate on the ballot. "Voting is a formal expression of will or opinion by the person entitled to exercise the right on the subject or issue."⁴² The expression of choice through voting for one's preferred candidate at the polls is the second aspect of the right to vote, which is the fundamental tenet of democracy. The first is the formation of an opinion regarding the candidates. The first action enhances the second. Without access to the necessary information on a candidate, many voters will find it difficult to form an opinion and select the best option. At the very least, the voter/citizen should be aware of the fundamental facts regarding the candidate running, such as any criminal convictions. In *Jyoti Basu v. Debi Ghosal*,⁴³ the court observed that freedom of voting as distinct from the right to vote is thus a species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as the right to secure information about the candidate which are conducive to the freedom. So for the first time in *Union of India v. Association for Democratic Reforms*⁴⁴ case, which is the forerunner to the present controversy, the right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(a). Without a doubt, this has given the right inherent in Article 19(1)(a) a new dimension through an innovative approach driven by the need to enhance and refine the political electoral process. By defining this right, the Court had chosen a novel route rather than following a well-travelled one. Though there may be some overlap, it is important to highlight that the right to information as defined by this Court in the aforementioned judgement differs significantly from the right to learn about public affairs or the right to obtain information via the press and electronic media. When someone wants to become a public figure and the information pertains to him, the voter's or citizen's right to information is alleged to be violated. Second, the State's intervention is necessary for the realisation of such rights. Through laws or legally binding directives, the State or any of its agents must force a party to provide the information to the public.

3.13 Right to Freedom of Expression and the Right to Dress

It must be remembered that everyone has always considered the pursuit of identity to be a fundamental human ideal, whether it be about achievement, notoriety, economic dominance, political stance, celebrity status, or social superiority, among other things. However, to find one's identity and to live in a legal environment free from shame and fear, one must be able to express oneself freely, which is closely linked to the constitutional idea of an identity with dignity. In *National Legal Services Authority v. Union of India*,⁴⁵ the Court determined that all citizens have the right to freedom of speech and expression, which includes the ability to express one's gender identity, as stated in Article 19(1)(a) of the Constitution. The great fundamental rights that are acknowledged and upheld as natural rights entailed in being a citizen of a free nation are protected by Article 19(1)(a). According

⁴² Lily Thomas v. Speaker, Lok Sabha, (1993) 4 SCC 234

⁴³ 1982(1) SCC 691

⁴⁴ AIR 2002 SC 2112

⁴⁵ (2014) 5 SCC 438

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to Article 19(1)(a) of the Constitution, every person has the right to freedom of speech and expression, which includes the ability to express one's gender identity. The self-identified gender can be expressed through dress, words, action behaviour or any other form. No restriction can be placed on one's appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution." In *Navtej Singh Johar & Ors. v. Union of India*⁴⁶, the freedom of expression was referred to observe that transgender persons have a right to express their self-identified gender by way of speech, mannerism, behaviour, presentation clothing, etc. But in *Aishat Shifa v. State of Karnataka*,⁴⁷ the Supreme Court held that wearing a Hijab should not be protected as a form of expression, within the right to freedom of speech and expression

3.14 Internet and Freedom of Speech:

Internet access is one of everyone's fundamental rights. It supports the freedom of speech and expression. In addition, using the Internet for communication is now commonplace. Many fundamental rights, including those to education, information, communication, free speech and expression, and health, are intertwined with Internet access. One of the essential rights is the ability to use the internet. A violation of the freedom and rights protected by Article 19 of the Constitution is the suspension or termination of the internet and communication services. Utilising the internet is akin to having unrestricted connectivity. The "freedom to access the internet" was ruled to be a fundamental right covered by Article 19(1)(a) of the Constitution.⁴⁸ Citizens' fundamental rights cannot be violated by the government unless specific circumstances specified in the Constitution are met. The freedom to speak and express oneself, criticise others, and offer opinions on matters are all guaranteed by the right to freedom of speech and expression. According to Article 19 of the Constitution, Internet access is a fundamental right, subject to some limitations, and press freedom is a priceless and sacred right. It stated that magistrates should use common sense and adhere to the proportionality principle when issuing prohibitory orders. The Constitution's protections of the fundamental rights to information, education, and free speech are violated by the government's arbitrary and unreasonable Internet shutdowns. In *Faheema Shirin R. K v. State of Kerala*,⁴⁹ it is claimed that the right to access the Internet forms a part of the freedom of speech and expression guaranteed under Article 19(1)(a).

4. Conclusion

One of the most fundamental rights that every person in today's society should have just by being a human being is the freedom of speech and expression. A democracy cannot work properly without free speech, and the government should only seldom and carefully interfere to allow people to freely create their own beliefs and express them however they see suitable. It is one basic right that encapsulates several aspects, and several forms of expression including that of remaining silent. However, the judiciary has played a very pivotal role in widening the scope of the right of freedom of speech and expression but still, a lot of areas are unexplored. And also a proper balance has to be maintained between the exercise of free speech and other individual rights.

⁴⁶ AIR 2018 SC 4321

⁴⁷ (2002) 8 SCC 481

⁴⁸ Anuradha Bhasin v. Union of India & Ors., Writ Petition (Civil) No. 1031 of 2019.

⁴⁹ AIR 1997 SC 568