Right to Freedom and the Right to Life

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1. Background

Right to freedom and right to life are cardinal principles to any democracy. These rights are guaranteed and protected as fundamental rights by the Indian Constitution. They are fundamental law of the land essential for the all-round (material, intellectual, moral and spiritual) development of individuals.

However, the limitations placed on these fundamental rights are accused of restricting the very idea of rights. These limitations faced opposition not only from members of the Constituent assembly but also from prominent constitutional experts. In India, these limitations have been matter of intense debate since independence.

2. Right to Freedom

Article 19(1) of Indian Constitution guaranteed right to freedom of speech and expression. Right to expression is one of the most important mechanisms to exercise other rights given by constitution. Many political scientists, therefore, attach utmost importance to this right. Fight for freedom of press and expression formed the core agenda of the Indian National Movement.

The western liberal democracies believed in near absolute freedom of expression. In India, however, the list of bans and restrictions on this right is too long to produce in full. In last year there were many controversies surrounding this right. Perumal Murugan case, the ban on India’s Daughters and the Supreme Court’s judgment on Section 66A of Informational Technology Act 2000 has renewed the debate on position of right to freedom of expression in India.

2.1. First Amendment to Indian Constitution

• Free speech was put to test immediately after commencement of the constitution. The views expressed by extreme groups from left and right of political spectrum were perceived by many leaders as threatening the foundation of democracy in India.
• The Union of India responded to such offensive and violent prophesies by coming out with the doctrine of ‘reasonable restrictions’, put in place by the First Amendment Act. It added provisions to Article 19(2), which contains reasonable restrictions on right to freedom. The onus of deciding reasonableness is assigned to legislators and judges of the land. This is in stark contrast to the other democracies.
• The First Amendment to the American Constitution states “Congress shall make no law...abridging the freedom of speech, or of the press...” The American Constitution assumes pre-existing rights and freedoms, and places limitations on the state instead.
• While First Amendment to India Constitution authorized the Union and state legislatures to put ‘reasonable restrictions’ on free speech to preserve public order, morality, decency and friendly relations with foreign states.
• This doctrine has turned into a nightmare for freedom of speech in India. It set up a marketplace of outrage, which everyone wants to enter. Everyone now wants to say, ‘My feelings are more hurt than yours’.
• The end result is long list of bans, censorships and restrictions on the freedom of expression. Almost everything and anything written, drawn or filmed is said to object the feelings of community and threat to public order, decency and morality.

3. Analysis of various issues

3.1. Perumal Murugan case

• Murugan is noted Tamil novelist who has written on social, cultural and economic traditions. His novel Madhorubhagan purportedly offended the sensibilities of some dominant sections of society in the western Kongu belt of Tamil Nadu. Many outfits burned copies of his book and staged strikes to oppose his novel.
• Set in the backdrop of a pre-Independence era belief system involving ‘consensual sex’ ritually associated with the annual car festival of the Sri Arthanareeshwarar Temple in Tiruchengode. Perumal Murugan’s novel is very sensitive and poignant portrait of the dilemmas of a poor childless couple.

• Sectarian disputes are nothing new when writers reflect on socio-economic-cultural issues. The knowledge received from such literature is the key to an open society. The rights under the Constitution are designed to protect the freedom of expression of writers like Perumal Murugan who may seek to question uncomfortable truths from the past. It is a pity that a range of forces conspired to silence him.

• The writer faced physical intimidation by the groups protesting his book. He was forced to leave his native region by protesters. The writer announced his decision to give up writing in light of persistent threat to his life and safety of family members.

3.2. Ban on India’s Daughters

• India’s Daughters is documentary inspired by the tremendous protests after the brutal rape case in the New Delhi called as Nirbhayaa case. The documentary interviewed the accused in the case, two defense lawyers and others connected with the case.

• The documentary is part of a global campaign against rape, violence against women and gender inequality. It explores the life and dreams of an extraordinary young woman, brutally ended. The tension between her story and the outrageously reactionary social attitudes expressed on camera gives the documentary its power.

• The justification given to ban the documentary clearly shows how wisdom applied to decide ‘reasonable restrictions’ is questionable.

