

ISSN: 2582 - 2942



LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- VI

AUGUST 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR IN CHIEF

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

EDITOR IN CHIEF

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE

OF ARBITRATORS

PHONE - +91-8500832102

EDITOR

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;

ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS
INTERNATIONAL UNIVERSITY) - MARKETING
MANAGEMENT

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION
BUSINESS LAW)

EDITOR

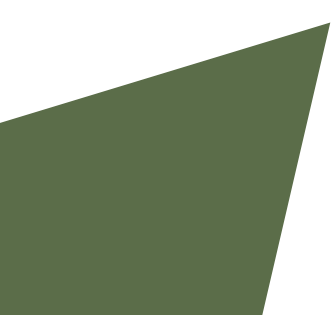
DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL
AND ADMINISTRATIVE LAW)., NET (TWICE) AND
SET (MAH.)

EDITOR

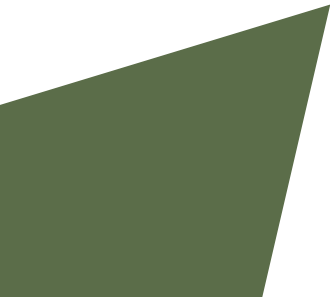
MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE



ABOUT US

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



Protection of Human Rights and the Role of Judiciary in India

Bhaskar Mukherjee & Chandrika Saha

ABSTRACT

Every Judiciary has an obligation and a Constitutional role to protect Human Rights of their citizens. In our country also, the Constitution of India has enshrined a couple of fundamental rights under Article 14 to 35. Article 19 under this chapter particularly embodies some of the basic Human Rights such as Freedom of Speech and Expression and others. But in the same Article sub clause 2, this basic Human Right seems to have been curbed in the name of reasonable restriction. There have been plethora of cases at the Supreme Court of India which have explained the pros and cons and positive and negative aspects of the Fundamental Human Rights. So, the role of Judiciary has become significant in interpreting the provisions of Human Rights in our country. The role of Indian Judiciary in protecting the basic Human Rights of the citizens of India is very laudable though due to the failure of proper Administration of Justice System in India, hundreds of accused persons are languishing in different jails of India without trial year after year for sheer lack of Judges in the High Courts or Supreme Court. The serious debate that has been going on since long between the executive and judiciary of our country regarding the process of recruitment of Judges i.e., whether Executive or Judiciary which should play the leading role, has contributed havoc to the System of Administration of Justice in our country.

Keywords: Indian Judiciary; Constitution of India; Human Rights; Administration of Justice System in India; Freedom of Speech and Expression.

INTRODUCTION

Starting with the origin and evolution of the concept of Human Rights, we all recognize the fact that the origin of every law is Natural Rights. Initially, there were Natural Rights which transformed into Human Laws and finally into Human Rights. So, the journey from Natural Rights to Human Rights is of huge importance. Cyrus the great, conquered the city of Babylon and in 539 B.C did something extraordinary which had provided freedom to all the slaves. There was an establishment of a clay tablet, Cyrus Cylinder which is the first Human Rights Declaration. It was declared that each person had a right to choose their own religion and exercise certain human rights freely. India, Greece, and later Rome quickly inherited the idea of human rights. **Article 29 of Magna Carta Project** states that *“the body of a free man is not to be arrested, or imprisoned, or disseized, or outlawed or any way ruined, nor is the king to go against him to send forcibly against him except by judgement of his peers or by the law of the land”*¹. This provision led to the outcome of the freedom from arbitrary detention and the right to a fair trial. Like this, various other provisions led to the upcoming of modern Human Rights Laws which must be respected and protected by the State. Magna Carta acknowledged three main constitutional principles which are still in existence. Firstly, the Fundamental Rights cannot be taken away or restricted without due process and without Law. Secondly, it is the right to free and fair election which reinforces the fact that the government rests on the consensus of the people. Thirdly, it is law which administers the government as well as the governed. The Human Rights Act 1998 establishes the fact that nobody can infringe our rights, not even the public authorities. Later, Magna Carta was wrapped, and Pope Innocent III stated it “illegal, unjust, harmful to royal rights and shameful to English People”. Yet, Magna Carta holds great value today also. The Principles of Magna Carta have been carried across throughout the world in the following years. Eleanor Roosevelt, the Chairman of the Drafting Committee of the Universal Declaration of Human Rights (UDHR) stated UDHR as “the international Magna Carta of men everywhere”. UDHR played a vital role to influence the Human Rights Convention which led to world wide acceptance of these Human Rights and implementation of the same in the Fundamental Laws of the Land. This makes us clear that each nation that is giving consent to such a convention must follow the principle that the supreme authority must be binding by the rule of law and should not violate Fundamental Freedoms².

