
CRITICAL ANALYSIS OF FREEDOM OF SPEECH AND EXPRESSION WITH REFERENCE TO N.V. SHARMA VS UNION OF INDIA & ORS AND MOHAMMED ZUBAIR VS STATE OF NCT DELHI & ORS

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ABSTRACT

Article 19 (1)(a) of the Indian constitution i.e., right to freedom of speech and expression which is one of the fundamental right provided under Part-III of the constitution plays a very vital role in the present day society. As every right is not absolute in nature it's the same stand for this as well but this right is very subjective in nature due to this character it is very important for us to understand the nuances of this right. In this research paper the author is going to understand the nuances of article 19(1)(a) with the help of the recent infamous cases of Nupur Sharma and Mohammed Zubair. In both these cases article 19(1)(a) plays a key role in deciding their rights and also if they are subject to any liability. Hate speech is the main aspect of both these cases. With the analysis of these cases the author is going to understand the extent to which a citizen can enjoy this right and as well as at which point it curtails his right and with the help of this analysis. The author is going to analyse if Nupur Sharma and Mohammed Zubair had violated their rights or were within their limits.

RESEARCH OBJECTIVE

Through this research paper, the author aims to critically examine the cases of N.V.Sharma vs Union of India and Mohammed Zubair vs State of NCT Delhi and others through the lens of article 19(1)(a)¹ and its restrictions mentioned under article 19(2)² of the Indian Constitution and analyse the cases and understand if they have violated the respective right or not.

RESEARCH QUESTION

Whether Nupur Sharma and Mohammed Zubair have violated the restrictions mentioned under article 19³ of the Indian Constitution and if they have not violated why?

INTRODUCTION

Article 19 of the Indian constitution which comes under part-III guarantees every citizen the right to freedom in certain aspects where the state does not interfere. As we know that no right is absolute in its nature even the rights under this article are not absolute in nature they have reasonable restrictions. The rights are provided under article 19(1) from clause (a) to clause (g)⁴ and its restrictions are mentioned under article 19(2) to article 19(6)⁵. And no one can infringe the rights provided under article 19 except if it is violating the restrictions mentioned under article 19(2) to article 19(6) and no other restrictions can be placed on a citizen except for those mentioned under this article. In this research paper the major focus is going to be on article 19 (1) (a) and the restrictions of this clause are provided under article 19(2). Article 19(1)(a) guarantees a citizen right to freedom of speech and expression. In the year 1951 the words “public order”, “friendly relations with foreign states” and “incitement to an offence” were added to article 19(2) through the first amendment of the constitution and again in the year 1963 the word “sovereignty and integrity of India” were introduced to article 19 through the sixteenth amendment of the constitution under the purview of reasonable restrictions. Article 19(2) states the restrictions of article 19(1) (a) that is anything which is done affecting or against the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation

¹ INDIA CONST.art.19(1)(a)

² INDIA CONST.art.19(2)

³ INDIA CONST.art.19

⁴ INDIA.CONST.art.19(1)

⁵ INDIA.CONST.art.19

or incitement to an offence cannot be said to be a citizen's right to freedom of speech and expression. Freedom of speech and expression provided under article 19(1) (a) includes various facets although not explicitly mentioned in the article these are interpreted by judiciary, researchers, academicians etc. Freedom of speech and expression includes freedom of press, right to information, right to vote, right to telecast or broadcast, right to silence, right to fly and sing national anthem etc. These rights are not exhaustive in nature they are inclusive as the situations keep varying depending upon the societal needs and fundamental rights can be amended without affecting the basic structure of the constitution. This right is only available to citizens of the country and no foreigner can entitle protection under this right. Article 19(1) (a) plays a very key role in a democratic society as it aids citizens in expressing their opinion about the issues happening in the society, the different organs of the government, politics which paves a way for progress. Even a citizen has a right to criticise or provide a dissenting opinion unless it does not violate the restrictions mentioned under article 19 (2). Even though the government might think that a citizen is criticising against their regime it cannot restrict them as it is the right provided to them by the constitution. In a democratic society dissent is necessary as it is the people's choice which determines the legitimacy of the government. A democracy would not exist without freedom of speech and expression but an autocracy.

