WORKING PAPER

PROJECT: Fundamental Rights in the Indian Constitution—their scope, operation and trend.

TOPIC: Right to Freedom of Speech and Expression guaranteed under Article 19(1) (a) of the Constitution of India.

PRELIMINARY EXPLANATION

'FUNDAMENTAL Rights' has been chosen as one of the projects for research by the Indian Law Institute. The objective of this project is to examine all the instances in which claims of fundamental right have been raised before the Courts, to determine the extent to which the intentions of the framers of the Constitution, in safeguarding such rights, have been realised in practice, to compare the extent of such protection with that afforded in other constitutional democracies, and to consider the desirability of any further protection of fundamental rights.

PLAN OF WORK

The subject was proposed to be approached, in the beginning, with the study of the Constituent Assembly Debates in order to find out the intention of the framers of the Constitution. It was also decided that the subject should be divided into different categories involving similar problems and that the cases should be divided accordingly under similar categories. Finally, it was intended to make a comparative study of the results in each one of these areas with the decisions of other countries having similar constitutional provisions.

SCOPE AND NATURE OF WORK DONE

In order to have a proper grasp of the subject, first of all, a background study of Fundamental Rights, in general, was completed. The particular subject of freedom of speech and expression in India, as it stood during the British times, was then analysed and considered on the basis of the leading cases under section 124-A of the Indian Penal Code. The Constituent Assembly Debates, especially volumes III, VII, XI and XVIII which were found useful for the purpose and the Parliamentary Debates on the Constitution First Amendment Bill, 1951, were studied in order to understand the intention of the framers of the Constitution. The Press Commission Report of 1954, which remommended the repeal of section 124-A of the Indian Penal Code, was consulted. A 'Case and Comment' was prepared on the law of Sedition (Does Section 124-A, Indian Penal Code, contravene Article 19(1) (a) of the Constitution) and published in the first issue of the Journal. A progress report for the

conference held on 25th September, 1958, at the office of the Institute, was submitted. And, lastly, a paper showing all the details of the progress of the work done so far has been prepared analysing all the leading Indian cases and statutes. In that paper an attempt is made to suggest solutions to some problems which have not been solved so far. This working paper is made out of that main paper.

PRELIMINARY CONCLUSIONS

1. During the British regime freedom of speech and expression was not a guaranteed right and was in practice subjected to restrictive laws such as section 124-A, Indian Penal Code. Their Lordships of the Privy Council in *Bal Gangadar Tilak's* case (1897 I.L.R. 22 Bom. 112) had very specifically laid down what section 124-A of the Indian Penal Code actually meant in those days. According to their view even an attempt to excite bad feelings and disaffection or disloyalty towards the Government was made punishable. Whether such an attempt led to any overt act or disturbed the public peace or whether the charges levelled against the Government were true or false, was not at all a question to be taken into consideration. Whenever a person did any act prescribed by the impugned section he was invariably presumed to intend the consequences of the Act, whatever his real intention might have been.

2. It is clear from the Constituent Assembly Debates that a concept of sedition, such as that recognized in Tilak's case, was regarded by the framers of the Constitution as antithetical to a democratic society.

3. The Constitution guarantees to the citizens the right to freedom of speech and expression. But the legislature can make any law restricting this frredom in the interests of—

(a) the security of the State
(b) friendly relations with foreign States
(c) public order
(d) decency or morality

or in relation to—

(e) contempt of court
(f) defamation or
(g) incitement to an offence.

4. The validity of Section 124-A of the Indian Penal Code, which makes it an offence to excite feelings of hatred, disaffection or contempt towards the Government has not yet been determined by the Supreme Court. Only with a passing reference to Section 124-A the Supreme Court in *Ramesh Thapper* v. *The State of Madras* (A.I.R. 1950 S.C. 124) accepted, as beyond doubt, the statement of its interpretation made by the Privy Council in *Tilak's* case and *Sadashiv Narayan's* case. The Punjab High Court in *Tara Singh's* case (A.I.R. 1951 Punjab 27) accepted the same interpretation and relying upon the doctrine of severability, propounded by the Supreme Court in the above case, declared the section wholly unconstitutional and void.

After the Constitution First Amendment Act, 1951, when the phrase 'Public Order' was added to clause (2) of Article 19, the question again came up whether this addition made S. 124-A constitutional. There has been disagreement among the High Courts as to whether this section should be narrowly interpreted so as to save its constitutionality, (Debi Soren *v.* The State, A.I.R. 1954 Patna 254), or whether it should be held totally invalid on the ground that it is too broad an infringement of freedom of speech and expression to be saved by the powers of restrictive interpretation (Ramnandan *v.* The State, 1958 A.L.J. 793, and Sagolsen Indramani Singh *v.* The State of Manipuri, A.I.R. 1955 Manipur page 9).

5. The Supreme Court had made it clear, in dealing with the Press Emergency Powers Act, 1931, that a publication, before it is proscribed, must be considered as a whole in a free, fair and liberal spirit not dwelling too much upon isolated passages or upon a strong word here and there. An endeavour must be made to gather the general effect which the whole composition would have on the mind of the public.