¹Translated by H. Summerson et al, The Articles of the Barons: Article 29, The Magna Carta Project, Magna Carta, 1215, http://magnacarta.cmp.uea.ac.uk/read/articles_of_barons/Article_29

² Karina Weller, Magna Carta: The Origin of Modern Human Rights, Human Rights News, Views & Info (Apr. 03, 2017), <https://rightsinfo.org/magna-carta-rights-today/>.

EMERGENCE OF UNITED NATIONS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

There was a huge amount of chaos and uneasy situation that prevailed everywhere after World War II. People from defeated nations were punished and ill-treated with various allegations. So, after World War II, the principle of Human Rights grew stronger. Governments from various nations agreed to the establishment of the United Nations which aimed at International Peace and Security and prevent any further war. People agreed to the fact that nobody should be unjustly denied life, freedom and food, clothing and shelter. There was a widespread fear among the citizens of various countries which was caused by abuses from the government and ill-treatment meted out to the people at large, this called for the drafting of the United Nations Charter in 1945 to protect basic human rights. The members of the United Nations agreed to promote, protect and respect the human rights of the people. This agreement led to the establishment of a Commission on human rights by the UN. The commission was given a job of drafting an article which will lay down various fundamental rights and freedom which are in tune with the Charter. The Universal Declaration of Human Rights (UDHR) was adopted on 10th December 1948 by 56 members of the United Nations, unanimously voting to it. The Preamble of the UDHR states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. UDHR is also referred to as International Magna Carta. In spite of UDHR not being a legally binding document it has attained the position of Customary International Law, reason behind this is that people call it “as a common standard of achievement for all people and all nations”. Today 185 nations across the world have incorporated the Human Rights that are mentioned in the UDHR in the law of the land³.

INDIA’S ACCEPTANCE OF UDHR AND EMBODIMENT OF RIGHTS IN THE CONSTITUTION

There was a pivotal role played by India while drafting the UDHR. The delegates on behalf of India were there in the United Nations and made significant input while drafting the declaration by mentioning the need for gender equality. There is a convention of the rights of the child to which India is a part as well as a member of six core human rights covenants. India being a signatory to the United Nations Charter adopted and accepted the Universal Declaration of

³ David Shiman, Teaching Human Rights, 6-7 (Nancy Flowers ed.)

Human Rights and tried to embody those rights in its own Constitution. As soon as UDHR came into force, the Indian Constitution unified various rights that are stated in the declaration in two portions- The Fundamental Rights and The Directive Principle of State Policy. Part III being the Fundamental Rights and Part IV being the Directive Principle of State Policy covers most of the rights that are mentioned in the UDHR. Fundamental Rights mainly from Article 12 to Article 35 of the Indian Constitution are in tune with the rights that are mentioned in Article 2 to Article 21 of the UDHR. These include Right to Equality, Right to Life and Freedom, Right against exploitation, Right to Education, Right to Freedom of Religion, Right to Constitutional remedies etc.⁴

Directive Principles of State Policy mainly from Article 36 to Article 51 of Constitution are in accordance with the rights that are stated in Articles 22 to 28 of UDHR. These include equal justice and free legal aid, right to work, to Education, and to public assistance in certain areas. Right to just and human conditions of work and maternity relief, Provisions for living wage for workers, Provisions for early childhood care and education to the children below the age of six years. Right to Nutrition, standard of living and public health. It also includes Separation of Judiciary from Executive as per Article 50 of Indian Constitution and promotion of International Peace and Security.

