

**GALGOTIAS**

**YOUTH**

**PARLIAMENT**

**2012**

**STUDY GUIDE**

**I would like to tell all the enthusiastic members of galgotia youth parliament that it is an honour to welcome you all to this inaugural session of parliament .**

**We would like to provide you all the assistance that will help you be better prepared for the conference though I would like to mention that as a participant you should not think of this background guide as a holy book for the conference and treat it as a law . This book just serves the purpose of being a reference point to start your preparation, to give you a broader perspective of the agenda at hand. Understand the environment of the agenda and research as much as you can to stand out on the conference day.**

**ALL THE BEST.**

**Abhi Jain**

**For any further help write to me: [02abhij@gmail.com](mailto:02abhij@gmail.com)**

## **WHY FREEDOM OF SPEECH:**

The spirit of democracy can be strengthened if citizens are able to fully participate in democratic affairs (*self government rationale*). Similarly, for fostering a social revolution and to improve the lot of Indians, it is necessary that the society engages itself in the *pursuit of truth*, and all citizens be given every opportunity to realise their potential (*self-fulfillment and autonomy*). These rationales for free speech thus represent an important resource in our constitutional tradition — a resource that the Indian state keeps ignoring at its own peril.

## **HISTORY BE TOLD:**

Indeed, the history of independent India is replete with examples of the government curbing free speech: We were the first country to ban Salman Rushdie's book, *The Satanic Verses*; Rohinton Mistry's *Such A Long Journey* was dropped by the Mumbai University from its syllabus; Delhi University did the same with A.K. Ramanujan's essay *Three Hundred Ramayanas*; makers of the movie *Rockstar* were forced to blur the Tibetan flag in the "Sadda Haq" song; and movies like *Deshdrohi*, *Bandit Queen*, *Da Vinci Code*, *Fire* and many others have been banned by State governments. These examples are just the tip of the iceberg, and there are numerous other instances where the government has chilled speech in the country.

## **SOME EXAMPLES OF VIOLATION OF ARTICLE 19 :**

Under the writ petition before the Supreme Court of India, Bennett Coleman Company challenged the sub clauses (3) and (3A) of Clause 3 of the Newsprint Control Order, 1962, passed by the Government of India under Section 3 of the Essential Commodities Act, 1955 and the provisions of the Newsprint Import Control Policy for 1972-73 of being violative of Article 14 and Article 19(1)(a) of the Constitution. In the year 1972-73, on account of suspension of U.S. aid, there was a reduction of 11,000 tonnes in the import of newsprint and thus a policy was enacted for equitable rationing of the newsprint. The order was challenged on the grounds that Clause 3 of the Order affect the volume of circulation, the size and growth of a newspaper and thus directly infringe Article 19(1)(a) of the Constitution. The Newsprint policy was contended to be violative of Article 19(1)(a) since :-

1. No newspaper could be started by a common ownership unit even in the authorised quota.
2. A limitation was imposed on the maximum number of pages to be 10 and pages were not allowed to be increased by adjustment between circulation and page numbers.
3. Newsprint quota of newspapers of the same ownership could not be transferred.

The majority judgement delivered by A.N. Ray J. for himself, Sikri J. and Reddy J. held that the Newsprint policy violated Article 14 and 19 and in a separate judgement Beg J. concurred with the conclusions. The dissenting judgement was delivered by Mathew J. holding the policy and order to be valid.

## **Article 19(1)(a) and Article 19(1)(g)**

Freedom of press imbibes both the freedoms guaranteed under 19(1)(a) and 19(1)(g). If the restrictions are placed on the freedom of the press, a serious problem is encountered in deciding whether the impugned restrictions should satisfy both restrictions set out in 19(2) and 19(6) or any one of them.

In *Sakal Papers v. Union of India*, it was contended by Union of India that there are two aspects of the activities of the newspapers- the dissemination of news and the commercial aspect. The government can place restriction under 19(6) in the interest of the general public on the commercial aspect of the press. But the Court held that the State cannot curtail one freedom by placing restriction on other since the restrictions that can be placed for that right are different. It further stated that the State cannot restrict one freedom for the purpose of better enjoyment of other right. It said that it is irrelevant to look at the restrictions on the business to determine a question relating to the freedom of speech and expression.

The newsprint policy of 1972-1973 imposed restrictions on the circulation, page numbers and new editions because of the limited supply of the newsprint, the group of newspapers claimed infringement of the freedom of speech and expression. Justice AN Ray speaking for the majority adopted the reasoning of the *Sakal Papers* and directly dealt with the question whether the direct effect of the policy could be observed on the freedom of speech and regulation or not.

