

Freedoms under Indian Constitution

Dr.G.B.Reddy

Professor

**University College of Law
Osmania University,Hyderabad-7**

gbredlaw@gmail.com

Freedoms under Indian Constitution

- **Meaning & purpose** – promotion of rights of citizens ,democratic values & oneness and unity of the country
- **The six freedoms** [Cl.(a) to (g) of Art.19(1)]
- **Availability**- only to citizens (natural persons)
- **Nature** – not absolute
- **Subject to reasonable restrictions**
- **Restrictions** – imposed by State & by law, justified under Cls.(2) to (6) of Art.19

Right to Freedoms (Art.19)

- Guarantee of freedoms to **citizens**
- **Six freedoms** – of 'speech & expression', 'peaceful assembly', 'association', 'free movement', 'residence' and 'practicing any profession and carrying on any business'
- **Not absolute-subject to reasonable restrictions u/A 19(2) to (6)**
- **Freedom of speech Art.19(1)(a) & (2)**
- **Grounds of Restrictions-** security of state ,friendly relations with foreign countries, public order, decency, and morality, sovereignty and integrity of India, contempt of court, defamation, incitement to an offence

Freedom of Speech & Expression

[Art.19(1)(a) & (2)]

- **Recognized under Art.19 of UDHR, I Amendment to US Constitution & other sources**
- **Art 19(1)(a)**-Guarantees to all citizens 'freedom of speech and expression'
- **Purpose** – for proper functioning of democratic government based on debate and open discussion, for preserving unlimited market place of ideas
- **Scope** – right to express one's views and opinions at any issue **through any medium**, e.g., by words of mouth, writing, printing, picture, films, silence etc.
- **Includes** implicitly freedom of press (In USA, First Const. Am. Guarantees freedom of speech and press)

Freedom of Press

- **Sakal Papers v.Uol** (1962, SC) – regulation of no.of pages acc.to price charged, prescribing the no.of supplements to be published, regulating size and area of advts. etc by govt.-invalid & violates Art.19(1)(a)- followed in **Bennet Coleman & Co. v. Uol**,(1973,SC) – (newsprint policy cannot be news control policy)
- **Indian Express Newspapers (Bombay) Pvt Ltd v.Union of India (1986,SC)**-imposition of customs duty and auxiliary duty on newsprint imported by different categories of newspapers-faulted as tax on knowledge-common fiscal burden however has to be borne by newspapers..

Bandhs & Constitutional validity

- **Bharat Kumar v. State of Kerala (1997 (2) KLT 287 (F.B.)** -“Para 17. No-political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its view point from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it.”
- **The Communist Party Of India (M) vs Bharat Kumar & Ors on 12 November, 1997 –AIR 1998 SC 184 - SC-satisfied that the distinction drawn by the High Court between a "Bandh" and a call for general strike or "Hartal" is well made out with reference to the effect of a "Bandh" on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of a n individual or only a section of the people.**
- Affirmed in **Indian National Congress v. Institute of Social Welfare and Ors. (2002 (2) KLT 548 : (2002) 5 SCC 685).**

Bandhs & Constitutional validity

- **James Martin vs State Of Kerala [16 December, 2003 –SC]**
 - in the name of Hartal or Bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property of any citizen or destruction of life and property, and the least any government or public property. It is high time that the authorities concerned take serious note of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. **Those who at times may have even genuine demands to make should not lose sight of the overall situation eluding control and reaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all around destruction with counter productive results at the expense of public order and public peace.** No person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. The case at hand is one which led to the destruction of property and loss of lives, because of irresponsible and illegal acts of some in the name of bandh or hartal or strike.

Bandhs & Constitutional validity

- Unless those who organize can be confident of enforcing effective control over any possible turn of events, they should think twice to hazard themselves into such risk prone ventures endangering public peace and public order. The question whether **bandh** or **hartal** or **strike** has any legal sanctity is of little consequence in such matters. All the more so when the days are such where even law-enforcing authorities/those in power also precipitate to gain political advantage at the risk and cost of their opponents. Unless such acts are controlled with iron hands, innocent citizens are bound to suffer and they shall be the victims of the highhanded acts of some fanatics with queer notions of democracy and freedom of speech or association. That provides for no license to take law into their own hands. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace.

Bandhs & Impact

- **George Kurian vs State Of Kerala on 28 May, 2004 - 2004 (2) KLT 758** – DB- With regard to the injuries and damages caused to the private persons and their properties, Government should adequately compensate them immediately as Government has failed to fulfill its constitutional obligation to protect lives and properties of the citizens and the Government should take steps to recover the same from the persons who caused such damages or injuries and also from the persons and political parties or organizations who called for such hartals or general strikes. Criminal cases also should be taken against the offenders as well as the abettors to the offence. Such criminal cases registered should be pursued with enthusiasm and it should not be withdrawn merely on political pressure and investigation should be conducted fairly not with a purpose of filing a subsequent refer report as undetected;
- **Shiv Sena Party vs B.C. Deshmukh And Ors. on 16/9/2005 -Bench: Y Sabharwal, C Thakker, R Raveendran JJ**-By impugned order, the petitioners were directed to deposit by way of exemplary damages a sum of Rs. Twenty Lakhs each with the state Government in a separate fund to be named "30th July 2003 Bandh Loss Compensation Fund". The said amount shall be deposited by the petitioners within a period of one week. In case the deposit is not made, the petitions shall stand dismissed without further reference to the court. In case the deposit is made and copies of receipts have been filed, the petitions shall then be listed for hearing.