INTERNATIONAL SCENARIO OF FREEDOM OF SPEECH AND EXPRESSION AS A HUMAN RIGHT

The freedom of Speech and Expression is such a fundamental human right which is promoted and protected by international law, and it exists in each constitutional Bill of Rights in the world. Democracy is the key to human development as well as dignity and personal establishment. The pillar of such democracy is Freedom of Speech and Expression. It is a fundamental principle of liberty. Freedom of Speech and Expression denotes the right that a person can express his or her opinion freely through verbal communication, printing, writing, pictures etc.⁵ To depict a good governance, a free society an individual must be allowed to express his or her opinion and ideas in public forum without any hindrance and without fear of punishment. We can debate freely and express our views on the political parties that are competing against each other. In such a manner so that the basic requirements of each and every individual is fulfilled through legislations and carefully scrutinizing the existing legislations. Democratic ideologies will be put under threat if the

⁴The Indian Constitution and Human Rights, Spotlight, india.gov.in Archive, https://archive.india.gov.in/spotlight/spotlight_archive.php?id=73

⁵ Dheerajendra Patanjali, Freedom of Speech and Expression India Vs America- A study, Vol 3, ILJ

individuals are not allowed to debate on the competency and honesty of the government as well as its actions. Article 19 of Universal Declaration of Human Rights (UDHR) states “everyone has a 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”. Article 19 of International Covenant on Civil and Political Rights (ICCPR) states that

1. “Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers either orally, in writing or in print, in the form of art or through any other media of his choice”.

As there are various conventions that promote the freedom of speech and expression like above, its scope is multilayered. There should be no discrimination as to the exercise of freedom of expression as a human right based on race, color, nationality, sex, language etc. freedom of speech and expression not only denotes expressing of good and respectful speeches but also offensive, satirical, and criticizing speeches. There was a famous case by the European Court of Human Rights (ECHR) which upheld the protection of disturbing speeches as a right to freedom of speech and expression. The case is *Handyside Vs United Kingdom*⁶. The court held that “*freedom of expression is applicable not only to information or ideas that are favorably received but also to those which offend, shock or disturb the state or any other sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society*”.⁷

“If liberty means anything at all, it means the right to tell people what they do not want to hear”-

GEORGE ORWELL

STATUS OF FREEDOM OF SPEECH AND EXPRESSION IN INDIA

Every Judiciary has an obligation and a Constitutional role to protect Human Rights of their citizens. In our country also the Constitution of India has enshrined a couple of fundamental rights under Article 14 to 35. Article 19 (1) (a), of the Indian constitution guarantees freedom of speech and expression, but there are certain restrictions or limitations that are imposed through Article 19(2) which gives the power the state to put reasonable restrictions such as security of the

⁶ Handyside Vs United Kingdom, 1 EHRR 737 (1976).

⁷ Freedom of Expression as a Human Right, International Media Support, www.law-democracy.org/live/wp-content/uploads/2015/02/foe-briefingnotes-1.pdf.

state, friendly relations with foreign states, public order, decency and morality, defamation, contempt of court, integrity and sovereignty of India and incitement of offence. Article 19 under this chapter particularly embodies some of the basic human rights such as freedom of speech and expression and others. But in the same article sub clause 2 this basic human right seems to have been curbed in the name of reasonable restriction. So, on one hand the government is giving us the freedom of speech and expression and taking it away with the other hand by enabling those restrictions. There are cases which prove that Indian judiciary could not protect the right to criticize the government in our country and there are certain cases which upheld the freedom of speech and expression.

NATIONAL ANTHEM CASE⁸

In this case there were three children who belonged to Jehovah were expelled from the school as they denied singing the National Anthem, although they were standing in a respectful manner at that moment. In the Kerala High Court, their expulsion was challenged, and the High Court held that it was a valid expulsion on the ground that it was their fundamental duty to sing the National Anthem. An Appeal was made in the Supreme Court and it was held that neither those three students committed any offence under the Prevention of Insults to National Honour Act, 1971 nor the fundamental right to speech and expression under article 19(1)(a) could be curtailed. Right to free speech also includes freedom of Silence. This is one of the famous cases where the Indian judiciary upheld Article 19(1).⁹

Now the following cases will discuss how the right to criticize the government is fading. There was a defamation case filed against RJ Malishka as she uploaded a video song which satirically criticized the inactions of Bombay Municipal Corporation (BMC) which described the crisis that people faced. The comical song that she uploaded described about the roadways which were full of potholes. Although she spoke the truth, her fault was that she criticized the BMC who charged 10,000 rupees as a defamation suit.

The BMC also raided her house without prior notice, held her under various defaults. The case of a BSF Jawan Tej Bahadur Yadav raised concerns by uploading a video about the poor quality of food that was served to the Military. Although it is accepted that the way of expressing was a bit inappropriate, it is to be kept in mind that he was exercising his right of freedom of speech and expression. He was compelled to seek retirement and being a nation serving person, he was made to face harsh dismissal steps.

