



DPSR MUN

1st, 2nd And 3rd April

LOK SABHA

Discussion On Freedom Of Speech
And Expression With Special
Emphasis On Hijab Ban



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Letter From Team Muniversiti,

Dear delegates,

Team MUNIVERSITI welcomes each one of you to DPSRMUN 2022. Several of you may be attending your first MUN conference, and we strongly urge you to review the study guide that has been compiled for you as a part of the conference to get a better understanding of the issue. We encourage all participants to be pragmatic in their outlook towards this conference. In order to reform policy and understand the mechanisms of global politics, it is imperative to comprehend the values and principles behind each agenda.

However, there is lot of content available beyond this study guide too. In order to get the most out of your intellectual energy, you will need to research, collate, write down possible points of discussion, questions, and possible responses. At the same time, it is not just about speaking and presenting, but also about the ability to listen, understand viewpoints and learn new perspectives from one another. Winning should not be your motive, but instead you should be motivated by learning, since learning something means that you are the real winner, directly and/or indirectly.

Wishing all of you a great learning experience. Looking forward to having you all with us.

Best wishes.

The Muniversiti Executive Board

Following is a suggested pattern for researching (if required):

- Research on the allotted personality, understanding his/her thinking about the agenda.
- Comprehending the Party Policy of the allotted Personality. It includes understanding the ideology and principles adopted by the party on the agenda. It further includes studying past actions taken by the party on the agenda and other related issues —specifically analyzing their causes and consequences.
- Researching further upon the agenda using the footnotes and links given in the guide and from other sources such as academic papers, institutional reports, national reports, news articles, blogs etc.
- Understanding policies adopted by different political parties and major parties involved in the agenda. Including their position, ideology and adopted past actions.
- Characterizing the agenda into sub-topics and preparing speeches and statements on them. It is the same as preparing topics for the moderated caucuses and their content.
- Preparing a list of possible solutions and actions that can be adopted on the issue as per your party's policies.
- Assemble proof/evidence for any important piece of information/allegation you are going to use in committee.
- Keeping your research updated using various news sources, especially news websites given in the proof/evidence section.
- Lastly, we would request all the delegates to put sincere efforts in preparation and research for the simulation and work hard to make it a fruitful learning experience for all.

A lot of members have doubts such as what they are supposed to write or how should they structure their speech. This is completely up to the member. The maximum we can do is to tell you according to our experiences about how speeches are structured and content chosen for them accordingly. These are:

- Premise — Analysis — Example
- Problem — Solution — Benefits
- Past — Present — Future Scenario
- What — So what — Now what

There can be more structures. These are some of them which the members of the Executive Board have seen.

Note: The best way to debate in any format is to clearly state your opinion and justify it with substantive rational sources

PROOF/EVIDENCE IN COMMITTEE:-

1. Government Reports (Each ministry publishes its own reports including External Affairs Ministry)
2. Government Websites
3. Government run News channels i.e. RSTV, LSTV, DD News
4. Standing Committee Reports/ Commission Reports
5. RTI Proofs
6. Parliamentary Standing Committee reports
7. Questions and Answers of the parliament

NOTE: Under no circumstances will sources like Wikipedia (<http://www.wikipedia.org/>), Amnesty International (<http://www.amnesty.org/>) or newspapers like Times of India (<http://timesofindia.indiatimes.com/>), etc. be accepted as PROOF/EVIDENCE. But they can be used for better understanding of any issue or even be brought up in debate if the information given in such sources is in line with the beliefs of the Government.

Agenda:

Discussion on freedom of speech and expression with special emphasis on Hijab ban.

Introduction:

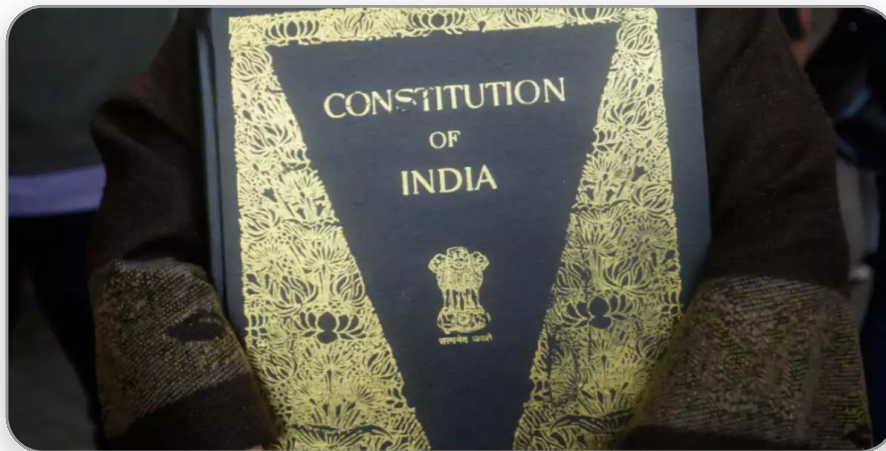
The essence of free speech is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution, restrictions or repression by the Government.