Other aspects of freedom of press

- **Freedom to advertise**- Hamdard Dawakhana (1960) and tat Press Yellow Pages case(1995)
- **Telephone Tapping violates** Art.19(1)(a)-PUCL v. Union of India (1997,SC)
- **Right to reply** (Manubhai Shah v.LIC,1981,Guj)
- **Censorship of films**
- **Censorship of press**
- Freedom of silence
- **Classification of films**
- Freedom to telecast etc

Freedom of Speech & Recent Trends

- **Trial by Media** [Law Commission of India-200th Report on trial by media, free speech and fair trial under Cr.P.C, 1973 -AUGUST 2006, Sahara India Real Estate ... vs Securities & Exch.Board Of India ,11 September, 2012- Swatanter kumar vs. the indian express ltd. Delhi HC thr. js Manmohan Singh decided on : jan-16-2014]
- **Sting Operations** - 1996 decision by the Supreme Court which ruled that wiretaps are a “serious invasion of an individual’s privacy -The Delhi High Court recently in the case of *Aniruddha Bahal v. State (2010)* -sting operation of some Members of Parliament, in which they were offered money for asking questions in Parliament and the act was caught in the camera -held that conducting a sting operation by any citizen is a legitimate exercise - **Supreme Court of India-Rajat Prasad vs C.B.I on 24 April, 2014-Sc refused to interfere with the Delhi HC’s refusal to quash the criminal proceedings against two journalists in a sting operation]**
- **Freedom on Internet:** Shreya Singhal v.Union of India [March 2015-(2015) 5SCC 1] - “S.66-A,IT Act,2000 rel. to . Punishment for sending offensive messages through communication service, etc.-struck down by SC as violative of Article 19(1)(a) and not saved under Article 19(2).
- **Posting comments on Facebook** criticising Police-not criminal intimidation u/s 503,IPC-Manik Taneja v.State of Karnataka (2015) 7 SCC 423
- **Defamation** –In Aug.2015-After holding extensive hearing over 19 days, the Supreme Court on Tuesday reserved its verdict on the constitutional validity of criminal defamation law.

- Hate Speeches [an effort to marginalise individuals based on their membership in a group] - in *Pravasi Bhalai Sanghatan v.UoI* [AIR 2014 SC 1591] , the SC held that there are sufficient provisions in penal laws to curb the menace of Hate Speeches
- **Expression of Gender Identity-** thr. Freedom of Speech and Expression – *NALSA v.UoI* , AIR 2014 SC 1863
- **Right to receive Information:** part of Art.19(1)(a)- *Indian Soaps and Tioletries Makers Association v.Ozair Hussain* (AIR 2013 SC 1834)
- **Decency and Morality:** *S.Khushboo v. Kanniammal* (AIR 2010 SC 3196)- reg.her statement on pre-marital sex and live-in relationships-ought to have been contested on media and press rather than in thr.police prosecution
- **“Without Freedom of thought there can be no such thing as wisdom;and no such thing as public liberty, without freedom of speech.”— Benjamin Franklin**

Right to Freedoms (Art.19)

[contd..]

- **Freedom to assemble** Art.19(1)(b) **Restrictions**- Art.19 (3) - **public order , sovereignty and integrity of India**
- **Freedom to form associations (including cooperative societies - 97th Am.2011)** - Art.19(1)(c) **Restrictions**- Art.19 (4) - **public order, morality, or sovereignty and integrity of India**
- **Freedom of movement** - Art.19(1)(d) **Restrictions**- Art.19 (5) – **interest of general public ,or protection of interests of STs**

Right to Freedoms (Art.19)

[contd..]

- **Freedom of Residence** - Art.19(1)(e)
Restrictions u/a Art.19(5) - **interest of general public ,or protection of interests of STs**
- **Freedom to carry on Trade and Commerce** - Art.19(1)(g) Restrictions -
Art.19(1)(6) - **interest of general public ,state monopoly , qualifications**

- Liquor trade-Art.19(1)(g) v.47
- Betting and gambling
- Prize competitions
- Games of skill and chance
- Professions & regulation (Role of MCI, BCI etc)
- Right to trade on footpaths/pavements (**Sodhan Singh v.NDMC-II,1989,SC**)
- Requirement to pay minimum wages by employers
- Taxing laws, Licensing, price fixing etc

Conclusion

- *“Your right to swing your arms ends just where the other man’s nose begins.”*
- *A drunken man was going down the street in Baltimore flinging his hands right and left, when one of his arms came across the nose of a passer-by. The passer-by instinctively clenched his fist and sent the intruder sprawling to the ground. He got up, rubbing the place where he was hit, and said, “I would like to know if this is not a land of liberty.” “It is,” said the other fellow; “but I want you to understand that your liberty ends just where my nose begins.”*