⁸ Bijoe Emmanuel and Ors. v State of Kerala and Ors., A.I.R. 1987 S.C.R. (3) 518 (India).

⁹ Anubhav Pandey, Five most important judgments on freedom of speech and expression, iPleaders (May.17, 2017), <https://blog.iplayers.in/freedom-of-speech-and-expression/>.

There was another case where a person named Ravi was arrested for sharing a tweet which questioned Mr. Chidambaram about his assets. He was a small businessman who belonged from Tamil Nadu exercised his right to know, as we all know that transparency in relation to assets should be maintained by the politicians. The arrest of Ravi was harshly criticized.¹⁰

A Nation cannot be termed as a Democratic Country if a person gets arrested merely by exercising his Freedom of Speech and Expression through wording his opinion.

ROLE OF INDIAN JUDICIARY IN RELATION TO FREEDOM OF SPEECH AND EXPRESSION AND BASIC HUMAN RIGHTS

The concept of Human Rights does not imply only Freedom of Speech and Expression. It also implies the basic right of free education, compulsory employment etc. These rights have been embodied in the Constitution of India in the Chapter of Directive Principles of State Policy but these rights are excluded from the purview of the Judiciary i.e., to make it clear that these rights have been laid down in the Constitution but are not enforceable in any Court of Law. At the initial stage it was stated that the Chapter of Directive Principles of State Policy shall have to be implemented within 10 years from the date of proclamation of the Constitution of India. But during the last seven decades these rights are still not being implemented and the Judiciary has no role to enforce these provisions of basic Human Rights. But the twist comes in wherein if we criticize the government regarding their failure of providing education and employment, we will be held under Article 19(2) of the Constitution of India. Now moving in the depth to the role of judiciary there are a plethora of cases at the Supreme Court of India which has explained the role of Indian Judiciary in relation to Fundamental Human Rights.

In case of Detention Laws, there exists a concept i.e., Detention without trial. At present Detention without Trial is governed under Unlawful Activities Prevention Act, 1967. From time to time it has many avatars with various Titles such as Preventive Detention Act, 1939, Maintenance of Internal Security Act, 1971, National Security Act, 1980. If a person is arrested and kept in prison without trial, then the Human Rights mentioned under UDHR such as right to trial and no unfair detention gets violated. But the fact is that UDHR does not have a legal binding. This leads to a curtail of freedom of speech and expression.

¹⁰ Vidhi Koolwal, Top Cases Which Prove the Lack of Freedom of Speech and Expression and the Fading Right to Criticize the Government in Our Country, Legal Desire (Jul.29, 2017), <https://legaldesire.com/top-cases-which-prove-the-lack-of-freedom-of-speech-and-expression-and-the-fading-right-to-criticise-the-government-in-our-country/>.

There was a famous case of *A.K. Gopalan*¹¹ where illegal detention was upheld. A.K. Gopalan was arrested and kept in prison without trial. This can be regarded as the failure of Judiciary in upholding the Human Rights.

Recently, In *Bhima Koregaon case*¹² in Maharashtra, five eminent activists who belonged from various professions such as authors, lawyers etc. were alleged for plotting to kill Prime Minister Narendra Modi. It was alleged that they were sending letters to each other which stated it was a plot to assassinate Prime Minister Narendra Modi but without an iota of evidence, they were arrested under Unlawful Activities Prevention Act, 1967. This case also proved that Detention without trial is curbing the right to freedom of speech and expression.

But it will be unfair to put forward the positive and praise worthy role of Judiciary in protecting basic Human Rights.

In 2017 there was a case filed by the *Authority of Power Grid at Bhangar* who were constructing an electrical grid on the land which belonged to peasants and farmers against the leaders of an agitation who were protesting such construction. In order to curb that agitation, the government has arrested those leaders of the movement under UAPA¹³. Subsequently, it was challenged in the High Court of Calcutta and the Hon'ble High Court rescinded this arrest under UAPA and the leaders were released.¹⁴

To put forward another praise worthy decision taken by the Indian Judiciary is in the case of *Bhobishyoter Bhoot*¹⁵. There was an allegation made against the West Bengal Government by the producers that there was an unofficial ban on the film. The reason behind such a ban was that the special branch of West Bengal Police claimed that the screening of such movies may lead to “political law and order problems”. Various unidentified officials purposefully forced the theatres to ban such films. Eminent actors such as Aparna Sen and Soumitra Chatterjee protested the attack on Freedom of Expression. The Supreme Court later ordered the West Bengal Government to let the film *Bhobishyoter Bhoot* be displayed without any interference. As the Producers of the film alleged that the West Bengal Government ordered an unofficial ban. The Court passed the interim order. Justice DY Chandrachud and Hemant Gupta stated that “once the Central Board of Film Certification has certified a film, no one can come in the way of its public exhibition”.

