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## FREEDOM OF EXPRESSION AND PUBLIC ORDER: SPECIAL REFERENCE TO SEDITION

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"On himself, his actions had layer upon his thoughts the individual is his own sovereign." - *J.S. Mill (1773-1836 AD)*<sup>2</sup>

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

### ABSTRACT

Freedom of expression is enshrined in Article 19 of the Universal Declaration of Human Rights. It is considered one of the most important rights, as it allows the individual to achieve the fullness of himself and to enjoy the freedom to the fullest.

The United Nations Human Rights Council adopted in 2018 resolution Article 19 "the same rights that people have offline must also be protected online, in particular the freedom of expression that applies regardless of borders and by choice of media." A right refers to what I and others consider important and necessary to lead a life of honor and dignity (right is basically an entitlement or a claim which is justified. It states that What are we entitled to as citizens, individuals, human beings.)The fulfillment of our basic needs gives us the freedom to pursue our talents and interests, where we can take the example of the right to free expression. This right gives us the opportunity to be creative and original - whether it is in the field of writing or other creative pursuits, but freedom of expression is important for a democratic government. Because it allows the free expression of beliefs and opinions Rights like the right to livelihood or freedom of expression are important for all the people who lose in the society, that is why their nature is said to be reliable. The second basis of claiming rights is that they are necessary for our betterment, they help in developing the skills of the people.

**Keywords:** freedom of expression, sedition, Indian constitution, social media, internet shutdown

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## **Introduction**

Constitutional Protection - In 1215, Emperor John of England provided protection of basic rights to the citizens. This Magna Carta Charter is the first written document related to Fundamental Rights. This document is called the originator of Fundamental Rights. For the first time these rights were given constitutional level in America. The American people had bitter experience of the atrocities of the British Parliament; Therefore he demanded constitutional protection for the fundamental rights of the people. The inclusion of the 'Bill of Rights' in the US Constitution is the result of that. The people of America did not accept the British method, which is considered to be the guardian of the rights of parliamentarians. Those people recognized the principle of limited power of the legislature. He suspected that the elected representatives of the people should not be replaced by the British monarch and parliament.

## **Declaration of Independence**

- Magna Carta Act 1215
- Petition of Right 1628
- Habeas Corpus Act 1679
- Bill of Rights 1689

Freedom of expression was protected as early as 1789 in Article 11 of the Declaration of the Rights of Man and Citizen (France). "The free communication of thoughts and ideas is the most precious of these human rights. Every citizen can, accordingly, speak, write and print with freedom....It is also protected in the First Amendment to the United States Constitution.

of America (1791):"Congress shall not make any law with respect to the establishment of religion or to prohibit the free exercise thereof; or to curtail the freedom of speech, or of the press;Or the right of people to assemble peacefully..."

Sweden has adopted a fundamental law to protect the freedom of the press from 1766.

## **International provisions**

Freedom of expression is protected by global institutions.

- Universal Declaration of Human Rights (Article 29)
- International Covenant on Civil and Political Rights (Article 19)
- Regional institutions such as the European Council of the Convention on Human Rights (paragraph 10)
- American Human Rights Convention (Article 13)

When the Indian Constitution was being composed, a historical background was prepared about these rights. Taking inspiration from all these, the constitution-makers included the Fundamental Rights in the Constitution. In recent years, the term human rights is being used more than the word natural rights. The basic belief behind human rights is that any people are entitled to get certain things just by being human. Based on this understanding of rights, the United Nations Universal Declaration of Human Rights, drafted on 10 December 1948, seeks to recognize the claims that the world community collectively considers necessary to lead a life of dignity and self-respect. Thus, rights assign statutory obligations to the state to act in certain ways, with each authority directing what is doable to the state. and what is not.

Our rights ensure that the authority of the state works without violating the dignity of individual life and liberty, the state can be an absolute sovereign authority, the laws made by it can be enforced by force, but the state can be completely sovereign. Existence is not for self, but for the benefit of the individual, in this the public has more importance and the ruling government has to work for its welfare. The ruler is accountable for his actions and he must not forget that laws are meant to ensure the welfare of the people. In case of conflict we have to balance rights.

### **Scope of the right to freedom of expression:**

The scope of the right to freedom of expression is based on changing philosophical, political and legal concepts. It has to be analyzed in specific geographical, legal and social contexts. Most of the time it involves balancing exercise with other rights and fundamental values<sup>3</sup>.

### **Research Methodology:**

1. This study used the method of social media analytics to analyze on freedom of

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<sup>3</sup> <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/12/FreedomOfExpressionOnlineAndOffline5Feb2018.pdf>

expression, public order, social media, hate speech, sedition cases in india.

2. Theoretical and non-theoretical material will be collected in this study. Also, this study work depends on the collection and interpretation of various information. In which the information given by learned authors is based on books, journals, articles, articles, newspapers, national-international reports and other research documents and findings of research and court decisions which will help in research work and the broad nature of the research topic. Reason: Internet access will also be used for additional data.

