



CLEA REGIONAL CONFERENCE ON FREEDOM OF SPEECH AND EXPRESSION
(5-6th Nov, 2016)
Lloyd Law College, Greater Noida

Law commission of India in association with Commonwealth Legal Education Association (CLEA) Asia-India organized CLEA Regional Conference-2016 at Lloyd Law College on the topic 'Freedom of Speech and Expression'. The two day conference was held with the following sub- themes:

1. *Laws Affecting Speech and Expression*
2. *Sedition*
3. *Defamation*
4. *Privacy, Individual Freedom and Media*
5. *Right to Know v/s Right against Information*
6. *Freedom of Press in the Internet Age*

The main objective of the conference is to find the intellectual solution between freedom of speech and expression and reasonable restrictions under the ambit of Constitutionalism and rule of law. A review committee was duly constituted by the Law Commission of India for both selection of abstracts and to assign chairpersons to the respective presentations and for the publication of the proceedings. A tremendous response was received from scholars, students and practitioners of law from India and abroad. The committee selected 140 abstracts, having a genuine and stimulated concern on the issue, of the 268 abstracts received. The principle of freedom of speech and expression asserts some range of protection for speech that goes beyond limitation on government interference with other activities. While a minimal principle of liberty maintains that government should not inhabit communications that pose no legitimate threat of harm, a distinctive principle of freedom of speech and expression posits more robust constraints. The inspiring address of President Roosevelt in 1941 deserve, as a greatest reminder to the present generation.

“In future days, which we seek to make secure, we look forward to a world founded upon four essential freedoms. The first is freedom of speech and expression everywhere in the world, the second is the Freedom of every person to worship god in his own way everywhere in the world .The third freedom from the want and fourth freedom is from fear which translated into world’s terms, means a worldwide reduction of armaments to such point and in such a thorough fashion that no nation will be in position to commit an act of physical aggression against any neighbour

anywhere in the World” Law is an instrument for the emancipation of human suffering. Freedom of Speech and expression is the essence of democratic process

A total of six Invited Speakers sessions were held, one on each sub theme, along with **10 Main Sessions and 6 Student Sessions**. A total of 80 **papers** were presented. The Invited Speaker sessions were dominated by the lively exchange and intense discussions among honourable judges, senior advocates and vice chancellors of National Law Universities. The Main sessions and Students sessions were chaired by reputed teachers and practitioners of law who were witness to well researched paper presentations, discussions and deliberations on the sub topics. The objective of the conference was to deliberate regarding Freedom of Speech and Freedom of Expression, revisiting the necessity of Sedition law.

Mr. Manohar Thairani, President of Lloyd Law College, facilitated the debate raising the importance of distinction between the Free Speech and the Hate Speech. He insisted that in current circumstances we need to locate the focal point leading to hate discourses and dissect misleading information. Indulging in Hate speech is an abuse of one's Right to Freedom of Expression.

Professor S. Sivakumar, Member, Law Commission of India reiterated Mr. Thairani's point that democracy is based on free debate. Right to Freely Express is the topmost when it comes to Human Rights hierarchy. Although one must remember that all rights are subjective to limitations. Hence, discussions around Sedition law needs to be updated.

Justice B.S. Chauhan, Chairman, Law Commission of India, began his discussion stating 'Freedom of Speech is mother of all other liberties'. Right to Freedom of Speech is the essence of a free society. There is a need for legal and judiciary reforms and a clear definition of what constitutes a seditious act. Public interest needs to be kept into consideration when it comes to free speech.

Justice Arun Mishra, Judge, Supreme Court of India inaugurated the Conference and continued the discourse further shifting the focus to positive and negative aspects Freedom of Speech. Right to Information is not unfettered. Knowing where to draw the line and awareness of your own rights is imperative to Freedom of Expression. He focused on investigative journalism, its power of dissemination and the important role media plays. This role can be harbored either positive or negative way, one must remember that constitution has no space for negativity. He referred to the War reporting instance where media's reporting became a controversy. There has also been a gross misuse of RTI Act. Unless it directly affects the major section of society, Right to Know and Right to Information can lead to unnecessary interference, with no positive value.

Dr. Mohammad Salim, Director, Lloyd Law College, summed up the Inauguration Session by emphasizing the importance of free speech, debates and freedom of expression in a democratic society.

Session 1 was on *Laws Affecting Speech and Expression* chaired by Justice Indira Banerjee, Judge high Court of Delhi. The discussion was on Article 19(1)(A), Right to Freedom of Speech and Expression being a basic right, reasonable restrictions and their importance with respect to rights, perspective on Sedition, relevance of Article 19(2). Should government have power to control our speech? Can the government grossly misuse that power? These questions were discussed across by the panelists.