6. Although there is no Supreme Court decision directly in point, the licensing of speeches or meetings in public places, in order to prevent breaches of the peace, has been held justified by a Division Bench of the Allahabad High Court. This view, at least as applied to freedom of speech, requires re-examination before it could be taken as settled.

7. Picketing, if it is peaceful, and attempts only to dissuade others by speech or writing, without threat of force or violence and if it does not infringe any of the fundamental rights of some other person, is not punishable.

8. The use of loudspeakers, amplifiers and other mechanical appliances that spread loud and racuous noise upon streets and public places may be subjected to the requirement of the permission of an executive officer who is given the power to regulate the same as necessary. (*Rajni Kant Verma* v. *The State*, A.I.R. 1958 All. 360). That is a single judge decision of the Allahabad High Court relying on *Kovacs* v. *Cooper*, 1949, 93 Law Ed. 513. But the law struck down by the American Supreme Court in the above case had significant differences from the law impugned in the Allahabad case. The reconciliation of free speech with the rights of the public needs careful study and the above view of the learned judge, it is suggested, has to be accepted with caution.

9. In order to preserve decency or morality words, signs or visible representations which are grossly indecent, scurrilous, obscene, or intended for black-mail may be restrained. Under the Press (Objectionable Matter) Act, 1951, the Government, after having given warnings to that effect, may demand security, issue notifications requiring all copies of such objectionable matter wherever found and other documents containing copies, reprints, translations of extracts from the same matter to be forfeited to the Government. The Act was declared valid as it provided ample scope for judicial review on merits. (*Krishna Sharma* v. *The State*, A.I.R. 1954 Sau. 28 and *Shanker & Co.* v. *The State of Madras*, A.I.R. 1955 Mad. 498).

However, an uncontrolled decision of an executive officer to grant or deny licenses or to prohibit a certain performance in the interest of

decency or morality as under the Dramatic Performances Act, 1876, violates freedom of speech and expression (*The State* v. *Baboolal and others*, A.I.R. 1956 All. 571). The Allahabad High Court relied on the judgments given in *Tozamal* v. *Government of West Bengal*, (A.I.R. 1951 Cal. 322) and *Madanlal* v. *State of Rajasthan*, (A.I.R. 1953 Raj. 162). Though the provisions of law that were challenged in these cases were different—the former dealt with the freedom of movement whereas the latter with the freedom of speech and freedom of profession—still the right of hearing before condemnation was admitted to be an important part of natural justice. The Allahabad High Court, stating that the substantive part of the Dramatic Performances Act was valid declared the Act unconstitutional because its procedural part imposed such restrictions on the right of freedom of speech and expression which were not reasonable within the meaning of Art. 19(2). By leaving the matter entirely to the subjective determination of a Magistrate without having any provision for a higher authority (judicial or otherwise) to review or reconsider his order, the Act denied the essential requirements of justice. No opportunity was given to the aggrieved party to make a representation against the prohibitory order of a Magistrate.

10. The Courts in India do not countenance any interference which is calculated to impede, embarrass or obstruct the administration of justice. Any publication which has a tendency to foil or thwart a fair and impartial trial, or any conduct which in any manner prejudices or prevents judicial investigation whether by intimidation of or by reflection on the Court, counsel, parties or witnesses, in respect of a pending cause, constitutes contempt of Court.

11. As has been noted above, the Constitution specifically authorises legislation which imposes reasonable restrictions upon the exercise of the right to freedom of speech and expression in relation to defamation. Even without this legislative power it is clear that the freedom guaranteed does not include freedom to defame one's fellows. Article 19(1)(*a*) must be read in the light of the protection which the law of defamation gives to the right to reputation and of such legislation as satisfies article 19(2) of the Constitution.

The criminal law relating to defamation is found in section 499 of the Indian Penal Code and there no distinction is drawn between libel and slander. So far as the civil law of defamation is concerned there has been little statutory interference and, except for the refusal in most jurisdictions to accept the English distinction between libel and slander with respect to proof of special damage, the English Common Law of defamation is applied. It is generally true to say that the Press is given no special privileges where defamation is concerned but is liable for its publications in the same way as ordinary citizens. An exception is that the Parliamentary Proceedings (Protection of Publication) Act, XXIV of 1956, confers a qualified privilege on the publication of a substantially true report of proceedings in Parliament either in the newspaper or from a radio broadcasting station. It is of course important to remember that the common law of defamation, with its defences of justification (truth), fair comment and qualified privilege, itself protects the right of free speech.

FURTHER RESEARCH UNDER THIS TOPIC

1. In order to understand clearly the position of the legislatures and the Press in India, it is necessary to consider fully the recent decision of the Supreme Court (The 'Searchlight' case) regarding the question whether the newspapers in publishing a true and correct account of a speech made by a legislator within the House, when the House has forbidden publication in that form, commit a breach of privilege. (The 'Searchlight' case has not yet been reported).

2. It is also necessary to consider the validity of the Dramatic Performances Act, 1876, and the Seditious Meetings Act, 1911.

3. English and American cases are frequently quoted by the Courts in India. Therefore, a comparative study of this particular topic with regard to the decisions of other countries, having similar constitutional provisions, must be made.