



www.eprawisdom.com

## Research Paper

## FREEDOM OF EXPRESSION, MEDIA AND DEMOCRACY IN INDIA

<b>Prof.B.P.Mahesh Chandra Guru<sup>1</sup></b>	<sup>1</sup> Professor, Department of Studies in Communication and Journalism, University of Mysore, Manasagangotri, Karnataka, India.
<b>K.N.Mahadevaswamy<sup>2</sup></b>	<sup>2</sup> Assistant Professor and Head, Department of Journalism, Sahyadri Arts College, Kuvempu University, Shivamogga, Karnataka, India.
<b>M.Dileep Kumar<sup>3</sup></b>	<sup>3</sup> RGNF Research Scholar, Department of Studies in Communication and Journalism, University of Mysore, Manasagangotri, Mysore-570006, Karnataka, India,
<b>P.Gowtham Devanoor<sup>4</sup></b>	<sup>4</sup> Research Scholar, Department of Studies in Communication and Journalism, University of Mysore, Manasagangotri, Mysore, Karnataka, India,

#Paper presented in the UGC Sponsored National Conference on 'Media, Politics and Indian Constitution: Emerging Issues and Concerns' Organized by Sahyadri Arts College, Kuvempu University, Shivamogga, Karnataka, India, March 27, 2017.

### ABSTRACT

The early human rights documents enumerate the concept of freedom of expression. The issues and concerns of freedom of expression and democracy in India are analyzed in this paper. India was subjected to 1000 years of slavery after the downfall of Buddhism. Indians were deprived of democracy because of the caste system and invasion of outsiders from Middle East and Europe. The national leaders had consciously adopted the parliamentary form of democracy in order to make the people of India sovereign republics and makers of democracy. The freedom of expression has been considered as a necessary condition for a democratic polity. The freedom of expression also carries with it duties and responsibilities which are subjected to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety. The freedom of speech and expression should receive generous support from all those who believe in the inclusive development of women and weaker sections who are the strong pillars of national democracy. The media have played a responsible role in the protection of freedom of expression in the wake of recent developments in Central University of Hyderabad, JNU, Delhi University and other centers of learning. In the new millennium, the electronic media and social media have played a crucial role in the battle against curtailment of freedom of expression and weakening of the foundations of democracy by the powers that be in Indian Republic.

**KEY WORDS** : democracy, national leaders, freedom, society



## PREAMBLE

The freedom of expression is the fundamental right of every individual to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, according to the Universal Declaration of Human Rights (1948). The Constitution of India guarantees freedom of speech and expression to all citizens through Article 19(1)(a). This freedom is subjected to certain reasonable restrictions vide Article 19(2). 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. There is a well established relationship between the freedom of expression and democracy. The freedom of expression is the oxygen which sustains democracy in times of peace and crisis. The democracy becomes a fool's paradise in the absence of freedom of expression. The freedom of expression and dissent are suppressed by those in power from time to time in the name of sedition and national security. The issues and concerns of freedom of expression and democracy in India are analyzed in this paper.

## DEMOCRACY IN INDIA

Ambedkar had rightly stated that the history of India is the history of conflict of interest between Brahminism and Buddhism. Brahminism represented the caste system and caste based domination. Buddhism represented humanism and value based democracy in India. Democracy was founded by Buddha on the basis of equality, liberty, fraternity and justice which constitute the foundations of a welfare state. The Aryans invaded India and crushed the indigenous people through undemocratic means. They also destroyed the Buddhist foundations and imposed Brahminism as a way of life in India. The indigenous people lost their fundamental rights and became slaves of the system under the draconian Verna system. Many indigenous rulers were also defeated through politics of manipulation by the Aryans in Indian sub-continent.

India was subjected to 1000 years of slavery after the downfall of Buddhism. Indians were deprived of democracy because of the caste system and invasion of outsiders from Middle East and Europe. The World War-II was fought between the fascists and democrats. The democratic forces led by America, Russia, England, India and other progressive nations defeated the fascists non-violently. India became politically independent nation in 1947. Ambedkar had termed it as transfer of

power from the hands of external vested interests to the hands of local vested interests. Ambedkar, Lohia, Jayaprakash Narayan and other statesmen had strongly advocated for social and economic democracy in India.

The national leaders had consciously adopted the parliamentary form of democracy in order to make the people of India sovereign republics and makers of democracy. In the recent times, some leaders have advocated the need for switching over to presidential form of democracy in India. The surrender to the authority of one individual, as in the presidential system is dangerous for democracy (Ramachandran, 2017:11). It is improper to change the basic structure of Indian democracy since it would make the president a fascist. The presidential form of democracy leads to centralization of power in one individual unlike the parliamentary system. It would also institutionalize isolationism and annihilationism which are diametrically opposite to the basic principles of inclusive development and integrated development of the people of India.

