
FREEDOM OF SPEECH AND EXPRESSION AND REASONABLE RESTRICTIONS: AN ANALYSIS

Rupesh Kumar Singh, Dept. of Law, Aligarh Muslim University

ABSTRACT

Right to freedom of speech and expression is one of the most cherished rights and sacrosanct in nature. It is regarded as first condition of liberty and backbone of robust and vibrant democracy. It includes freedom to hold opinions and convictions regardless of any interference and to seek, receive or impart any information and ideas through any medium. It not only includes liberty to propagate one's views but also liberty to propagate or publish the views of others. However, every right brings with it some responsibilities so that, it may not jeopardise the liberty of others. The State is empowered, by making laws, to impose restrictions and limitations where it is expedient in larger interests of the public. It is necessary that such restrictions should qualify 'reasonableness' i.e. they should not be arbitrary and excessive. Any provision which causes or compels the people to self-censor their ideas and opinions because of fear of invocation of sanction produces a 'chilling effect' in the minds of people while exercising their right of freedom of speech and expression. Thus, each restriction upon the freedom of speech should be scrutinized in order to avoid unnecessary restrictions.

Keywords: freedom of speech, chilling effect, reasonable restrictions, public order, sedition.

FREEDOM OF SPEECH: AN INTRODUCTION

The freedom of speech and expression is one of the basic rights and liberties which are recognised as the natural right inherent in any person. As JOHN MILTON said, “give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” It occupies preferred position in hierarchy of liberties giving succour and protection to all other liberties; thus, it can truly be regarded as the mother of all other liberties.¹ Article 19(1) (a) of the Constitution of India guarantees the freedom of speech and expression, which is available only to citizens. It means the freedom to express one’s own opinions and convictions without any fear or interference through any medium be it, like words (orally or written), printing, pictures, films etc. Preamble of Constitution of India also provides liberty of thought and expression. On the other hand, this right has international recognition; article 19 of Universal Declaration of Human Rights² provides ‘everyone has the right to freedom of opinion and expression’ and article 19 of International Covenant on Civil and Political Rights (ICCPR) enshrined the freedom of expression.

Freedom of speech and expression serves four major purposes: 1) it helps a person to attain self- fulfillment; 2) it helps in discovery of truth; 3) it helps individual in capacity building to participate in decision making process; and 4) it provides a mechanism which makes it possible to strive a reasonable balance between stability and social change.³ Thus, this right is a precondition for healthy and robust democracy as it attaches great importance to democratic system. PATANJALI SASTRI J., in case of *Romesh Thappar v. State of Madras*⁴ rightly observed that “Freedom of speech and of the Press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible.”

FREEDOM OF PRESS

Article 19(1) (a) finds its roots in the First Amendment⁵ to the Constitution of the USA, which expressly guarantees freedom of press. The Indian Constitution does not make a specific

¹ M. P. Jain, *Indian Constitutional Law* 1078 (Lexis Nexis Butterworths Wadhwa, 2012)

² Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on August 18, 2021)

³ J. N. Pandey, *Constitutional Law of India* 211 (Central Law Agency, Allahabad, 2020)

⁴ AIR 1950 SC 124

⁵ The USA Constitution, 1st Amendment reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievance.”

provision for the freedom of the press but it is deemed to be embedded or implicit in the right to freedom of speech and expression.

The question as to whether the said right to be inserted as distinct provision or not, Dr. B.R. AMBEDKAR, Chairman of the Constituent Assembly's Drafting Committee argued:

"The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual Capacity. The editor of a press or the manager is all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression and in my judgment therefore no special mention is necessary of the freedom of the press at all."⁶

In case of *Indian Express Newspaper v. Union of India*⁷, the court observed with regard to the utility of freedom of press:

"The expression 'freedom of the press' has not been used in Article 19 but it is contemplated within Art 19(1) (a). The expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Freedom of the press is the heart of social and political inter-course. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate."