## **Introduction**

### **Freedom of Expression**

Freedom of speech and expression means to express one's views through words, writings, prints, signs or any other means. Freedom of expression includes expressing the thoughts of a person by any means by which he can communicate them to others<sup>4</sup>.

### **Constitution Of India Article 19(1) a :- Freedom of speech and expression**

Freedom of speech and expression is the cornerstone of democratic governance. Every democratic government attaches great importance to this freedom. Without it, it is not possible to develop the rational and critical power of the people, which is necessary for the proper functioning of the democratic government.

### **Grounds of Restriction - Article 19(2)**

- Sovereignty of India
- State Security
- Friendly relations with foreign states
- Public order
- In the interests of courtesy or morality
- contempt of court

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<sup>4</sup>डॉ. जयनारायण पाण्डेय : भारत का संविधान, 44वां संस्करण सेन्ट्रल लॉ एजेन्सी, 2011

- defamation
- crime provocation<sup>5</sup>

The right is subject to reasonable restrictions -

"The constitution-makers have made us a bird to roam in the free sky by giving place to the fundamental rights in the constitution, but have not given them wings."

Reasonable restriction under Article 19 and the **principle of American police power** The freedom to act according to the will of any person is not absolute even in matters of expression. In the modern state, no authority is absolute or limitless. They have certain limitations or limitations. The rights guaranteed in the first ten amendments to the US Constitution are expressed as if and were absolute. But keeping in view the requirements, the Supreme Court of America invented the principle of police power to impose those restrictions. Police power is the power of the government to protect itself. According to this, reasonable restrictions can be imposed on rights and property to protect the society from harm. Subject to police power, the state can regulate the use of soundproofing devices, the speed of vehicles on highways, the distribution of contaminated food items, and compel the public to take measures to avoid fire. Many such limitations have been accepted in the name of police power. It has been recognized in our constitution that freedom can be effective only when it is limited.

In his speech to the Constituent Assembly, Dr. Ambedkar, while emphasizing the need for restrictions, had said, "We could expect the Supreme Court to invent the principle of police power to assist the Parliament by keeping the Fundamental Rights in extreme terms. Do it. We didn't take this route. Our Constitution directly permits the state to impose limits on fundamental rights." It is also right, the importance and existence of rights can remain so long as they are used in a balanced and balanced manner, their existence cannot be imagined by attacking the rights of others.

## **SEDITION**

The sedition law was used by the British to suppress dissent and imprison freedom fighters such as **Mahatma Gandhi and Bal Gangadhar Tilak**, who criticized the policies of the colonial administration. After independence, the framers of the Constitution gave considerable

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<sup>5</sup> डॉ. जयनारायण पाण्डेय : भारत का संविधान, 44वां संस्करण सेन्ट्रल लॉ एजेन्सी, 2011

time to consider various aspects of this colonial law. One of the most vehement critics of the sedition law, **K.M. Munshi** argued that such a harsh law is a threat to democracy in India. He argued that, "Indeed the essence of democracy is criticism of the government." It was because of his efforts and the perseverance of Sikh leader Bhupinder Singh Mann that the word sedition was removed from the Constitution.<sup>6</sup>

**124A. (Sedition):**—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, 13\*\*\* the Government established by law in 14[India], 15\*\*\* shall be punished with 16[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.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation

2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation

3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]<sup>7</sup>

Due to its poor definition, the sedition law can be used by the police to falsely accuse individuals because it does not clearly state what acts are seditious and what can be classified as sedition. It provides a comprehensive outline.