NUPUR SHARMA CASE

When we come to the case of N.V.Sharma vs Union of India (popularly known as Nupur Sharma Case), Nupur Sharma is a politician and was appointed as the national spokesperson of the Bharatiya Janata party in 2020. On 28th May an FIR was filed against Nupur Sharma at Pydhonie police station in Maharashtra on behalf of Raza Academy under Sections 295A of IPC⁶ which stipulates the punishment for any person found guilty of deliberately and maliciously intending to offend any group's religious feelings by disparaging their faith will be punished with imprisonment for a term which may extend to three years or with fine or both, Section 153A of IPC⁷ which states about inciting hatred or hostility between different groups on ground of race, religion, place of birth, residence, language etc and doing acts prejudicial to maintenance of harmony for which the punishment is stipulated which may extend to three years or fine or with both, Section 505B of IPC⁸ which mentions about promoting enmity or hatred or ill-will between classes and the punishment may extend to three years or fine or with

⁶ INDIAN PENAL CODE,1860 § Section 295A

⁷ INDIAN PENAL CODE,1860 § Section 153A

⁸ INDIAN PENAL CODE,1860 § Section 505B

both, and later several FIR's were filed against her across the country. The reason behind this is that she had made offensive comments against Prophet Mohammed about his third marriage with Aisha and consummation of that marriage during a debate show which was telecasted on Times Now. This led to hurting of religious sentiments of Islam and had created furore. Her comments caused disturbance in the country a tailor in Udaipur was killed by Muslim men as he had posted a video supporting her. A plea was filed by Nupur Sharma in Supreme Court through her advocate for seeking protection on 1st July 2022 but it was dismissed. And again on 19th July 2022, the matter was heard by the same bench and it was told by Sharma's counsel that she has been receiving death threats and she is not able to approach any institution physically for seeking alternative remedy due to the death threats she has been receiving and even two more FIR's were filed against her and he has requested for clubbing of all the FIR's filed in different states as the subject matter is the same in everything and be transferred to Delhi as it is place of her residence and she cannot be punished several times for the same offense taking into account what had been done in Arnab Goswami's case. By taking all this into account the court has issued an order that no coercive action can be taken against Nupur Sharma FIR's filed and in any further FIR's filed against this issue on 19th July, 2022. And in the next hearing the court gave the order that all the FIR's be clubbed and transferred to Intelligent Fusion and Strategic Operations (IFSO) Delhi unit as the FIR which has been filed in Delhi was lodged with IFSO and the order which has been passed on 19th July 2022 stands the same and will be in effect till the investigation is completed. When we come to the main issue of this research paper if Nupur Sharma has violated her freedom of speech and expression or not, according to the view of the author she has violated article 19 of the Indian constitution although hate speech is not explicitly mentioned under restrictions of article 19 in some cases it can be considered as a restriction depending on the circumstances of the case and if it results into any action mentioned under restrictions of article 19. This aspect is very subjective in nature, but when it comes to this case her speech comes under violation of article 19 as it had led to disturbance of public order as we could see how a tailor was killed in Udaipur for supporting her and a man from all the way Pakistan travelled to India for killing her which affects the security of the state as well. If we take the case of Ramji Lal Modi vs State of Uttar Pradesh⁹ it has been ruled that if any religious speech made is affecting public order then it can be considered as a restriction under article 19(2). Her speech has also affected friendly relations with foreign states as backlash has been poured from several countries like Qatar, UAE,

⁹ 1957 AIR 620 1957 SCR 860

Pakistan, Afghanistan, Iran, Indonesia for the remarks she made against the prophet and even some countries like UAE had issued a ban on Indian products. Although she did not make a comment per say about the country but her speech has affected the sovereignty and integrity as we had seen above how it has affected and created disturbance within and outside the country as well. As mentioned in the cases of Rangarajan vs P.Jagjivan Ram¹⁰ and Superintendent, Central Prison, Fatehgarh vs Ram Manohar Lohia¹¹ it is necessary to establish a proximate and direct connection with any immediate danger to the community in order to impose restrictions on free speech. Being an official spokesperson of a national party, she is representing the party as well as the nation so according to the Indian concept of secularism the state shall not associate with any religion but it shall respect all religions So according to this concept she is not entitled and does not have right to comment and she is violating the tenets of the constitution as well. Article 153A and 295A comes in conjunction with article 19 as they involve the aspect of speech and if any speech is made related to religion and if it creates disturbance in the country it in turn violates article 19 along with those sections. Even the BJP has suspended her after cases have been filed against her so even the party has indirectly accepted that she had created disturbance and exceeded her limits of freedom of speech. So we can see she has violated the restrictions mentioned under article 19 (2) i.e., the security of the state, friendly relations with foreign states, public order. So, accordingly the judiciary has to look into the case and award her the appropriate punishment it deems fit.