The presidential system has been debated extensively in India since independence. The Supreme Court has dealt with the 'basic structure' of Indian Constitution. The present parliamentary system has been tried and tested for nearly 70 years. It is better to reform thoroughly the electoral process rather than changing the system (Baxi, 2017:03). The people of India constitute the supreme parliament under this system. The government is answerable to the parliament and parliament is answerable to the people. The country has not achieved the goals of integrated development, sustainable development and inclusive development in the post-independence era due to lack of political commitment and social mobilization. In the new millennium, democracy is controlled by the market forces and religious fundamentalists in India. Democracy needs to be rejuvenated on the basis of value based politics, social mobilization and empowerment of the weaker sections of India.

## HISTORICAL CONTEXT OF FREEDOM OF EXPRESSION

The early human rights documents enumerate the concept of freedom of expression. The *Parliament of England (1689:10)* legally established the constitutional right of 'freedom of speech in Parliament' which is still in effect. The Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution (1789) specifically affirmed freedom of speech as an inalienable right. The Article 19 of the Universal

Declaration of Human Rights (1948:15) provides the basis for the freedom of expression. It reads: "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".

The freedom of speech, or the freedom of expression, is recognized in international and regional human rights law. The right is enshrined in Article 10 of the European Convention on Human Rights (1950:05), Article 19 of the International Covenant on Civil and Political Rights (1966:07), Article 13 of the American Convention on Human Rights (1978:02) and Article 9 of the African Charter on Human and Peoples' Rights (1986:01). These international conventions have emphasized that freedom of expression includes basically - the right to seek information and ideas, the right to receive information and ideas and the right to impart information and ideas. The 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. The freedom of expression is the means of generating public opinion on vital issues in a democratic society.

The Article 10 of the European Convention on Human Rights (1950:05) provides the right to freedom of expression and information, subject to certain restrictions that are in accordance with law and necessary in a democratic society. This right includes the freedom to hold opinions, and to receive and impart information and ideas. The article emphasizes that everyone has the right to freedom of expression which include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom of expression also carries with it duties and responsibilities which are subjected to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety.

The First Amendment to the Constitution of USA states: "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people to assemble peaceably and to petition the Government for a redress of grievance". Freedom of speech is understood to be fundamental in a democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency.

The concept of democracy is that of self-government by the people. Freedom of expression is a prerequisite to the effective functioning of a democracy. The freedom of expression is key to the development, dignity and fulfillment of every person. The people feel more secure and respected by the state if they are able to speak their minds. The freedom of expression is necessary for good governance and establishment of a welfare state. Free debates and discussions also ensure the betterment of public policies and welfare programmes in a civil society.

## **FREEDOM OF SPEECH AND EXPRESSION IN INDIA**

The Preamble of the Indian Constitution ensures to all its citizens the liberty of expression. The Constitution of India provides the right to freedom which is enshrined in articles 19, 20, 21 and 22 respectively. The framers of the constitution had understood the importance of freedom of expression in a democratic society like India and guaranteed the right to freedom in Article 19. The courts have held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.

The constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1)(a) of the Constitution. The constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1)(a) of the Constitution. Article 19(1) provides that all citizens shall have the right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practice any profession or to carry on any occupation, trade or business.

The rights mentioned in Article 19(1) are not the exhaustive of all rights of a free man. Some of the rights falling outside Article 19 are freedom to move, right of citizenship, the right to vote, or contest election, the contractual right against the Government, right of Government servants to continue in employment and the right to strike. The freedoms enumerated in Article 19(1) are those great and basic rights which are recognized as natural rights inherent in the status of a citizen. But none of these freedoms is absolute or uncontrolled. The rights granted by Article 19 are available only to citizens and not to aliens or foreigners.

Thus the press is subject to the restrictions that are provided under the Article 19(2) of the Constitution. Freedom of speech is the right to communicate one's opinions and ideas without fear of government retaliation or censorship. The term freedom of expression is sometimes used synonymously, but includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used.

### **FREEDOM OF EXPRESSION AND JUDICIARY**

Judiciary is indeed the angel guardian of democracy, media and people in India. The judiciary has upheld the democracy and freedom of expression in various occasions and judgments. The judiciary has called upon the legislature not to take the freedom of expression of the people for granted. The judiciary has also enabled the media to function responsibly in accordance with the reasonable restrictions imposed upon the freedom of speech and expression.

The Supreme Court (1950:12) in Romesh Thapar v. State of Madras observed: "Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible."