• While arguing for ban, government felt that broadcasting film and especially the interview with the convicted rapist and killer will threaten public order by “encouraging and inciting violence against women”, instilling fear in them, and leading to “a huge public outcry” and serious law and order problem.

• The documentary should be seen as holding a mirror unto a society that is far from being sensitive to gender issues. Films such as this aid in genuine transformation of the attitude and approach of society at large. The solution is not to ban such efforts.

• Documentary may help confront the widespread cases of rape and the widely seen phenomenon of public figures, officials and politicians conforming to the patriarchal mindset that is at the core of gender violence in India.

3.3. Section 66A and Shreya Singhal case

• The Supreme Court, in Shreya Singhal versus Union of India, has stepped with affirmation of the value of free speech and expression. It quashed Section 66A of the Information Technology Act, 2000 (IT Act) as unconstitutional.

• Section 66A had attained particular infamy after the arrests by the Mumbai police in November 2012 of two women who had expressed their displeasure at a bandh called in the wake of Shiv Sena chief Balasaheb Thackeray’s death. Since then, several arrests have been made by different State police, of various individuals, for the most benign dissemination of online content.

• This verdict in Shreya Singhal is a hugely important landmark in the Supreme Court’s history for many reasons. It represents a rare instance of the court adopting the extreme step of declaring a censorship law passed by Parliament as altogether illegitimate.
3.4. Comparison with Directive Principles of State Policy and Beef Ban

- Maharashtra Animal Preservation (Amendment) Bill, 1995, that prohibits the slaughter of bulls and oxen and the possession and sale of beef received the assent of the President. The bill allows the slaughter of buffaloes but possession of meat is illegal according to act. Eating beef is not banned under the act, though act makes it impossible to access beef.
- The bill is passed in light of Article 48 under the Directive Principles of State Policy (DPSPs). Article states that the State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and other milch and draught cattle.
- Many states have joined this ban wagon. Haryana passed similar legislation after Maharashtra and others are considering similar options. It is argued that these bans violate fundamental liberties and erode the secular character of the state.
- The Bombay High Court has validated the act passed by the state assembly. The Judgment says, “It is not a fundamental right of a citizen to eat beef. It cannot be said that the government cannot take away these rights. The state legislation can regulate consumption of flesh of any animal the source of which is reprehensible.”
- The Supreme Court in its previous cases has upheld the notion that the cow was held in reverence by the Hindus. However, the Supreme Court has also ruled that a ban on the slaughter of bullocks and bulls, despite being old age and no longer economically useful, amounted to imposing unreasonable restrictions on the butchers – and was, therefore, ultra vires of the Constitution.
- State of Maharashtra has argued that the ban has nothing to do with any religion and is purely motivated by the economic factors and protection of farmer’s interest.
- Many farmer bodies, however, see the ban as counter-productive to the interest of the farmers. As keeping animals with no economic benefits puts burden on farmers, slaughtering such animals provide economic benefits to farmers.
- It is argued that the forces of individual liberty be given priority over social orthodoxy. Our rights as citizens should become progressively detached from our particular identities. It should be treated as attack on individual liberties and freedom.

3.5. Way Forward

- The first amendment retains a significant space in the history, not merely because it was the first amendment but because in many ways it also signaled the kinds of battles that would take place between the project of nation building and the sphere of the media. It marked the rather premature end of the vision of a free society. It prioritized the promotion of national security and sovereignty being over the promotion of democratic institutions.
- Just as the pernicious license raj institutionalized corruption in India, these ‘reasonable restrictions’ have institutionalized a culture of ‘hurt sentiments’ and ban. We are becoming a nation of individuals and groups who get offended at anything and everything.
- What is happening in India is perhaps one extreme, where even stray references questioning beliefs and faiths are censured, academic commentaries on religions and social groups are banned, even as vested interests, groups and political parties play upon fears, alienation and differences between communities for gains.
- Dr. Ambedkar had said in one of his landmark speeches in the Constituent Assembly that the experiment of building a liberal constitutional republic on an illiberal society is fraught with risks. Constitutional values have to be given more importance whenever they clash with social norms, customs and traditions. And one way of strengthening these liberal constitutional values is refraining from the restricting individual liberties and right to freedom.
• Economic growth alone can’t serve as the panacea for tackling rising intolerance in the country. We must uphold the fundamental duty of tolerance. We must allow the existence or occurrence of something that one dislikes or disagrees with, without interference.
• Unrestrained freedom may look like a catastrophe in short term but in long term it is pre-condition for social integration and perpetual peace in the society.

