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## RIGHT TO INFORMATION IS THE OTHER SIDE OF THE COIN OF RIGHT TO FREEDOM OF SPEECH-DOES THE STATEMENT HOLDS WELL IN FORMAT?

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### ABSTRACT

Right to Speech and expression is not only fundamental right but a basic human right. It is only this animal which is given a boon to express in words by the God. When we speak or express we have information which our capacity as human beings help us to acquire, use and store information which is essential for our survival. Both these rights i.e. right to speak and expression and right to be informed goes parallel to each other and it is evident both should be equally be protected to be meaningful. Hence, the author here has made an effort to bring out a knit between the rights.

### KEYWORDS

Right to Information, Right to Speech and Expression, Indian Constitution, Fundamental Right and Supreme Court.

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### INTRODUCTION

Everyone has a right to express themselves and have access and right to disseminate information and opinions. Freedom of expression is a human right and central to democracy. The significant part of liberty is the freedom of expression. In the hierarchy of liberty, this occupies prominent position and as it is stated that freedom of speech is the mother of all the other liberties. The right to express one's own conceptions and opinions freely by words or which are in writing or oral, or which is in the form of

printing, or which is represented by pictures or any other more is freedom of speech.

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<sup>1</sup>. A free word contributes to democratic development. The freedom to receive and communicate information and ideas without interference is an important aspect of the freedom of speech and expression. Freedom of speech is the right to communicate one's opinions and ideas without fear.

Concepts of freedom of speech can be found in early human rights documents. In England *England's Bill of Rights*, 1689 legally established the constitutional right of 'freedom of speech in Parliament'. The Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789, specifically affirmed freedom of speech as an inalienable right. The Declaration provides for freedom of expression in Article 11, which states that:-

*"The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law"*<sup>1</sup>.

Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that:

*"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"*<sup>2</sup>.

Freedom of speech, or the freedom of expression, is recognized in international human rights law. The right is enshrined in Article 19 of the International Covenant on Civil and Political Rights. Based on John Milton's arguments, freedom of speech is

understood as a multi-faceted right which includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects: the right to seek information and ideas; the right to receive information and ideas and the right to impart information and ideas.

International, regional and national standards also recognize that freedom of speech, as the freedom of expression, includes any medium, be it orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression.<sup>3</sup>

## OBJECTIVES OF FREEDOM OF SPEECH AND EXPRESSION

The freedom of speech and expression is required to fulfil the following objectives:

### To discover truth

Historically the most durable argument for a free speech principle has been based on the importance of open discussion to the discovery of truth. If restrictions are imposed then society is prevented from ascertaining of truth and opinions. Truth is never published. This forms the major handicap in the competitive world. The idea of global trade is will only be in letters and will lose its spirit.

### Non self-fulfilment

A second major theory of free speech sees it as an integral aspect of each individual's right to self-development and fulfilment. Restriction imposes restriction on the growth of personality. This shall hinder the prosperity of human knowledge which means there shall be no distinction between human beings and animals. Freedom of speech is also linked to other fundamental freedoms such as right to life, livelihood, equality, etc. Thus, for development of human personality, freedom of speech and expression is essential

### Democratic value

Freedom of speech is the bulwark of democratic Government. This freedom is essential and part of democracy. Democracy means for the people, by the

<sup>1</sup> Dheerendra Patanjali, 'Freedom of Speech and Expression India v America - A study', *India Law Journal*, vol. 3, issue. 4, 2007, p. 17.

<sup>2</sup> The Declaration of the Rights of Man and of the Citizen (French: *Declaration des droits de l'homme et du citoyen*), passed by France's National Constituent Assembly in August 1789, is a fundamental document of the French Revolution and in the history of human and civil rights.

<sup>3</sup> <sup>3</sup> <http://www.un.org/en/documents/udhr/>, last visited on 30/12/2016.

people and of the people. The agenda shall hold well only when this is linked with the freedom to disseminate information. This is first condition of liberty and fraternity. This keeps the discussion open on all the issues which bring the government to be alert in its substance. This freedom plays a major role in forming public opinion of all the aspects of life.