The Supreme Court (1984:13) in Indian Express v. Union of India and others remarked: "The press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements such as freedom of access to all sources of information, freedom of publication and freedom of circulation.

The Supreme Court (2002:14) in Union of India v. Assn. for Democratic Reforms asserted: "One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions".

The Clause (2) of Article 19 of the Indian Constitution enables the legislature to impose certain restrictions on free speech under following heads such as security of the State, friendly relations with foreign States, public order, decency and morality, contempt of court, defamation, incitement to an offence and sovereignty and integrity of India. The citizens and media representatives are equally subject to the restrictions that are provided under the Article 19(2) of the Constitution.

### **FREEDOM OF EXPRESSION AND MEDIA**

The media institutions are regarded as the fourth pillar of a democracy. The media institutions are required to facilitate the free flow of information and ideas which sustain democracy. The media also serve as the best communicator of information and the best instrument of expression. Exercise of right of freedom of expression is the professional duty and character work of media, whether it is print or electronic media. The media institutions should also enjoy the freedom for promoting public good in a civil society. Democracy was threatened by Indira Gandhi when she declared emergency on June 25, 1975 without lawful justifications. Jaya Prakash Narayan led the total revolution movement during 1975-77 and succeeded in the restoration of democracy. The underworld press had also played a crucial role in the protection of freedom of press and democracy.

The philosophical basis for the freedom of publication and circulation is the social purpose of supplying unadulterated information without tendentious presentation, readily and the right time. The Constitutional rights stem from political philosophy (Iyer, 1975:08). The press had played a historical role as a prominent institution which nurtured, sustained and strengthened our democracy against too many odds. The press also facilitated public opinion formation in the post-emergency period. Several national and regional leaders were brought to the book by the press and punished with imprisonment for proven corruption and lapses.

In the decade of 1990s several scams and controversies were reported in the press and many leaders, bureaucrats, businessmen and others paid heavy price for their anti-people and undemocratic practices. Rajiv Gandhi had to lose power for his alleged involvement in Bofors and Fairfax scandals. An era of political uncertainty had also begun in India after the death of Rajiv Gandhi. The press played a responsible role as the angel guardian of public interest and freedom of expression in India.

The Anna Hazare movement against political corruption gained momentum in India thanks to the proactive role played by media in general and social media in particular. Aravind Kejriwal had become the Chief Minister of Delhi without caste power and cash power for the first time in modern India. The people were fed up with the misrule of the government led by United Progressive Alliance. Narendra Modi also extensively

used new media and social media and steered the National Democratic Alliance to power in general elections of 2014.

The media have not spared Narendra Modi who could not live upto the expectations of the people as the champion of social and economic democracy. The government led by Modi has only protected the interest of capitalists and fundamentalists and let down the farmers, workers, women and weaker sections. The IPL India is shining and BPL India is sinking under the misrule of Modi and company. Efforts are also made by the present government to suppress the voice of the people against misrule. Democracy is at the cross roads in India. Progressive forces are threatened by the fundamentalists and capitalists led by Modi. The media have critically analyzed the misrule of Modi and sensitized the stakeholders of democracy in the present times about the ways and means of restoring democracy in India. The social media have emerged as the parallel media of the people and facilitated social and political mobilization across the country.

### **EMERGING ISSUES AND CONCERNS**

In the present times, there are series of threats to freedom of expression in India. The present union government has resorted to saffronization, commercialization and politicization of education and culture across the country. The government has failed to win the confidence of all sections of society for political compulsions. The recent attacks on progressive individuals by the religious fundamentalists in various university campuses and public places have jeopardized the freedom of expression and democracy in the country. The rulers have failed to understand that Indian democracy can be strengthened by tolerance, non-violence, freedom of expression and secular approaches. The manner in which the image of the Supreme Court and fundamental rights is being whipped is equally shocking for the true democrats in India.

There is exceptional and unprecedented break down of the justice delivery mechanism and administration of justice, lamented Kanhaiya Kumar. D.Raja, CPI leader stated that action against JNU students was an attack on right to freedom of speech and expression. The parliament should amend the Section 124A of the Indian Penal Code which deals with sedition since it is outdated, outmoded and outrageous provision (Gandhi, 2016:06). The idea of nationalism is misused by the fundamentalists. The supporters of students' agitation have lamented that the BJP is running shrill campaign branding all those who dissent as anti-

nationalists. Recently renowned thinker and media critic Noam Chamsky strongly condemned the intervention of police in the affairs of JNU.

Many of us remain very concerned about the recent threats to freedom of expression and democracy in India under the national government headed by Narendra Modi. The appointment of Yogi Adityanath as the Chief Minister of Uttar Pradesh indicates the hidden agenda of the Hindu fundamentalists who have gained absolute control over the Indian democracy.