The Article 19 (1) of Indian constitution provides 6 fundamental rights in the nature of freedoms which are specifically summarised with sub-clauses of Article 19 (1) as under:

- (a) Freedom of speech and expression;
- (b) Assemble peaceably and without arms;
- (c) Form associations or unions;
- (d) Move freely throughout the territory of India;
- (e) Reside and settle in any part of the territory of India; and
- (f) Practise any profession, or to carry on any occupation, trade or business

The article 19(1) (a) of the Constitution of India states that, “all citizens shall have the right to freedom of speech and expression”. The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizens, liberty of thought and expression. The exercise of this right is, however, subject to “reasonable restrictions” for certain purposes being imposed under Article 19(2) of the Constitution of India.

The Article 19 (2) states that nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of 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 or incitement to an offence.



Main Elements of Right of freedom of Speech and Expression:

1. This right is available only to a citizen of India and not to foreign nationals.
2. The freedom of speech under Article 19(1) (a) includes the right to express one's views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc.
3. This right is, however, not absolute and it allows the Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.
4. This restriction on the freedom of speech of any citizen may be imposed as much by an action of the State as by its inaction. Thus, failure on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of Article 19(1) (a).

Landmark judgements of Supreme Court of India: Freedom of Speech and Expression:

Judicial creativity, judicial wisdom and judicial craftsmanship have widened the scope of freedom of speech & expression by including in it the following aspects

- Freedom of Press,
- Freedom of Commercial Speech
- Right to Broadcast
- Right to Information
- Right to Criticise
- Right to expression beyond national boundaries
- Right not to speak or Right to silence is also included in the Right to speech and expression.



With context to the Hijab Ban in India, the petitioners challenging the ban on wearing hijab by students before the Karnataka High Court sought to invoke multiple grounds to attack its legitimacy. The grounds cited by the counsel included violation of their rights to equality, privacy and non-arbitrariness. Senior Advocate Devadutt Kamat reiterated that the hijab ban was violative of Article 19(1)(a) of the Constitution, as the freedom of speech and expression included the freedom to dress in one's way. He further argued that the right to wear a hijab flows out of the right to privacy, which has been recognized as an essential facet of Article 21 of the Constitution by the Supreme Court in Justice K.S. Puttaswamy (Retd.) vs. Union of India (2017).

In recent years, questions and public dissent against encroachment of the freedom of speech and expression has been a highlight. From internet bans to prime time discussions to India being ranked one of the poorest when it comes to freedom of press, a lot of issues have been highlighted that point towards a lack of efficient implementation and exercise of freedom of speech and expression.



Statement of Issue:

Over the past month, several government-run educational institutions in Karnataka have banned Muslim female students from wearing the hijab, or headscarf, depriving them of their freedom to dress as per their choice. The state government, led by the Hindu nationalist Bharatiya Janata Party (BJP) had backed the discriminatory ban by passing a directive saying, “clothes which disturb equality, integrity, and public law and order should not be worn.”

Amid increasing tensions and protests between Hindu and Muslim students around the hijab in schools, Karnataka authorities had to shut down schools and colleges for three days. On February 8, as the Karnataka High Court heard petitions by Muslim students supporting the right to wear the hijab, viral videos emerged of a mob of Hindu youth heckling a female Muslim student for wearing one. A day later, according to a news report, admission forms of six female Muslim students at the forefront of the protests, including their phone numbers and home addresses, were leaked online.

The hijab ban violates India's obligations under international human rights law, which guarantees the rights to freely manifest one's religious beliefs, to freedom of expression, and to education without discrimination. Likewise, forcing women and girls to wear religious garments also violates religious freedom and privacy rights under international law.