As illegal detention curtails the freedom of speech and expression, similarly sedition laws curtail such rights too. The seditions laws under section 124A of the Indian penal code it is stated that

¹¹ A.K.Gopalan v Union of India, A.I.R. 1950 S.C.R. 88 (India).

¹² Romila Thapar and Ors. v Union of India and Ors. (2018) (India).

¹³ Monotosh Chakraborty, Bhangar on edge after local's arrest, TOI, March 06, 2017

¹⁴ Anonymous, Government may withdraw cases against Bhangar power grid protestors, TOI, August 09, 2018

¹⁵ Indibily Creative Pvt. Ltd. & Ors. v Government of West Bengal and Ors. (2019) (India)

“whoever by words, either spoken or written or by signs or by visible representation, or otherwise, brings or attends to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the government established by law in India shall be imprisoned for life. There have been various debates, examinations on the legal standpoint of this law and to verify its scope. This law is so broad that any person who criticizes the government’s action can be held liable under this section. The British government brought into force the sedition law to curtail free speech which was made during the struggle of the Independence of India. But strictly speaking, the government is using such law to ill-treat and harass and silence the people who have critical opinions. The sedition law under Section 124A of IPC belongs to the colonial era. Mahatma Gandhi, the great who was also imprisoned under this law, stated this provision as “the Prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen”. There are various decisions made by the Court which shows that if an expression contains incitement to imminent violence, it will lead to sedition. But it is quite visible that various Journalists, Human Rights protectors and activists have been arrested again and again for simply uttering critical views. It can be stated that appliance of Sec 124A of IPC is full of debate and questionable. Moreover, this law is not in accordance with International Human Rights Law and it violates the Freedom of Speech and Expression under Indian Constitution.¹⁶

KANHAIYA KUMAR VS STATE OF NCT OF DELHI¹⁷

There was an event which was organized by the students of Jawaharlal Nehru University which dealt with the parliament attack convict Afzal guru hanged in 2013. Through poems, art and music the students expressed their feelings against the judicial killing of Afzal guru. The students were blamed that they were protesting by shouting anti Indian slogans and thus a case was filed against various students and they were charged with sedition. Kanhaiya Kumar, the university’s student’s union president was arrested as allegations were made of ‘Anti National’ sloganeering. Later Delhi High Court granted release of Kanhaiya Kumar on bail as investigation was under due process and his role in the protest was ambiguous. On 14th January 2019, charge sheet had been filed against Kumar and Others in the Court by the Police stating that seditious slogans were processed and supported under his leadership in the JNU campus on 09th February 2016. The current status of this case is that the Delhi government seeks months’ time to grant sanction to prosecute Kanhaiya

¹⁶ Demand The Repeal Of The Sedition Law, Amnesty International India, <https://amnesty.org.in/take-action/demand-repeal-sedition-law/>.

¹⁷ Kanhaiya Kumar Vs State of NCT of Delhi (2016) (India)

Kumar. Earlier Delhi Police mentioned that the authorities will take 2-3 months of time to provide requisite sanctions.¹⁸

VIEW POINT OF THE LAW COMMISSION TOWARDS FREEDOM OF SPEECH AND SEDITION LAWS

The Law Commission of India performs its major functions by advising the Centre in relation to Laws. The head of the advisory body is a former Supreme Court Judge Justice B.S. Chauhan. The law commission of India states that criticizing and disagreeing with the government is the ultimate exercise of Freedom of Speech and Expression which in turn will symbolize a democratic nation. A recommendation was made through a Consultation paper by the Law Commission to review the provision of Sedition under Section 124A of Indian Penal Code. It was also debated whether the provisions should be repealed or not. As the commission debated by saying that India being the largest democracy and with the existence of right to freedom of speech and expression, “why should India retain such sedition when the British who introduced sedition to oppress Indians, have themselves abolished the law in the country?”