MOHAMMED ZUBAIR CASE

When it comes to the case of Mohammed Zubair vs State of NCT Delhi (popularly known as Mohammed Zubair case), Zubair is an engineer turned journalist and co-founder of Alt news which works to combat fake news. He was arrested on 27th June by Delhi police for an alleged tweet which he had posted in 2018. The tweet was about a hotel signboard which had changed its name from “Honeymoon hotel” to “Hanuman hotel.” This tweet was objected by an anonymous handle named @balajik Jain (Hanuman Bhakt) that he was insulting Hindu deities. A compliant was registered by Delhi Sub Inspector where he claimed that while going through twitter, he found this tweet and he was booked under Section 153A, 295A of the IPC. He was booked in several other cases in state of Uttar Pradesh which were related to alleged tweets of religious matters. Cases were booked against him one each in Sitapur, Lakhimpur Kheri,

¹⁰ 1989 (2) SCC 574

¹¹ 1960 AIR 633, 1960 SCR (2)

Muzzafarnagar, Ghaziabad, Chandauli, and two in Hathras. In Sitapur he was booked under Section 295A and Section 67 of the Information Technology (IT) Act, 2000 for a tweet in which he has used the term “hatemongers” against Bajrang Muni Ji of Rashtriya Hindu Sher Sena, Hindu Yati Narasimha Nar Saraswati and Swami Anand Swaroop. In Lakhimpur Kheri complaint was registered by an employee of Sudarshan News for propagating fake news under Section 153A of IPC. In this tweet he has posted a picture and asserted that Sudarshan news used the images of Al-Masjid an-Nawabi from Madina and replaced it with an old picture from Gaza, with graphics bombing the mosque to depict the Israel Palestine conflict. Regarding the case filed in Ghaziabad this case was booked in 2021 and is related to the violent assault of a 72 year old Muslim man Abdul Samad Saifi. It was claimed that this issue came into the masses after Zubair had posted this video on twitter and it was retweeted by several others and which in turn gave rise to communal disharmony and he was booked under Section 153A, 295A, 505¹², 120B¹³ and 34 of the IPC¹⁴. When it comes to the case filed in Muzaffarnagar it was claimed that he had issued life threats to a person named Ankur Rana who had approached him regarding Sudarshan news channel case that if gets involved in the case that his life would be in danger and he had been booked under Section 192¹⁵, 506¹⁶ and 504¹⁷ of the IPC. In Hathras a complaint was booked by a Hindu supremacist for allegedly insulting Hindu deities and creating disharmony without reference to any specific tweet and also for posting a edited video of Nupur Sharma in which she made remarks about Prophet Mohammed which gave rise to a lot of disturbances in the country and in other case filed in Hathras he was booked under Section 153A, 295A, 298¹⁸ of the IPC and Section 67 of the IT Act, 2000¹⁹ in connection to the protest on June 10th in Pardil Nagar town for the remarks made against Prophet Mohammed by Nupur Sharma. On July 7th he has moved the Supreme court in relation to the bail in Sitapur case as the request for bail was rejected by Allahabad High court. On July 8th, he was granted an interim bail by the SC for five days and this was further extended on July 12th till the next hearing with respect to this case. On July 10th a Special investigation team was proposed by the UP government for investigating the cases lodged against him. In meanwhile on July 11th he was issued 14 days judicial custody in Lakhimpur Kheri case. On July 15th he was issued a bail by