The hijab ban is the latest example of Indian authorities increasingly seeking to marginalise Muslims, exposing them to heightened violence. At the national and state levels, BJP governments have adopted a slew of laws and policies that systematically discriminate against religious minorities and vulnerable communities, especially Muslims



In December 2021, Hindu ultra-nationalists, many with links to the BJP, held a three-day religious convention in Uttarakhand in which speakers openly called for the killing of Muslims. In Haryana state, the BJP chief minister backed Hindu vigilantes demanding that Muslim prayers in public spaces be stopped. Working-class Muslims are often beaten up, threatened, and harassed with impunity. Photographs of hundreds of prominent educated Muslim women have been displayed on apps saying they were for sale, to humiliate, degrade, and intimidate them.

This all comes from a government that says it supports girls' "education and participation." It needs to act on those words, ensure that schools are inclusive spaces, and safeguard girls' right to wear a hijab free of intimidation.



The term 'censorship' originates from censors instituted in Ancient Rome, when democracy emerged. The censors were magistrates, whose responsibility was to regulate both the moral and political conduct of citizens. In modern day society, the term 'censorship' refers to the act of restricting and suppressing information, ideas and opinions, with the purpose of protecting a specific social institution. According to the Global Internet Liberty Campaign, these institutions can be categorized into the following: the family, the church and the state. As well as information, ideas and opinions which are censored can be categorized into the following: moral, political, religious, military and corporate censorship.

Of all media which can be used to spread and share information, the Internet is perhaps the most difficult to regulate in terms of censorship of its content. The reason for this is the fact that the Internet is a global medium of communication with universal reach, so there are conflicts which can arise as to who should have ultimate control over the Internet's content; whether that be individual countries, or a mutual decision amongst all. Due to the ever-growing magnitude of the Internet, censoring all content which is seen as unsuitable for public viewing is a task which is wholly unconceivable. This is why there is the necessity to find a justified balance between appropriate expression of opinion and free speech through the Internet, and prohibited content which is to be restricted by means of censorship.



Moral censorship: This is the censorship of materials which can be considered vulgar, inappropriate or morally questionable. Common examples of this are (child) pornography and pedophilia.

Political censorship: This type of censorship consists of concealing or falsifying information received by citizens, with the objective of preventing discordance with governmental/ political ideas.

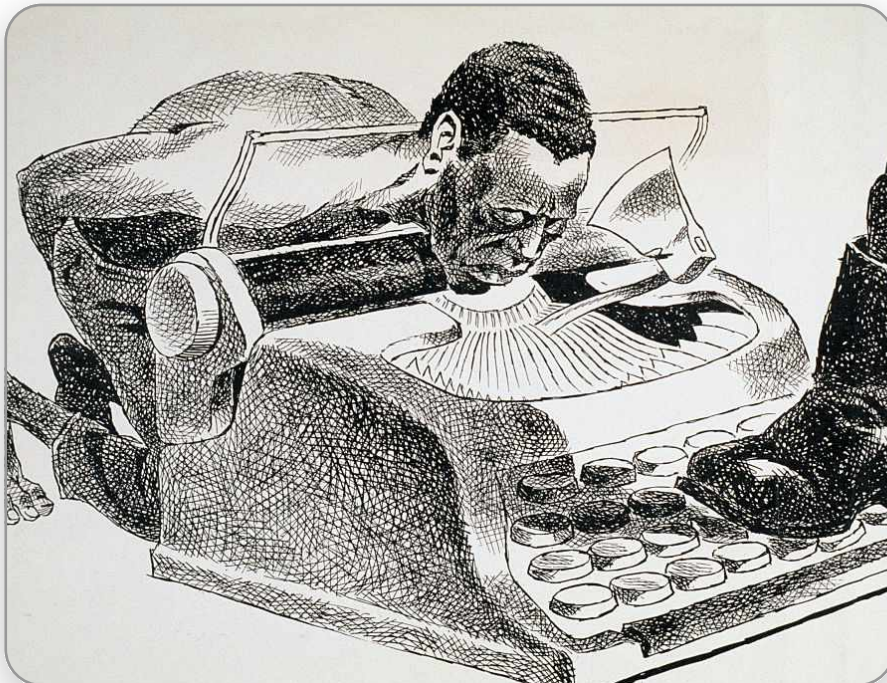


Religious censorship: This entails the use of censorship in order to suppress opinions and ideas opposing those of conventional beliefs.