Session 2 was on *Sedition*, chaired by Justice A.P. Shah, Former Chairman, Law Commission of India. The focus was on garnering different perspective on the Sedition law. Justice Shah cited the example of Kanhaiya Kumar, Hardik Patel and Aseem Trivedi to highlight the abuse of the Sedition law. Labeling it a colonial legislative legacy, he insisted that Sedition law must be repealed. Dr. Subramanian Swamy, M.P. Rajya Sabha, echoed Justice Shah's reasoning, stating that there is no sedition unless you are preparing to overthrow the government with violent means. This law needs to be scrapped in IPC. Dr. Swamy also stated that decriminalization of Sedition law would soon be a reality. Justice Mukta Gupta, Judge, High Court of Delhi stated that fortunately India is a healthy democracy and in a healthy democracy, debates and discussions are always welcome, so Sedition laws need to be further debated and closely reworked on.

Session 3 was on *Defamation*, chaired by Justice S. Murlidhar, Judge High Court of Delhi. The discussion centered around whether criminalization of Defamation is necessary or not? Since defamation is considered a civil wrong and is not an impact crime, the panelists unanimously agreed, that there is no need to criminalize defamation. Indira Jaising also highlighted that defamation is a wrong against an individual, and not against the society. Justice Murlidhar concluded that pluralism is the strength of our country and interest of collective are to be developed for the progress of our society.

The second day of the Law Commission of India conference on review of laws on Freedom of Speech & Expression saw speakers raise concerns over misuse of information and RTI Act. Setting the ball rolling, Chairman Justice B S Chauhan highlighted how the RTI Act is being misused and said there is an urgent need to re-examine it. "No credibility and purpose for seeking the information leads to an increase in possibilities of misuse. There is an urgent need to create awareness in society so that masses are discouraged from misuse," he said.

Sunday's conference started with a panel comprising senior Supreme Court lawyers and member of law commission, justice Ravi R Tripathi, touching upon the need to strike a balance between right to information and right to privacy.

On Day 1 of this Regional Conference, sub- themes like *Laws Affecting Speech and Expression*, *Sedition*, and *Defamation* were discussed by the eminent judges, lawyers and professors present. On 6th November, Day 2 of the conference, *Privacy, Individual Freedom and Media, Right to Know v/s Right to Information* and *Freedom of Press in the Internet Age* were the sub-themes of

the continued discussion. The objective of the conference is to encourage debate on Freedom of Speech and Freedom of Expression, so that restrictions prescribed in law can be revisited.

This information and the knowledge exchanged, drafted into a meaningful report, will be submitted as recommendation by Law Commission of India to the government.

Day 2 started with Session 4 on *Privacy, Individual Freedom and Media* chaired by Justice Ravi R. Tripathi.

Privacy is discounted and disregarded and has turned into a privilege for the rich, argued advocate Madhavi Divan, one of the panelists and a lawyer in Supreme Court of India.

Privacy is precondition to free speech. For free speech to flourish, it is essential to safeguard an individual's right to privacy. Hence, Freedom of Speech and Freedom of Expression are interlinked with an individual's right to privacy. In the digital age due to the constant exposure to the public sphere like the social media, privacy is dead, you might as well get used to it or fight towards protecting it. Diwan also addressed privacy violation issues, saying that law of defamation is not enough to prevent intrusion into an individual's personal sphere. Eminent lawyer P P Rao was critical of Press and Media's role in disseminating information without checking facts and in the process sometimes violating personal space. Media needs to respect individual's privacy while reporting events, he said, highlighting subjective and emotional nature of Privacy.

Other panelists dwelt on Freedom of Speech with respect to religion, and its misuse even if it goes against national interest. There is an urgent need to address this issue and reasonable restrictions need to be incorporated. By holding media accountable for information it disseminates, one can ensure a step forward to respect the privacy of individuals. An honest effort has to come from media to question their ethics and responsibility towards society while reporting as its impact can affect the masses in extreme ways. Senior advocate K N Bhatt underlined the need to discourage sensationalism by media for the sake of TRPs as such information often leads to increased chaos.

Justice Tripathi concluded the session by stating that no right can be an absolute right. Freedom of Speech and Freedom of Expression cannot be abused at the cost of privacy invasion. Since technology has amplified Digital and Print Media to transmit information at a grander scale and a shorter time span, imperative lies on the media bodies to be responsible communicator of information. One must ensure that no one is subjected to arbitrary interference as everyone has a right to lead dignified life, and have right to privacy, an essential basic human right.

Seminar 5 was on *Right to Know v/s Right to Information* chaired by Justice B.S. Chauhan, Chairman, Law Commission of India.

Senior lawyer R. Venkatramani, one of the panelists, differed and emphasized the utmost necessity of RTI Act. He wondered why people are debating the 'purpose' part of RTI Act saying technology in any case has made it easy for people to access information. The traditional understanding of monopoly over knowledge and information is no longer a viable option for information-seeking tech-savvy masses. We need information to lead fulfilling lives and the onus lies on the individual to determine the relevance of information to their personal use. In fascist regimes, information is sought as a sacred knowledge pool available to the privileged few. In a functional democracy, knowledge must be shared while looking for solutions to curb its misuse.