It is submitted that this approach of the court to discard the test of checking whether the restrictions are justified under 19(6) or not and directly addressing the question of direct effect on the freedom of speech and expression is incorrect. The court in *Indian Express*, addressing the question if taxes are burdensome on the newspaper industry, stated that the newspaper industry enjoys two of the fundamental rights under Article 19(1)(a) and Article 19(1)(g) of the Constitution, the first because it is concerned with the field of expression and communication and the second because, communication has become an occupation or profession and because there is an invasion of trade, business and industry into the field where freedom of expression is being exercised. The court concluded that the tax can be imposed on the business part of the newspaper and it will be unconstitutional only if it stifles the freedom of speech and regulation. Thus in the *Indian Express*, it was

held that there could be a restriction imposed on the business part of the industry even if it affects the scope of freedom of speech and expression.

## **THE UNDERLYING TRUTH:**

The peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

# FREEDOM OF SPEECH IN MEDIA-SOME

## EXAMPLES-

It was stated in *K.A. Abbas v. Union of India and Ors.*, AIR 1971 SC 48 that although it must be remembered that the cinematograph is a powerful medium, the mere portrayal of a social vice in a movie cannot attract the censor's scissors: how the theme is handled by the producer should be the criterion. While analysing the role of the censor, the Supreme Court held: "The task of censor is extremely delicate and its duties cannot be the subject of an exhaustive set of commands established by prior ratiocination.....Our standards must be so framed that we are not reduced to a level where the protection of the least capable and most depraved amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favour of freedom this leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good."

Lawrence Liang stated in his article headlined 'Sense and Censorability': "The practical mission of censorship is closely tied to the idea of creating an 'ideal citizen-viewer. The task of censorship is to teach the viewer to become a citizen through particular spectatorial practices, and the imagined gaze of the citizen-viewer determines the specific content of censorship laws."

In the case of *Anand Patwardhan v. Union of India*, AIR 1997 Bom 25, Doordarshan refused to telecast the petitioner's film, *In Memory of Friends*, which was about the violence in Punjab. The Bombay High Court, while dealing with the objection to screening of a movie, held: "The film maker may project his own message which the other may not approve of. But he has a right to 'think out' and put the counter appeals to reason. The State cannot prevent open discussion and open expression, however, hateful to the policies."

The court further held that the petitioner's film must be judged in its entirety. The film has a theme and it has a message to convey.

The same film maker, in *Anand Patwardhan v. Union of India* 1997 (3) Bom CR 438, approached the Bombay High Court seeking a direction to Doordarshan to telecast his documentary *Raam-Ke-Naam*. Objection was taken to certain scenes in the film where *akar sevak* justified the assassination of Mahatma



Gandhi by Nathuram Godse. Rejecting the point of view that the film provoked commission of offence, it was held that “viewed from the healthy and common sense of point of view, it is more likely that it will prevent incitement to such offences in future by extremists and fundamentalists.”

Anand Patwardhan also challenged an order of the Film Certification Appellate Tribunal (FCAT), in *Anand Patwardhan v. CBFC 2003 (5) Bom CR 58*, which had directed changes to his documentary *War and Peace (Jang aur Aman)* that showed a Dalit leader questioning in his speech why the bomb had exploded on Buddha Jayanti day and not on Lord Rama's birthday. The Bombay High Court held that it is only in a democratic form of government that the citizens have a right to express themselves fully and fearlessly as to what their point of view is towards the various events that are taking place around them.

# IMPORTANCE OF FREEDOM OF SPEECH

Freedom of speech is also important to governments because when criticisms of a government are freely voiced, the government has the opportunity to respond to answer unfair comments and criticisms about its actions. On the other hand, when freedom of speech is restricted, rumours, unfair criticisms, comments and downright falsehoods are circulated by word of mouth. These have a habit of spreading across the length and breadth of the country through conversation and surreptitiously circulated writings. The government is in no position to answer these views, because they are not publicly stated. It is in a government's interest to have criticisms in the public arena where it can answer its critics and correct its mistakes. The government generally has access to electronic and printing communication far in excess of individuals and groups. It is able to present its view only if the opposing views are in the open and known. Without free speech no political action is possible and no resistance to injustice and oppression is possible. Without free speech elections would have no meaning at all. Policies of contestants become known to the public and become responsive to public opinion only by virtue of free speech. Between elections the freely expressed opinions of citizens help restrain oppressive rule. Without this freedom it is futile to expect political freedom or consequently economic freedom. The *sine qua non* of a democratic society is the freedom of speech.