

*Menaka Gandhi Vs Union of India (1978 S.C.597 at 691-692)*

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speech and expression and whenever State action, be it law or executive fiat, restricts or interferes with the right to go abroad, it necessarily involves curtailment of freedom of speech and expression, and is, therefore required to meet the challenge of Article 19 (1) (a). This argument was sought to be answered by the Union of India by a two-fold contention. The first limb of the contention was that the right to go abroad could not possibly be comprehended within freedom of speech and expression, because the right of free speech and expression guaranteed under Article 19(1) (a) was exercisable only within the territory of India and the guarantee of its exercise did not extend outside the, country and hence State action restricting or preventing exercise of the right to go abroad could not be said to be violative of freedom of speech and expression and be liable to be condemned as invalid on that account. The second limb of the contention went a little further and challenged the very premise on which the argument of the petitioner was based and under this limb, the argument put forward was that the right to go abroad was not integrally connected with the freedom of speech

and expression, nor did it partake of the same basic nature and character and hence it was not included in the tigt of free speech and expression guaranteed under Article 19(1) (a') and imposition of restriction on it did not involve violation of that Article. These were broadly the rival contentions urged on behalf of the parties and we shall now proceed to consider them. (A) Is Freedom of speech and expression confined to the Territory of India ?

The first question that arises for consideration on these contentions is as to what is the scope and ambit of the right of free speech and expression conferred under Article 19(1) (a). Has it any geographical limitations ? Is its exercise guaranteed only within the territory of India or does it also extend outside ? The Union of India contended that it was a basic postulate of the Constitution that the fundamental rights guaranteed by it were available only within the territory of India, for it could ~~never have~~ been the intention of the constitution-makers to confer rights which the authority of the State could not enforce. The argument was stressed in the form of an interrogation; how could the fundamental rights be intended to be operative outside the territory of India when their exercise in foreign territory could not be protected by the State ?

Were the fundamental rights intended to be mere platitudes. in so far as territory outside India is concerned ? What was the object of conferring the guarantee of fundamental rights outside the territory of India, if it could not be carried out by- the State ? This argument, plausible though it may seem at first blush, is, on closer scrutiny,

unsound and must be rejected. When the constitution-makers enacted Part III dealing with fundamental rights, they inscribed in the Constitution certain basic rights which inhere in every human being and which are essential for unfoldment and development of his full personality. These rights represent the basic values of a civilised society and the constitution-makers declared that they shall be given a place of pride in the Constitution and elevated to the status of fundamental rights.

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The long years of the freedom struggle inspired by the dynamic spiritualism of Mahatma Gandhi and in fact the entire cultural and spiritual history of India formed, the background against which these rights were enacted and consequently, these rights were, conceived by the constitution-makers not in a narrow limited sense but in their widest sweep, for the aim and objective was to build a new social order where man will not be a mere plaything in the hands of the State or a few privileged persons but there will be full scope and opportunity for him to achieve the maximum development of his personality and the dignity of the individual will be fully assured. The constitution-makers recognised the spiritual dimension of man and they were conscious that he is an embodiment of divinity, what the great Upanishadic verse describes as "the children of immortality" and his mission in life is to realise the ultimate truth. This obviously he cannot achieve unless he has certain basic freedoms, such as freedom of thought, freedom of conscience, freedom of speech and expression, personal liberty to move where he likes and so on and so forth. It was this vast conception of man in society and universe that animated the formulation of fundamental rights and it is difficult to believe that when the constitution-makers, declared these rights, they intended to confine them only within the territory of India. Take for example, freedom of speech and expression. Could it have been intended by the constitution-makers that a citizen should have this freedom in India but not outside ? Freedom of speech and expression carries with it the right to gather information as also, to speak and express oneself at home and abroad and to, exchange thoughts and ideas with others not only in India but

also outside. On what principle of construction and for what reason can this freedom be confined geographically within the limits of India ? The constitution-makers have not chosen to limit the extent of this freedom by adding the words "in the territory of India" at the end of Article 19(1) (a). They have deliberately refrained from using any words of limitation. Then, are we going to supply these words and narrow down the scope and ambit of a highly cherished fundamental right ? Let us not forget that what we are expounding is a constitution and what we are called upon to interpret is a provision conferring a fundamental right. Shall we expand its reach and ambit or curtail it ? Shall we ignore the high and noble purpose of Part III conferring fundamental rights ? Would we not be stultifying the fundamental right of free speech and expression by restricting it by territorial limitation. Moreover, it may be noted that only a short while before the Constitution was brought into force and whilst the constitutional debate was still going on, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10th December, 1948 and most of the fundamental rights which we find included in Part III were recognised and adopted by the United Nations as the inalienable rights of man in the Universal Declaration of Human Rights. Article 19 of the Universal Declaration declared that "every one, 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". (emphasis supplied). This was the glorious declaration of the: fundamental freedom of speech and expression noble in conception and universal in scope- which was