4. Right to Life and the Right to Die

In the Nikhil Soni vs Union of India case, the Rajasthan High Court has concluded that the Jain practice of Santhara or Sallekhana shall be considered a criminal offence under Section 309 of the IPC, which provides for punishment for attempted suicide, and Section 306, which provides for punishment for abetment of suicide. The decision has renewed the debate over right to life and right to die.

• In 2006, Jaipur-based lawyer Nikhil Soni filed a public interest litigation and sought directions under Article 226 to the Central and State governments to treat Santhara, the fast unto death practised by Swetambara Jains (Digambars call it Sallekhana), as illegal and punishable under the laws of the land. Calling it suicide and, therefore, a criminal act, the PIL also sought prosecution of those supporting the practice for abetment to suicide.
• The PIL argued that death by Santhara was not a fundamental right under Article 25 (freedom of conscience and free profession, practice and propagation of religion), because it violated the right to life guaranteed under Article 21. It argued that religious freedom is subject to public order, morality and health.
• The Court said that it was not established that Santhara or Sallekhana is an essential practice of the Jain religion. Jain scriptures or texts don’t say that moksha (salvation) can be achieved only by Santhara/Sallekhana.
• According to the judges, it was one thing to argue that Santhara is not suicide, and quite another to say that it is a permissible religious practice protected by Articles 25 and 26. The court asked the state to stop the practice in any form, and directed that any complaint made in this regard be registered as a criminal offence in accordance with Section 309 (attempted suicide) or Section 306 (abettment to suicide) of the IPC.
• Sallekhana is the Jain practice of withdrawing from taking food, under some very special circumstances, as a way of subduing all passions that cause himsa and preparing for a purified passage into the death state and beyond.
• Santhara, also called ‘Pandit-marana’, ‘Sallekhana’ and ‘Sakham-marana’, is believed to have been practised since the foundation of Jainism and finds mention in its agams (religious texts). As per the Jain Yuva Sangh, the Pratikramana Sutra in Shrawaka Anuvrata (the code of conduct for Jains) clearly explains Santhara, saying that when all purposes of life have been served, or when the body is unable to serve any more purpose, a person can opt for it.
• However, scholars who had studied the philosophy of Jainism argue that characterizing Santhara as a form of suicide is fallacy. True, both acts culminate in the self-extinguishment of a human life, but the motivations of the actors are poles apart. Whereas suicide is an act of extreme desperation fuelled by anguish and hopelessness, a Santhara practitioner relinquishing food and drink voluntarily by this method has arrived at that decision after calm and unruffled introspection, with intent to cleanse oneself of karmic encumbrances and thus attain the highest state of transcendent well-being. Santhara, for him, is therefore simply an act of spiritual purification premised on an exercise of individual autonomy.
• Human rights activists allege that it’s a social evil, and old people are made to undertake Santhara/Sallekana by family members who don’t want to look after them for a variety of reasons.
• The Supreme Court has stayed the order of Rajasthan high court based on the reading of ‘essentiality’ of the practice under religious beliefs.
5. Conclusion

- The state is right to intervene in practices that are unjust, essential or not. Sallekhana is different because it is not usually associated with evil most religions inflict - outright coercion. Sallekhana, unlike sati, with which comparisons are drawn, has not historically been associated with the subordination of women. Both men and women do it. It is voluntary, though it can be debated whether the social attraction of being remembered as an adept is a kind of coercive pressure. In some renditions of the practice, having once taken a vow, the community censure on withdrawing is significant.
- The Supreme Court should reconsider the High Court judgment. It goes against the identity of a religion whose central tenet is reverence for life, and it is a practice whose harm, in most cases, is not obvious. The community, for its part, will need a conversation on the conditions under which Santhara should be permitted.