### **To ensure pluralism**

Freedom of Speech reflects and reinforces pluralism, ensuring that different types of lives are validated and promote the self-esteem of those who follow a particular life-style.

So, it can be concluded that freedom of speech enables to discovery of truth, is important for the working of democratic form of government and to fulfil all the aspects of human wants and autonomy. It is in the speaker's interest in communicating ideas and information and equally in the interest of audience in receiving ideas and information.

## **FREEDOM OF SPEECH AND EXPRESSION AND INDIAN CONSTITUTION**

It is always through the curious histories of irony that larger stories reveal themselves. The irony that concerns us is that of an apparently innocuous phrase "the first amendment". The first amendment in the context of the US Constitution refers to the right of freedom of speech and expression, a right which has been held to be almost absolute in the US. The first amendment in India refers to the first amendment to the Constitution in 1951<sup>4</sup> which attempted to strengthen state regulation over the freedom of speech and expression by expanding the scope of Article 19(2). This article narrates the history of the first amendment to the Constitution of India as the history of the first media crisis in post-colonial India, and the response of the state to the crisis.

This crisis of media in the early life of the 'new' nation was not surprisingly seen to be a crisis of the nation, and this configuration of the 'national crisis' has remained the spectral fear that permeates much

of media history in post-colonial India. It also provides for us the first instance of what Dr. Upendra Baxi terms as "constitutionalism as a site of state formative practices"<sup>5</sup>. Article 19(1) (a) in its original form read as follows: "All citizens shall have the right to freedom of speech and expression". This fundamental right was, however, limited by Article 19(2) which said: "Nothing in sub-clause (a) of clause 1 shall affect the operation of any existing law insofar as it relates to or prevents the state from making any law relating to libel, slander, defamation, contempt of court or any matter which offend against decency or morality or which undermines the security of the state or tends to overthrow the state".

The first amendment to the Constitution was to the proviso to Article 19 (1) (a)<sup>6</sup>, namely Article 19(2), and after the amendment the provision read as follows: Article 19 (2) "Nothing in sub-clause (a) of clause 1 shall affect the operation of any existing law insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the sub-clause in the interests of 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." The three significant additions brought about by the amendment were: a) addition of the word 'reasonable' before restrictions b) addition of 'friendly relations with foreign states' as one of the grounds for restricting freedom of speech and expression, and finally c) the addition of 'public order'<sup>7</sup>.

Before we begin to understand why this amendment was made, it is important to provide a background to the emergence of the Constitution, and the philosophy that it sought to articulate, and the structural logic it adopted to realise its goals. While India gained independence on August 15, 1947, it was not until two-and-a-half years later on January 26, 1950 that India adopted a formal Constitution.

<sup>5</sup> Upendra Baxi, "The Rule of Law in India", *International Journal of Human Rights*, vol. 4, 2007, pp. 6-25.

<sup>6</sup> Constitution (First Amendment) Act, 1951.

<sup>7</sup> Pandey, J.N, '*Constitutional Law of India*', Central Law Agency, Allahabad, 2003, p.63.

<sup>4</sup> <http://indiacode.nic.in/coiweb/amend/amend1.htm>, last visited on 29/12/2016.

The day marked the end of three years of debate and drafting, and the paper's editorial went on to say: "Today India recovers her soul after centuries of serfdom and resumes her ancient name"<sup>8</sup>. The Constitution was therefore seen to be both a document that articulated the hopes and aspirations of the new nation, as well as one which was structurally designed to actualise these aspirations.

The greatest challenges for the framers of the Constitution included, "How could authority be centralised enough to enhance national unity and to promote economic development without alienating subordinate levels of government and stultifying local initiative? How, while applying the rule of law, would social economic reform be fostered and democratic institutions strengthened in a huge society in which religion and tradition sanctioned inequality and exploitation? How would government achieve these and other national goals -- indeed, how would it govern when the law, the courts and the administration failed to reach so many citizens effectively?"