Chomsky and other academicians across the world have also condemned the culture of authoritarian menace that the present government in India has generated. They have opined that those in power have replicated the dark times of the oppressive colonial period and the emergency. The Supreme Court of India states: "If a citizen comes to this court saying his fundamental rights are under threat, we have to hear him. Something extraordinary is going on in this country. No doubt about it. We will certainly examine the students bail plea (Chamsky, 2016:04).

The Bar Council of India told the Supreme Court that serious action would taken against the errant lawyers who brazenly defied the courts order for calm and indulged in violence in the Patiala House courts complex recently. The scribes have also condemned the Patiala House court attacks and registered their concern for freedom of expression and protection of fundamental rights in the country. The academics and researchers have strongly protested against the shrinking democratic space in educational institutions across the country.

These events have deepened the state of tension, suspicion and discord that has afflicted the country over the past several years. At one level, the events bring to sharp focus the mindset of the Narendra Modi government, the partisanship of university and law enforcement authorities, the brazenness of lawbreakers, the nature of student politics and inflammatory role of some television channels. Every one of these aspects demands serious introspection and a new broad consensus if we are to retain our hard-won and hard-preserved national freedom and freedom of expression in India.

The recent events call upon us as citizens to reflect on our relationship with the entity that we call India; to reflect on the nature of the feeling we have for India, and indeed, what is the 'India' that we have feelings for nationalism without liberalism is a monster. We saw this when lawyers and a local Delhi politician brazenly resorted to violence in the name of nationalism (Pai, 2016:09).

**CONCLUSION**

The national leaders won the freedom against too many odds after one thousand years of slavery. They accepted democracy as a way of life. The framers of Indian Constitution led by Baba Saheb Ambedkar consciously accorded a place of pride to freedom of expression which sustains democracy in India. The freedom of speech and expression should, therefore, receive generous support from all those who believe in the inclusive development of women and weaker sections who are the strong pillars of national development. However in modern world Right to freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. The stakeholders of democracy are required to balance freedom of expression with other human rights. The centers of learning should be a space for healthy debates and discussions which shape the destiny of the nation. The academic institutions are required to produce people who ideate and think in the interest of the nation. The students should be enabled to learn appropriate lessons in citizenship and nation building endeavors. The media have played a responsible role in the protection of freedom of expression in the wake of recent developments in Central University of Hyderabad, JNU, Delhi University and other centers of learning. In the new millennium, the electronic media and social media have played a crucial role in the battle against curtailment of freedom of expression and weakening of the foundations of democracy by the powers that be in Indian Republic.

**REFERENCES**

1. *African Union (1986) African Charter on Human and Peoples' Rights, October 21, Banjul, Gambia.*
2. *American Convention on Human Rights (1978) General Secretariat of the Organization of American States, July 18, San Jose, Costa Rica.*
3. *Baxi, Upendra (2017) Do We Need a Presidential System? Comment, OPED, 9, The Hindu, March 24, Bengaluru, Karnataka, India.*
4. *Chamsky, Noam (2016) The Hindu, report, Bengaluru Edition, February 21, p.7.*
5. *European Convention on Human Rights (1950) The convention for the protection of Human Rights and Fundamental Freedoms, November 04, Rome, Italy.*
6. *Gandhi, Gopalakrishna (2016) Time to amend sedition charges drastically, The Hindu, report, Bengaluru Edition, February 21, p.7.*
7. *International Covenant on Civil and Political Rights (1966) General Assembly resolution, December 16, New York, USA.*
8. *Iyer, Krishna V.R (1975) Law, Freedom and Change, East West Press Pvt. Ltd., New Delhi, India.*
9. *Pai, Nitin (2016) Patriotism without nationalism, perspective, The Hindu, Bengaluru, February 23, p.9.*
10. *Parliament of England ((1689) Bill of Rights, December 16, London, UK.*
11. *Ramachandran, Raju (2017) Do We Need a Presidential System?, Comment, OPED, 9, The Hindu, March 24, Bengaluru, Karnataka, India.*
12. *Supreme Court (1950) Romesh Thappar v. State of Madras, AIR 1950, 124, May 22, New Delhi, India.*
13. *Supreme Court (1984) Indian Express v. Union of India and others, AIR 515, 1985 SCR (2) 287, New Delhi, India.*
14. *Supreme Court (2002) Union of India v. Association for Democratic Reforms and Anr, 5 Supreme Court Cases 294, New Delhi, India.*
15. *United Nations (1948) The Universal Declaration of Human Rights, www.un.org.*