¹² INDIAN PENAL CODE, 1860 § Section 505

¹³ INDIAN PENAL CODE, 1860 § Section 120B

¹⁴ INDIAN PENAL CODE, 1860 § Section 34

¹⁵ INDIAN PENAL CODE, 1860 § Section 192

¹⁶ INDIAN PENAL CODE, 1860 § Section 506

¹⁷ INDIAN PENAL CODE, 1860 § Section 504

¹⁸ INDIAN PENAL CODE, 1860 § Section 298

¹⁹ INFORMATION TECHNOLOGY ACT, 2000 § Section 67

the Patiala House court in relation with the 2018 case. On July 16th the Lakhimpur Kheri court rejected his bail. On July 18th Zubair's advocate had moved SC for an urgent hearing and the court issued that it would hear the matter on July 20th. On July 20th Zubair had been granted bail and all the cases against him were transferred to the Delhi police. The court has granted for transfer of cases as the subject matter in all the cases is related to the tweets posted by him and all the complaints were related to religious allegations and the investigation in the Delhi case is also related to the same allegation and almost all the FIRs were booked under the Sections 153A, 295A, 298, 505 of the IPC and if this was not done he would be deprived of his liberty and unnecessarily subjected to physical and mental pressure as he had to approach different courts and hire multiple advocates for defending himself for the same offences in all cases and also a person cannot be deprived of his liberty even for a single day by taking into account Arnab Goswami case as the precedent and the SIT formed by the UP police was disbanded as the cases are now transferred to the Delhi police and Zubair cannot be subjected to multiple investigations on the same issue. The court also has claimed that he can approach the High court for quashing of the FIRs under article 32²⁰ of the constitution. When we come to the aspect of article 19 i.e., if the aspects of the case are violating article 19 of the constitution or not according to the author any aspect of the case i.e., any tweet posted by him is not violating article 19 of the constitution as discussed above sometimes hate speech can be considered as a facet i.e., restrictions under article 19. But in this cases no tweet can be pertained to as hate speech as he did not post anything which was violative of the restrictions mentioned under article 19. If we take into consideration of the 2018 tweet which he has posted about a hotel signboard it was discovered that it was from a 1983 Hindi film Kissi Se Na Kehna and also he mentioned in that tweet that it was before and after 2014 and it was assumed that he was referring to a political party(BJP) and the claim was made although if we consider that it cannot be said to be violative as in a democratic set up a citizen has a right to criticise the government or any political party and that forms a right under freedom of speech and expression. And if we come to the case of Sitapur he has used the term "hatemongers" against the acclaimed Hindu supremacists but he had used that term as they had insulted Muslims and publicly threatened to rape Muslim women but no action was taken against them in that case. He cannot be said to violate or hurt anyone religious sentiments as he had just responded and it did not give rise to any communal disharmony. When it comes to Lakhimpur Kheri case as well he was in fact combating fake news which was propagated and even he has tagged the

²⁰ INDIA.CONST.art.32

police to take action in order to stop misleading people so that cannot even come under Section 153A as it is not promoting enmity between any groups for which he was booked. When it comes to Hathras case as well he was booked without referring to any specific tweet so by this we can say that the police did not try to enquire but they simply have filed a case against him. Even in Muzzafarnagar case he just posted a video but he did not mention anything that cannot be said to be violate article 19 as a journalist he has a right to publish which is also a facet of article 19 and if we come to the case of video of Nupur Sharma it was not an edited video which has been proved later and also the Times Now channel has dropped of the video from its website as it erupted public disorder in the country as said in Muzzafarnagar case he is a journalist and it is his duty to educate people of what is happening in the country and if he is being held violative the police or the respective authority is restricting his right under article 19 (1)(g)²¹ to practise his profession. So by the analysis of the respective tweets we can say that he has posted nothing which would give rise to public disorder, or affecting the security of the state or its relations with foreign states or defamation or incitement to an offence or affecting decency or morality as mentioned under article 19(2) of the constitution nor is he is violating provisions mentioned under Section 153A, 295A, 505 of the IPC. So, accordingly the judiciary has to look into the case and propose a fair investigation of the case and squash the FIRs filed against him.

CONCLUSION

So, after examining the above cases we can say that hate speech very subjective in nature and it needs to be carefully examined from case to case. What could be hate speech to one may not be the hate speech to another. Therefore, the protections given to free speech under article 19 become all the more important. When we see the above cases, we can tell that how certain provisions of criminal law are being blatantly misused in some cases to stifle freedom of speech and expression. Even the police have to initially examine the cases and decide if the respective case is violating any provisions of law or not and then register a complaint. However, the right to freedom of speech and expression is not absolute and as seen above in Nupur Sharma case how some aspects could amount to hate speech and cause religious disturbances among communities. Therefore, it would be advisable to introduce a specific enactment regulating hate speech or introduce amendments elaborating upon the existing provisions of law to keep up with the developments and circumstances in the present day society and which would go

²¹ INDIA.CONST.art.19(1)(g)

along with the freedom of speech and expression under article 19 and would ensure that no person can be restricted to express his opinion about any aspect unless it violates the restrictions in the said enactment.

REFERENCES

Manupatra

Economic And Political Weekly

Bar and Bench

MP Jain's Book on Constitutional Law

The Hindu

Scroll

The Quint

Hindustan Times

Indian Express