According to Austin, the Indian Constitution sought to ensure a structure which would tie in all these concerns in a non-contradictory manner. The core vision of the Constitution "may be summarised as having three strands: protecting and enhancing national unity and integrity; establishing the institutions and spirit of democracy; and fostering a social revolution to better the lot of the mass of Indians. The framers believed, and Indians believe today, that the three strands are mutually interdependent and inextricably intertwined. Social revolution could not be sought or gained at the expense of democracy. Nor could India be truly democratic unless the social revolution had established a just society. Without national unity, democracy would be endangered and there could be little progress towards social and economic reform. And without democracy and reform the nation would

not hold together. With these three strands, the framers had spun a seamless web"<sup>9</sup>.

However, the early history of the Constitution of India is precisely about the strains that begin to emerge in this imagination of the seamless web, as the three strands that is the executive, legislation and the judiciary start to contradict each other and work against each other. On the one hand, the project of nation-building in terms of national sovereignty and security begins to conflict with the exercise of democratic rights, especially freedom of speech and expression. This shall stand in the promotion of social justice. Then how to resolve this conflict? The answer lies in the publication of flaws of the organs and in the interpretation of the Constitution.

### **SUPREME COURT ON RIGHT TO SPEECH**

The first attempt on the seamless fabric of the Constitution emerged in the context of the decisions by the Supreme Court way back in 1950 itself, over the interpretation of what constituted freedom of speech and expression in a democracy and what were the powers of the state to impose restrictions on the exercise of these rights. In the *Romesh Thapar v. State of Madras*<sup>1</sup> case, the petitioner was the printer, publisher and editor of an English journal called 'Crossroads'. 'Crossroads' was printed and published in Bombay and was considered a left-leaning journal, very critical of a number of the policies of the Union government. The Madras government had declared the communist parties illegal. The Government of Madras, in exercise of their powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 purported to issue an order No MS 1333 dated March 1, 1950, whereby they imposed a ban on the entry and circulation of the journal in that state. The Appellant approached the Supreme Court of India and alleged that this ban was a violation of his freedom of speech and expression as guaranteed under Article 19(1) (a). The court stated that the ban would *prima facie* constitute a clear violation of the fundamental right of freedom of speech and expression unless it could

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<sup>8</sup> By the editor of *The Hindustan Times*, January 26<sup>th</sup> 1950 with the Heading 'Hail Our Sovereign Republic'.

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<sup>9</sup> Glanville Austin, 'Working a Democratic Constitution: The Indian Experience', Oxford University Press, U.S., 2003, p 13.

be shown that the restriction was saved by the exceptions provided by Article 19(2) of the Constitution. The question that therefore arose was whether Section 9(1-A) of the Madras Maintenance of Public Order Act was saved by Article 19(2). Section 9(1-A) authorised the Provincial Government “for the purpose of securing the public safety or the maintenance of public order, to prohibit or regulate the entry into or the circulation, sale or distribution in the Province of Madras or any part thereof of any document or class of documents”. Given the fact that Article 19(2) did not contain the phrase ‘public safety’ or ‘public order’, the question was whether it could fall under the language of Article 19(2) and be considered a “law relating to any matter which undermines the security of or tends to overthrow the state”. The government argued that the expression “public safety” in the Act, which is a statute relating to law and order, means the security of the Province, and, therefore, “the security of the state” within the meaning of Article 19(2) as “the state” has been defined in Article 12 as including, among other things, the government and the legislature of each of the erstwhile Provinces. The court however stated that the phrase ‘public safety’ had a much wider connotation than ‘security of the state’, as the former included a number of trivial matters not necessarily as serious as the issue of the security of the state. It concluded that “unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the state or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that Section 9(1-A) which authorizes imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional”.