Military censorship: Any type of censorship conducted by those employed in the armed forces, generally in order to prevent the spread of classified information.

Corporate censorship: This is a censorship conducted by corporations, where threats are held against those with important information, in order to prevent them from spreading it.

Totalitarian regime: A centralized governmental rule in which there is only one political party that holds absolute authority and control.



Democracy: This is a governmental system with a constitution that supports and upholds human rights and fair elections.

Communism: This is a governmental system in which private ownership does not exist. In theory, there are no social classes in this system, however in reality there are generally two classes; a ruling and a working class. The social and economic activities are controlled by a single political party.

Free speech: Free speech is the human and political right to speak and communicate ideas and opinions without limitation. This is established as a human right in Article 19 of the Universal Declaration of Human Rights (UDHR). The boundaries of free speech are not absolutely defined, and are dependent on legislation.

Hate speech: This is speech which attacks or threatens one or more individuals of a certain race, gender, religion, sexual orientation etc. Similar to free speech, the boundaries of hate speech are not clearly defined, and are subject to legislation. This is a frequently debated topic, which bears a controversial question: how can we determine whether statements commonly classified as hate speech should be permissible due to the fact that there is a human right to free speech and opinions?

Human right: Any right which all humans are entitled to.

Defamation: This is the act of falsely representing or communicating words or actions with the intention of damaging/degrading a person's reputation. This is relevant in particular when considering hate speech through means of the Internet, as it can be used to sway the opinions of others about a particular person/group of people.

Circumvention: In the context of Internet censorship, circumvention refers to the use of technology to bypass filtering in order to access and view censored information and content. All the various methods of doing so involve accessing a server which is unfiltered and is not subject to censorship laws. As circumvention is a very technically challenging process, it is not a very common issue and therefore censorship still remains as an effective method of withholding information.

Sedition: This is speech or language used to instigate rebellion or protest against the authority/ government of a state.



Filtering by keyword: This type of censorship works by censoring information containing specified words/phrases which are deemed inappropriate.

The Indian Constitution grants varied fundamental freedoms to the citizens of India. Right to freedom is one of the most fundamental freedoms enshrined in the Indian Constitution. The right to freedom ensures rights for people to lead a life with dignity. It is the existence of these freedoms that brings meaning to democracy. Freedom is a state under which individuals can speak, act and seek pleasure without undue external restrictions. Freedom is crucial because it results in enhanced forms of imagination and original thought, increased productivity and a high standard of life overall. The right to freedom often propagates an individual in social and political life. Articles 19, 20, 21A and 22 consist of provisions concerning the right to freedom. Six freedoms are granted to any citizen in the country, as provided in Article 19. They are:

- Freedom of speech and expression
- Freedom to assemble peacefully without arms
- Freedom to form associations or unions
- Freedom to move freely throughout India
- Freedom to reside and settle in any part of India
- Freedom to practice any profession or to carry on business, occupation or trade



Evolution of freedom of expression in India

In the colonial era, the freedom of Indians was fully at stake. Indeed, the British Empire's actions curtailed the Indian masses' freedom of expression and speech. The British took every practicable step, from the Sedition laws introduced by the English in 1870 to curtailing opinion-making among Indians in order to counter the nationalist feelings that exist among the masses to an independent battle. Freedom of speech and expression is a vital aspect of the American Constitution.

Other than that, the International Declaration of Human Rights, which was introduced in 1948, says that all should have the freedom to express their thoughts and opinions. Under Article 19, freedom of speech and expression is recognized as a human right, which has now become part of international and regional human rights law. Freedom of speech and expression is also recognized in the International Covenant on Civil and Political Rights (ICCPR) of International Human Rights.



Constitutional provisions

As mentioned earlier, the Indian Constitution provides different fundamental rights for an Indian citizen. The freedom of speech and expression provided for in Article 19(1)(a) of the Constitution is one such privilege. Freedom of speech and expression enables an individual to openly share his or her views, with some reasonable restrictions. It is an essential right in a democracy, and is granted by Article 19(1)(a) of the Constitution of India to the people of India. It upholds the 'liberty of thought and expression' principle provided in the preamble.