Sedition case law : in India

CR : case registerd

CCS : case charge sheeted

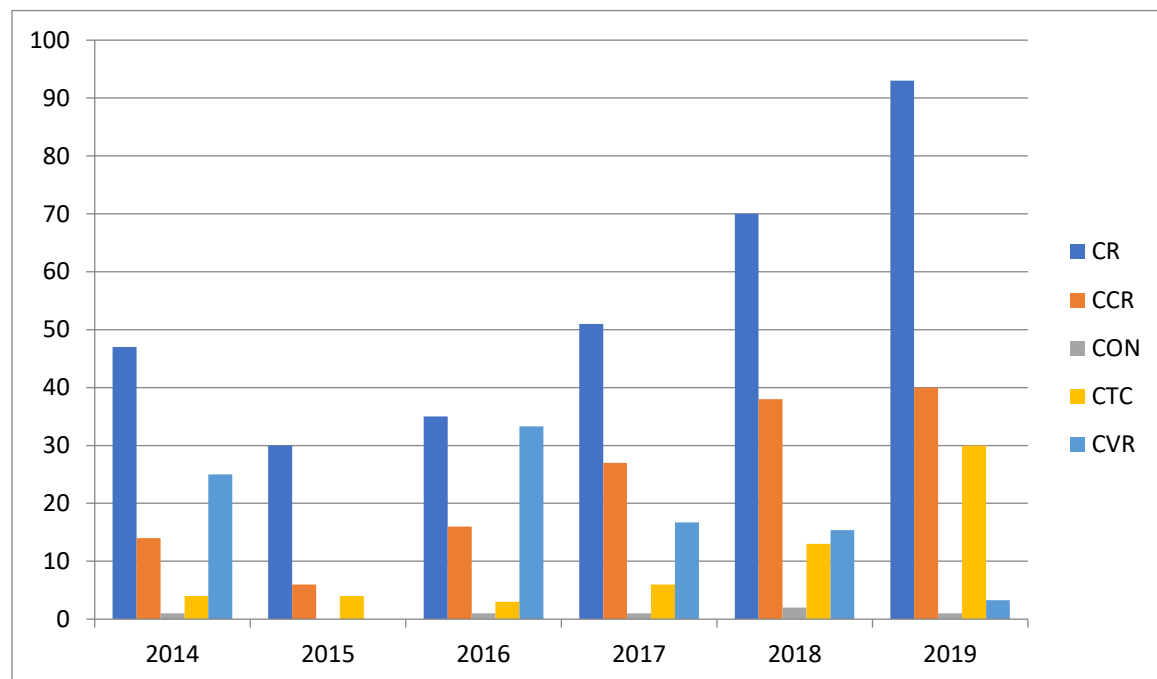
CON : case convicted

<sup>6</sup> <https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy/>

<sup>7</sup> [legislative.gov.in/sites/default/files/A1860-45.pdf](http://legislative.gov.in/sites/default/files/A1860-45.pdf)

CTC : case in which trials completed

CVR : conviction rate the offense of sedition



Source :- [www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/LS-16032021/281.pdf](http://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/LS-16032021/281.pdf)

The right to personal liberty and freedom of expression are hallmarks of liberal democracy and sedition laws and their gross abuse attacks the very foundation of these freedoms enshrined in the Indian Constitution. The need of the hour is that the judiciary should review this harsh law. Even though it may not be possible to abolish this law, reducing it and issuing strict guidelines to limit its indiscriminate use can certainly help India's democratic position apart from protecting the freedom of expression in the country.

The removal of the word "sedition" suggests that inciting criticism of the government or bad feelings towards it should not be considered reasonable grounds for restricting freedom of expression and the press, unless it amounts to undermining security. tend to overthrow the state. ... Thus, very narrow and rigid limits have been set for the permissible legislative abbreviations of the right to free speech and expression, and this was undoubtedly due to the realization that freedom of speech and the press lies at the foundation of all democratic organisations<sup>8</sup>.

<sup>8</sup> <https://vidhilegalpolicy.in/blog/what-distinguishes-disturbance-to-public-order-from-sedition-a-1950-sc-decision-shows-the-way/>

## Recommendations for India

End all charges and investigations against people facing trial for exercising their right to freedom of expression and assembly;

- The government should abolish or amend all laws that threaten the freedom of expression.
- Create a clear plan and timetable for the abolition or amendment of laws criminalizing peaceful expression;

Remove to Indian penal code, sedition laws

Government Stop misuse of sedition and UAPA.law.

## Conclusion

The Constitution of India protects the right to freedom of speech and expression, but recent and colonial laws such as sedition and criminal defamation are not only in the law books but are frequently used in an attempt to silence critics .Indian governments have failed to protect freedom of expression, despite courts repeatedly reminding them that maintaining law and order is the responsibility of the state and that threats to public order cannot be grounds for a ban on speech<sup>9</sup>.

Freedom and consciousness are inherent in human beings as soon as they are born, with these freedoms and consciousness, development takes place in man; Expression, which is a natural quality. No one can snatch it from what you get in the name of being a human being. Freedom of expression in India in ancient times Many examples are found in good temples (Khujraho), literature (Vedas). Art, music, etc. have been in the form. In the freedom movements, Mahatma Gandhi had peacefully agitated and brought the British government to the strength of factions. That is why peace in democracy; Government's protest, protest against the government, has been the foundation of the movement; But in the present scenario, the government has tried to put the protesting people in jail; The work of defaming has been done by putting up a case of sedition. During the CAA, NRC, Farm Act protests, the government imprisoned the protesting people on charges of sedition, UAPA, NSA so that the voice of the protesting people could be

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<sup>9</sup> [www.hrw.org/hi/news/2016/05/24/29012](http://www.hrw.org/hi/news/2016/05/24/29012)



suppressed. Apart from this, the government shut down the internet in Jammu and Kashmir. Taxes have crushed human rights. Along with this, Disha Ravi, who supported the farmers' movement, was arrested without listening to the tool kit case, but many such examples have not come to the fore, one reason for this has also been the Godi media. India is the world's largest democratic country but Its list of democratic countries is decreasing day by day, one of the reasons for which is to curb the freedom of expression and also to curb its mediums. In the same way, the government is moving towards dictatorship which will take India towards annihilation. The freedom of expression is being snatched from time to time by the government in the name of public order, sedition, it is fair to the extent that many artists are being stopped from doing shows. Artists like Kunal Kamra etc. are being put in jails.

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