In the second case, *Brij Bhushan v. State of Bihar*<sup>10</sup>, the chief commissioner of Delhi passed an order under Section 7(1) (c) of the East Punjab Public Safety Act, 1949 against an English weekly from

Delhi called ‘The Organizer’. If in the previous case the order was against the far left, in this case the order was against the far right. The commissioner had issued the order against ‘the Organizer’ for printing inflammatory materials with respect to the Partition. As per the order, the editor of ‘the Organizer’ had to submit for scrutiny, before publication, all communal matter and news and views about Pakistan including photographs and cartoons other than those derived from official sources or supplied by the news agencies, viz, Press Trust of India, United Press of India and United Press of America. The question arose as to whether this order of pre-censorship could be held to be constitutionally valid. This decision was delivered on the same day as the above case, and the majority in this case referred to their decision in *Thapar’s case*<sup>11</sup> and concurred with the findings in the *Thapar* case. The key factor in both the decisions was the fact that the phrase ‘public order’ was not included in Article 19(2) and that the courts interpreted restrictions on freedom of speech and expression as being legitimate only if they pertained to “undermining the security of the state or overthrowing the state”. Mere criticism of the government could not be considered as speech which could be restricted for the purposes of Article 19(2). It is interesting to note that Justice Fazl Ali delivered a dissenting decision in both the cases, and his argument was that a literal construction of the phrase ‘public order’ would justify restrictions even in the case of trivial offences. However, in the context of the two legislations, it could only relate to serious offences affecting public order.

These two decisions of the Supreme Court precipitated in the minds of the government the first major crisis of the nation state. The crisis can be read at various levels; it exposed the inherent tensions between balancing freedom of speech and expression and the promotion of national security and sovereignty. It also posed the question as to who the guardians of the Constitution were. And finally it set in motion a debate which would haunt Indian democracy viz the exercise of a democratic right as a

<sup>10</sup> 1950 AIR 124.

<sup>11</sup> Romesh Tappar v. State of Madras, 1950 AIR 129.

threat to the larger abstract ideal of a democratic state.

Although Article 19 does not express provision for freedom of press but the fundamental right of the freedom of press implicit in the right the freedom of speech and expression. In the famous case *Express Newspapers (Bombay) (P) Ltd. v. Union of India*<sup>12</sup> court observed the importance of press very aptly. Court held in this case that “In today’s free world freedom of press is the heart of social and political intercourse”. This show how the Supreme Court is defending the media by narrating that the freedom of press is essential for the proper functioning of the democratic process.

### **FREEDOM OF SPEECH AND EXPRESSION AND RIGHT TO INFORMATION**

The freedom of speech occupies a preferred and important position in the hierarchy of the liberty. Freedom of Speech and expression means the right to express one's own opinion by words or in writing or by any other form. This right to be safeguarded for it is essential in a free society. The first principle of a free society is an untrammelled flow of words in an open forum. Liberty is to express opinions and ideas without fear and plays significant role in the development of society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

The right of information is an inalienable component of freedom of speech and expression guaranteed by Article 19(1) (a) of Indian constitution as was held in the respective cases of *Bennet Colman v. UOI*<sup>13</sup>, *SP Gupta v UOI*<sup>14</sup>, and *Secretary, Ministry of information and broadcasting v Cricket assn. of Bengal*<sup>15</sup>. Beside Article 19(1) (a), the other articles which give right to information under Indian constitution are Articles 311(2) and 22(1). Article 311(2) provides for a government servant to know why he is being dismissed or removed or being demoted and representation can be made against the order. By way of Article 22(1) a person can know

the grounds for his detention. In *Essar Oil Ltd v. Halar Utkarsha Sanity*<sup>16</sup>, the SC held that right to information emerges from right to personal liberty guaranteed by article 21 of constitution.

Right to know, to be informed is other facet of freedom of speech. Information is power for development. If this right is curtailed then there is growth of corruption as it results in non-accountability of public authorities who seek defence in the guise of government duty and function. Sovereign function, a good defence to escape from disseminating information leads to violation of human rights. Throughout the world there is a trend to recognise this right to information and there is a growing body of authoritative who have been supporting this in the guise of protection of human rights.

Numerous laws have been adopted by the States which protects the rights of the citizens from misgovernment. There is information centres established and have been working around the clock to protect the rights of people. As a basic human right, it is linked to respect human dignity and public order. This right is protected not only by State laws but also International law.