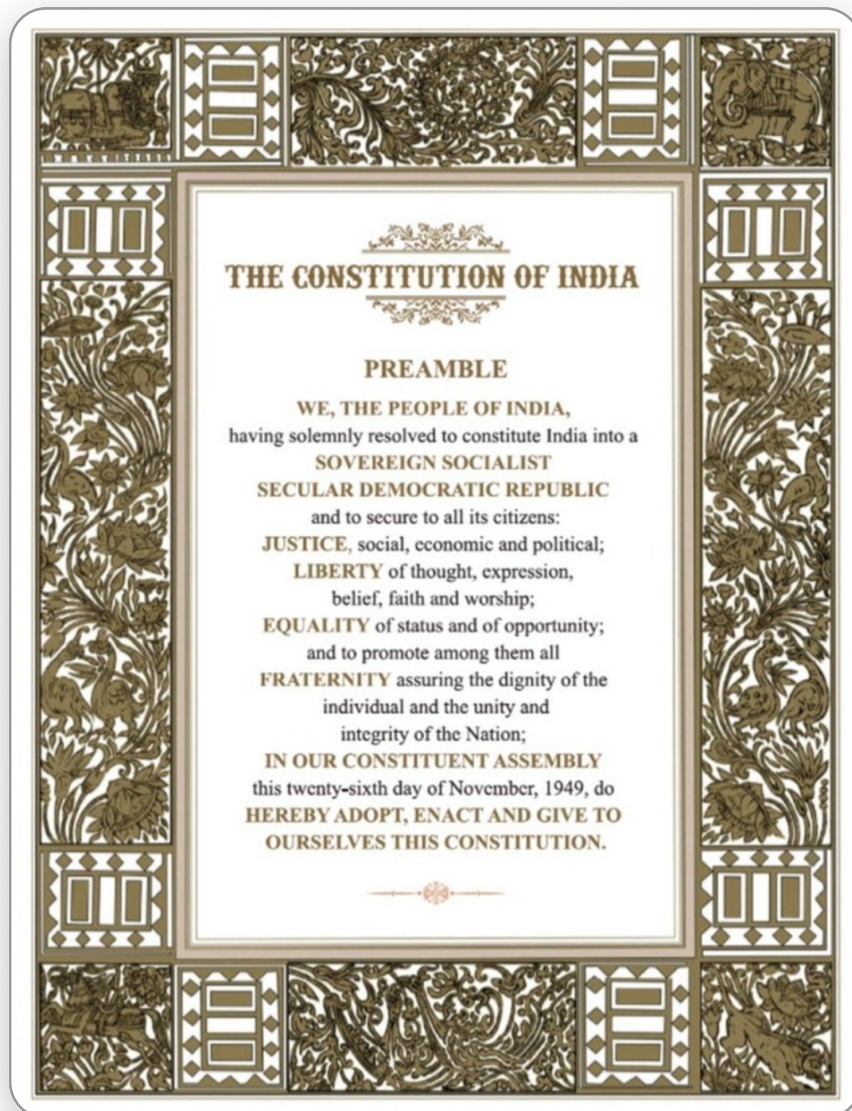
Freedom of speech and expression grants Indian citizens the right to communicate their thoughts and views without apprehension, by means of words either written or spoken, pictures or some other visual or communicable representation such as gestures or signs. It contains the freedom to propagate one's own opinions, and the opportunity to publish other people's views. Free expression cannot be equated or confused with a license to make accusations against the judiciary that are unfounded and are irresponsible. Therefore, the right to speech and expression is not an absolute right, and the State can enforce reasonable restrictions under Article 19(2) of the Constitution. Every constraint on the practice of the right referred to in Article 19(1)(a) which does not come within the four corners of Article 19(2) might not be applicable.



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Reasonable restrictions

By enforcing Article 19(2) of the Constitution, the State can enforce reasonable restrictions on the exercise of the right to freedom of speech and expression based on eight grounds. These are:

- Defamation: Refers to statements which injures a man's reputation.
- Contempt of court: Restriction may be instituted on the freedom of speech and expression if it surpasses the reasonable limit and amounts to contempt of court.
- Decency or morality: Sections 292 to 294 of the Indian Penal Code provide for situations where freedom of speech and expression is limited in the interests of dignity or morality.