The sessions and themes were as follows:

Day 1, November 5, 2016

Theme –I: Laws Affecting Speech and Expression:

Chair by **Hon’ble Ms. Justice Indira Banerjee**, Judge, High Court of Delhi

Co-Chair by **Hon’ble Mr. Justice Kanwaljit Singh Ahluwalia**, Judge, High Court of Rajasthan

Speakers

1. Hon’ble Mr. Justice Ravi R. Tripathi, Member, Law Commission of India
2. Shri Salman Khurshid , Ex. Cabinet Minister & Sr. Advocate
3. Ms. Vibha Datta Makhija, Senior Advocate
4. Shri Suresh Chandra, Law Secretary, Govt. of India
5. Prof (Dr.) Poonam Saxena, Vice-Chancellor, National Law University, Jodhpur.

Theme II - Sedition

Invited Speakers Session

Chair by Hon’ble **Mr. Justice A.P. Shah**, Former Chief Justice, High Court of Delhi & Former Chairman, Law Commission of India

Co-Chair by Hon’ble **Ms. Justice Mukta Gupta**, Judge, High Court of Delhi

Speakers

1. Dr. Subramanian Swamy, Hon’ble Member of Parliament, Rajya Sabha
2. Shri P.S. Narasimha, Additional Solicitor General of India
3. Shri Siddharth Luthra, Senior Advocate
4. Shri Raju Ramachandran, Senior Advocate
5. Shri Loknath Behera, Director General of Police, Govt. of Kerala

Theme–III Defamation

Invited Speakers Session

Chair by Hon’ble **Dr. Justice S. Muralidhar**, Judge, High Court of Delhi

Speakers

1. Ms. Pinky Anand, Additional Solicitor General of India
2. Shri Prashant Bhushan, Senior Advocate

3. Dr. Rajeev Dhavan, Senior Advocate
4. Ms. Indira Jaising, Senior Advocate
5. Shri Shyam Divan, Senior Advocate, Supreme Court of India

Day 2, 06th November, 2016

Theme –IV Privacy Individual Freedom & Media

Invited Speakers Session

Chair by Hon'ble **Mr. Justice Ravi R. Tripathi**, Member, Law Commission of India

Speakers

1. Shri P. P. Rao, Senior Advocate
2. Ms. Meenakashi Lekhi, Hon'ble Member of Parliament
3. Shri K.N. Bhatt, Senior Advocate
4. Shri Mahendra Singhvi, Senior Advocate
5. Ms. Madhvi Divan, Advocate
6. Shri A. Sai Manohar, Joint Director ,CBI

SESSION- 4

CHAIRPERSON- Hon'ble Mr. Justice Vipin Sanghi, Judge, High Court of Delhi

Topic- Privacy, Individual Freedom & Media

1. Ms. Madhvi Divan, Advocate
2. Shri P.P.Rao, Senior Advocate
3. Shri. Mahendra Singhvi, Senior Advocate
4. Shri. K.N.Bhatt, Senior Advocate

Theme –V Right to Know v. Right against Information

Invited Speakers Session

Chair by Hon'ble **Mr. Justice I. Mahanty**, Judge, High Court of Odisha

Speakers

1. Shri Gourab Banerjee, Senior Advocate
2. Shri Venkataramani, Senior Advoacte
3. Prof .(Dr.) P. Ishwara Bhatt, Vice Chancellor , NUJS ,Kolkata

Theme –VI - Freedom of Expression in the Internet Age

Invited Speakers Session

Chair by Hon'ble **Mr. Justice Badar Durrez Ahmed**, Judge, High Court of Delhi

Co-Chair by Hon'ble **Mr. Justice K. Kannan**, Former Judge, High Court of Punjab and Haryana & Chairman, Railway Claims Tribunal, Delhi

Speakers

1. **Prof. (Dr.) A. Lakshminath**, Vice Chancellor ,CNLU, Patna
2. **Dr. T.K. Viswanathan**, Former Secretary- General ,Lok Sabha
3. **Dr. Venkata Iyer**, Editor ,The Commonwealth Lawyer

SESSION-6

CHAIRPERSON-Mr. Justice Badar Durrez Ahmed, Judge, High Court of Delhi

Co-Chair- Mr. Justice K. Kannan, Former Judge, High Court of Punjab and Haryana

Topic- Freedom of Expression in the Internet Age

1. Mr. Justice Badar Durrez Ahmed
2. Mr. Justice K. Kannan
3. Prof. (Dr.) A. Lakshminath
4. Dr. Venkata Iyer

Valedictory Session (6th November ,2016)

Welcome Address **Mr. Manohar Thairani**, President, Lloyd Law College, Greater Noida

Summary of Conference **Mr. R. Venkatramani**, Senior Advocate

Address by Hon'ble **Dr. Justice B. S. Chauhan**, Chairman, Law Commission of India

Valedictory Address by Chief Guest Hon'ble **Mr. Justice Ashok Bhushan**, Judge ,
Supreme Court of India

Recommendations- Concluding Remarks by **Prof. (Dr.) S. Sivakumar**, Member,
Law Commission of India & Conference Chair

Vote of Thanks by **Dr. Lisa P. Lukose**, Coordinator Academic & CLEA (Asia –India)
Executive Member