### **INDIAN CONTEXT AND RIGHT TO INFORMATION**

While developed countries seem to have important opportunities for the right to information, least developed countries and developing countries are far away from this right. We cannot realize the right to information unless we realize other rights we mentioned above. As a conclusion, we can say that in the 21st century, the least developed and developing countries still won't reach their right to information. In India, the right to information has been developed through diverse strands for almost the entire period of the country's independent history. In 1982, the Supreme Court of India ruled that access to government information was an essential part of the fundamental right to freedom of speech and expression in Article 19 of the Constitution.

<sup>12</sup> [1973] 2 S.C.R. 757.

<sup>13</sup> AIR1973 SC 106.

<sup>14</sup> AIR1982 SC 149.

<sup>15</sup> (1995) 2 SCC 161.

<sup>16</sup> AIR 2004 SC 1834.

The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands<sup>17</sup>. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.

Indian laws provide for the right to access information under various provisions. Section 76 of the *Indian Evidence Act*, 1872<sup>18</sup>, the *Factories Act*, 1948<sup>19</sup>, Section 25(6) of *The Water (Prevention and Control of Pollution) Act*, 1974<sup>20</sup>, *The Air (Prevention and Control of Pollution) Act*, 1981<sup>21</sup>, *The Environment (Protection) Act*, 1986<sup>22</sup>, The Environment (Protection) Rules, 1986 and the Environmental Impact Assessment Regulations are few examples. The Press Council' Draft, 1995, The "CERC" Draft, The Shourie Committee" Draft, 1997, The Freedom of Information Bill, 2000 and State level Laws and Orders on the Right to Information (like *Goa Right to Information Act*, 1997, *Tamil Nadu Right to Information Act*, 1997, *The Madhya Pradesh Right to Information Act* and Orders on Right to Information, *The Rajasthan Right to Information Act*, 2000, *The Karnataka Right to Information Act*, 2000, *Delhi Right to Information Act* and Orders on Right to Information, 2001, Uttar Pradesh Code of Practice on Access to Information are created awareness about freedom to information and expression.

## HIGHLIGHTS OF RIGHT TO INFORMATION ACT, 2005

The right to information is implicitly guaranteed by the Constitution. However, with a view to set out a practical regime for the citizens to secure information as a matter of right, the Indian Parliament enacted the *Right to Information Act*, 2005<sup>23</sup>. This legislation is very comprehensive and covers almost all matters of governance. It has wide reach, being applicable to Government at all levels- Union, State and Local as well as to the recipients of substantial government funds. This Act mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide information about all the aspects of the government schemes, working, etc with certain restrictions.

Definition of Information is 'any material in any form. It includes records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force'<sup>24</sup>. The basic object of the *Right to Information Act* is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

If it is necessary to maintain and preserve freedom of speech and expression in a democracy, it is also necessary to place some restrictions to maintain social order. No right can be absolute. Accordingly, under Article 19(2) of the Constitution of India, the State may make a law imposing "reasonable

<sup>17</sup> Available at <http://www.lawteacher.net/free-law-essays/constitutional-law/right-to-information-india-law-essays.php#ftn3>, last visited on 22/09/2015

<sup>18</sup> Act No. 1 of 1872.

<sup>19</sup> Act No. 63 of 1948.

<sup>20</sup> Act No. 6 of 1974.

<sup>21</sup> Act No. 14 of 1981.

<sup>22</sup> No. 29 of 1986.

<sup>23</sup> No. 22 of 2005.

<sup>24</sup> Available at <https://www.iitgn.ac.in/RTI/RTI-Guidelines.pdf> last visited on 20/02/2017.

restrictions”<sup>25</sup>, on the exercise of the right to freedom of speech and expression “in the interest of” the public on the following grounds: Clause (2) of Article 19 of Indian constitution contains the grounds on which restrictions on the freedom of speech and expression can be imposed:-

### **Security of State**

Security of state is of vital importance and a government must impose restriction on the activity affecting it. Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of State. However the term “security” is very crucial one. The term "security of state" refers to serious and aggravated forms of public order such as rebellion, waging war against the State, etc. Rest though might be serious do not amount to threat to security of state such as robbery or murder.