The body also mentioned that an “expression of frustration over the state of affairs cannot be treated as Sedition”. When the case of Bhima Koregaon was put in front of the Supreme Court, the Hon’ble Court stated that “dissent is the safety valve of democracy”. Disagreeing with the policies and actions of the government should not amount to Sedition, this was in tune of the publication of the Consultation paper of the Law Commission.

What will be the difference between the Pre-Independence and Post-Independence era, if the state is not allowing criticism to freely flow from the public. The freedom of speech and expression promotes the right to criticize against what we are disagreeing to. The Law Commission said that “while it is essential to protect national integrity, it should not be misused as a tool to curb free speech”. In the Consultation paper, this Advisory Body stated that “in a democracy, singing from the same song book is not a benchmark of patriotism. People should be at liberty to show their affection towards their country in their own way”.

“Every restriction on Free Speech and Expression must be carefully scrutinized to avoid unwarranted restrictions” as said by the Law Commission. The debate or discussion by the Law Commission took a different direction when they discussed “contempt of government”. If an

¹⁸ Anubhav Pandey, Five most important judgments on freedom of speech and expression, iPleaders (May.17, 2017), <https://blog.iplayers.in/freedom-of-speech-and-expression/>.

individual commits an offence of contempt of court, he or she will be legally penalized. So, the question arose whether contempt of government should also invite punishment or not.¹⁹

There was also discussion held regarding the punishment for sedition and a proposal was made to bring down the maximum punishment to five years from life imprisonment. There was a private member's Bill that was put up by Shashi Tharoor in relation to Sedition Law. This bill urges to substitute Section 124A of Indian Penal Code with a new and modified provision. This Bill's introduction was approved by the Parliament on 28th December 2015. The Bill states that "sedition charges can be imposed on an individual only when his or her actions lead to or incite violence and results in the commission of the offence which is punishable with life imprisonment under IPC". The target which was aimed at is that the exercise of Freedom of Speech and Expression against the government should not be curtailed as well as the words that are used to incite violence should be punished.²⁰

ROLE OF JUDICIARY FOR THE PROTECTION OF FUNDAMENTAL RIGHTS

Judiciary plays a very important role in the protection of Human Rights through the enforcement of Article 32 and Article 226. Fundamental rights are guaranteed by the Constitution of India and if any of the fundamental rights are violated then a person can seek for constitutional remedies i.e., right to move to Supreme Court for enforceability of fundamental rights. As the protection of human rights of the citizens is a Judiciary's constitutional obligation, high courts and the Supreme Court have power to act against the violation of these rights. Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari are the writs and the directions that will be issued by the said Courts in case of infringement of Fundamental Rights.²¹

¹⁹ Krishnadas Rajagopal, Law Commission calls for re-think on sedition clause, TH, August 30, 2018

²⁰ Sana Shakil, Sedition law reviewed by Law Commission of India may be further strengthened, TNIE, July 05, 2018

²¹ Amartish Kaur, Protection of Human Rights in India: A Review, Vol 2, JIJ

RECOMMENDATION

In relation to the protection of basic Human Rights, the Supreme Court as the custodian of the Constitution and the provisions of the Human Rights therein should play a far greater role in protecting and preserving the Human Rights by revising the provisions of reasonable restrictions which are contradictory to the Human Rights. The significant role of interpretation should be played crucially by the Supreme Court as because this is an inherent power, and it can interpret any constitutional provision. While exercising such inherent right those provisions should be rescinded in order to keep the Chapter of the Fundamental Rights safe and secure, those reasonable restrictions should be revised and amended in such a manner that if freedom of speech and expression amounts to agitation of armed struggle and protests are made to create war and violence against the Government and the State then they should be held liable , but for mere criticism of the government should not be held under Article 19(2) and other penal laws. The laws of sedition should be framed in such a manner that only if there is speech given in a public platform which includes incitement of violence in the public, and if an expression includes a recommendation of armed struggle and violence it should amount to sedition. And trial should take place in any case of violence, if a person is put into jail and kept there without trial then it will curb the human right Trial.

By this we conclude our research paper by quoting the famous leader, George Washington ***“If Freedom of Speech is taken away, then dumb and silent we may be led, like sheep to the slaughter”***