Landmark judgements

Freedom of press

Freedom of the press is essential to freedom of expression, which forms the backbone of political freedom and genuine functioning of democracy. In the case of **Romesh Thappar v. State of Madras**, the court affirmed that the enforcement of pre-censorship on a journal constituted an infringement on the freedom of the press, which is an essential part of Article 19(1)(a). The judgement added that free political dialogue is necessary if a democratic government is to work properly

In **Indian Express Newspapers v. Union of India**, The Court confirmed that freedom of the press plays a very important role for the proper functioning of democracy, deriving its roots from Article 19(1)(a) and that it is the duty of the courts to uphold freedom of the press.

In **Benet Coleman and Co. vs. Union of India**, according to the Supreme Court of India, the constraint of the permissible number of pages in the newspaper was found to be in violation of Article 19(1)(a) and is not a reasonable restriction under Article 19(2).

In the case of *Prabhu Dutt vs. Union of India*, it was claimed that the right to know about the news and details related to government's administration is included in the freedom of press.

Right to Broadcast

By the introduction of technology, Courts have acknowledged the modern aspects of freedom of speech and expression. That is, the right to broadcast and advertise. In **Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana**, The Supreme Court ruled that the privilege of a person to display films on the Doordarshan- State Channel is part of the fundamental right provided by Article 19(1)(a). In this case, the petitioners challenged the displaying of a serial named "Honi Anhonion" in Doordarshan on the basis that it prompted the audience to believe in superstition and blind faith. The claim was rejected as the plaintiff became unsuccessful in showing evidence of detriment caused to the public.



Right to information

After the enactment of the Right to Information Act 2005, in the case of Secretary-General, Supreme Court of India v. Subhash Chandra Agarwal, the court reiterated that, according to Article 19(1)(a), the right to information is not a legislation but a constitutional guarantee.

The Supreme Court in Union of India v. Assn. for Democratic Reforms stated that the freedom to transmit and acquire information pursuant to Article 19(1)(a) is necessary. It is to guarantee that people are aware and that one sided information or misinformation will not render democracy a farce.

In the case of Dinesh Trivedi, M.P. and Ors. v. Union of India, The Supreme Court affirmed that, in a modern democratic society governed by the Constitution, it is obvious that citizens are entitled to know about the affairs of the government which they elect.

Right to criticize

In the case of S. Rangarajan v. P. Jagjivan Ram, it was affirmed that it is appropriate to form and convey an opinion in a manner which does not cause defamation to the other individual to whom such critique is addressed and is secured under the freedom of speech and expression. The decision added that democracy calls for open discussion and policy criticism.

Right to expression beyond national boundaries

In the case of *Maneka Gandhi v. Union of India*, the Supreme Court confirmed that freedom of speech and expression was not limited by geographical limitations or boundaries and claimed that Article 19(1)(a) encompasses both the right to speak and the freedom to express in India and also in abroad.



Right to refuse to speak or Right to silence

In the case of *Bijoe Emmanuel v. State of Kerala*, the school dismissed three students for their denial to sing the national anthem. Yet when the national anthem was playing, the children took a stand in respect. The legality of the students' expulsion was questioned at the Kerala High Court, and they confirmed the student's dismissal on the basis that singing the national anthem was their fundamental duty. Yet, on an appeal brought before the Supreme Court against the order of the Kerala High Court, the Supreme Court held that the students had committed no offence under the Prevention of Insults to the National Honour Act of 1971 and further stated that the dismissal of school children for not singing the national anthem created a violation of their right to freedom of expression.

ANALYSIS

Democratic government provides the people with one of the most fundamental rights i.e. freedom of speech and expression. Indian courts have defined the meaning and content of Article 19(1)(a) broadly, rendering it subjective only to the limitations allowed under Article 19(2). Besides the favour, there is also criticism about the application of this freedom of expression.

Freedom of expression is a fundamental human right which needs to be upheld in democratic societies. Yet there is a worrying global trend among governments that unjustifiably restricts freedom of speech by targeting journalists, protesters and other people who are considered to be dissenting from government views. In Western democracy also, laws curtail opposition movements and through mandatory metadata retention schemes, impede the freedom of the press and free speech. Civil societies across the world will be proactive in protecting freedom of speech. This is important for improving people's lives and for preserving healthy democratic societies.

Note: Please note that nothing mentioned in this background guide may be used as an established fact in committee without the presentation of a credible source and substance mentioned. The guide may act only as a source for your basic understanding of the agenda.

Reiterating, kindly do not limit your research only to these points and feel free to broaden your horizons of research. This is just a list of topics you should cover and is a reflection of the direction in which we intend to see the flow of debate in the committee.