### **Friendly relations with foreign states**

If the speech is potential to create enmity between two nations, then that has to be checked. No one create hatred between two nations. This provision was 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 jeopardize 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.

### **Public Order**

Next restriction prescribed by constitution is to maintain public order. 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. Anything that disturbs public tranquillity or public peace disturbs public order. It implies an

orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. It also includes public safety. 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. A speech that hurts religious sentiments of the people implies going against public order. But there must be reasonable and proper nexus or relationship between the restrictions and the achievements of public order.

### **Decency or morality**

The speech and expression should not affect the morality of the society. Decency and morality has a wide meaning. Under various laws various definitions are given<sup>2</sup>. Into to if there is something done or spoken which is at that time against morality it is not accepted. 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.

### **Contempt of Court**

Judiciary is one of the important organs of democratic government. If a party condemns the decision of court or speaks about judges in relation to an issue pending it amounts to contempt of court. According to the Section 2 'Contempt of court' may be either 'civil contempt' or 'criminal contempt'. But now, truth is a defence for contempt is that the statement must be made in public interest. In *Indirect Tax Practitioners Assn. v. R.K.Jain*<sup>26</sup>, it was held by court that, ‘truth based on the facts should be allowed as a valid defence, if courts are asked to decide contempt proceedings relating to a speech or an editorial or article’. The qualification is that such defence should not cover-up to escape from the consequences of a deliberate effort to scandalize the court.

### **Defamation**

The freedom of speech does not mean to defame a person. To defame means to speak or act in such a manner which shall affect the reputation of a person or his status. Defamation consists of exposing a man to hatred in the society. But the law relating to

<sup>25</sup> Available at <http://lawmin.nic.in/coi/coiason29july08.pdf>, last visited on 17/02/2017

<sup>26</sup> Contempt Petition (CRL.) No.9 of 2009.



defamation in India is still unsettled and there are exceptions by which a person can take offence.

#### **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.

#### **Sovereignty and integrity of India**

To maintain sovereignty and integrity of a state is prime duty of government. Taking into it into account, freedom of speech and expression can be restricted so as not to permit any one to challenge sovereignty or to permit any one to preach something which will result in threat to integrity of the country.

From above analysis, it is evident that Grounds contained in Article 19(2) show that they are all concerned with the national interest or in the interest of the society. The first set of grounds i.e. the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest, whereas, the second set of grounds i.e. decency, morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society.

#### **CONCLUSION**

If there is one right prized above all others in a democratic society, it is freedom of speech and expression. The freedom of speech and expression also includes freedom of information. The ability to speak one's mind, to challenge the political orthodoxies of the times, to criticize the policies of the government without fear of recrimination by the state is the essential distinction between life in a free country and in a dictatorship. Iver Jennings said, "Without freedom of speech, the appeal to reason which is the basis of democracy cannot be made."

Barriers that block or inhibit access to freedom of speech and expression exist all over the world, in various forms and in varying degrees. If their voices are denied, these groups are being denied a fundamental right, are facing barriers to their active participation in society, and, in many cases, are facing additional limits on their ability and opportunity to play a part in improving their own lives.

#### **SUGGESTIONS**

Freedom of speech and expression is a fundamental human right. It also underpins most other rights and allows them to flourish. The right to speak your mind freely on important issues of society, an access to information and to hold the powers that be to account plays a vital role in the healthy development process of any society<sup>1</sup>. So these are the some of the suggestions so as to improve the access to freedom of speech and expression and access to Right to Information.

1. Remove threats against right to speech and expression and make provision for access to information and digital political participation.
2. To support organisations, social movements and individuals in using ICT to build strategic partnerships for development, social justice and participation in political processes.
3. Easy access to information from authorities, as this increases transparency and allows citizens to influence decision makers. By disseminating information through social media will contribute to increase awareness.

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#### **CONFLICT OF INTEREST**

We declare that we have no conflict of interest.

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