The right to freedom of speech and expression is, however, not absolute or uncontrolled like any other right. The State, by making law, may impose 'reasonable restrictions' on the exercise of this right conferred by article 19(1) (a). This power is based on the principle that all individual rights of a person are held subject to such reasonable limitations and regulations as may be necessary or expedient for the protection of the rights of others, generally expressed as social or public interest.⁸

⁶VII Constituent Assembly Debates on December 2, 1948 available at: https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-02 (last visited on August 19, 2021)

⁷ (1985) 1 SCC 641

⁸ V. N. Shukla, *Constitution of India* 130 (Eastern Book Company, Lucknow, 2017)

TEST OF REASONABLE RESTRICTIONS

It is emphasised that restriction should be ‘reasonable’ however, the Constitution does not define the expression ‘reasonable restrictions’ nor can an exact standard or general pattern of reasonableness be laid down for all cases and situations, the test may vary from right to right which the law restricts.⁹ The standard is an elastic one: it varies with time, space and conditions and from case to case.¹⁰ Some of the principles which should be taken into consideration for ascertaining the reasonableness of restrictions are as follows:

- The restriction must be for specific purpose mentioned in the clause permitting the imposition of such restriction on that particular right,
- Restriction must be reasonable i.e., it must not be excessive or disproportionate.
- The determination by the legislature as to what constitutes a reasonable restriction is not final or conclusive but subject to supervision of courts.¹¹
- The restriction must be reasonable from the substantive as well as procedural standpoint.¹²
- Reasonableness of the restriction is to be determined by the court and not reasonableness of the law.
- A restriction to be reasonable must have rational nexus with the object which the legislature seeks to achieve.
- Reasonable restriction can be imposed only by a duly enacted law and not by executive action.¹³

GROUNDS OF RESTRICTIONS

The freedom of speech and expression does not confer a) an absolute right to speak or publish, without responsibility, or b) an unrestricted or unbridled licence that gives immunity for every possible use of language, and c) does not prevent punishments for those who abuse this freedom.¹⁴ Clause 2 of article 19 specifies the grounds on which this right may be restricted. It enables the legislature to impose ‘reasonable’ restrictions on the right of free speech ‘in the interest of’ or ‘in relation to’ the following:

⁹ State of Madras v. V. G. Row, AIR 1952 SC 196

¹⁰ Golak Nath v. Govt. of Kerala, AIR 1967 SC 1643

¹¹ Chintamani Rao v. State of M. P., AIR 1951 SC 118

¹² N. B. Khare v. State of Punjab, AIR 1960 SC 211

¹³ Express Newspapers Pvt. Ltd. v. UOI, (1986) 1 SCC 133

¹⁴ Romesh Thappar v. State of Madras, AIR 1950 SCR 594

Sovereignty and Integrity of India – this ground was added by the Constitution (16th Amendment) Act, 1963. Object of this ground is to guard against the right of free speech which tends to assail the sovereignty and integrity of India and if it preaches secession of any part of India.

Security of the State – the reasonable restrictions may be imposed on the freedom of speech and expression in the interest of security of the state. In **Romesh Thappar v. State of Madras**,¹⁵ the Supreme Court interpret the meaning of words ‘security of the state’, the court held that every kind of public disorder cannot be regarded as threatening the state, only serious and aggravated forms of public disorder are within the expression ‘security of the state’ e.g. rebellion, waging of war against the state, insurrection etc.

Friendly relations with Foreign States – this ground was added by the Constitution (1st Amendment) Act, 1951. The object of this provision is to prevent the unchecked malicious propaganda against friendly foreign State which may jeopardise the maintenance of good relations between India and that State. In India, the Foreign Relations Act, 1932 provides punishment for libel by Indian Citizens against any foreign dignitaries.

Public Order – it was added by the Constitution (1st Amendment) Act, 1951 as one of the grounds for imposing restrictions on freedom of speech and expression to deal with situation arising from the Supreme Court’s decision in *Romesh Thappar case*¹⁶. In that case, court had refused to permit the imposition of restrictions on the right of free speech which results in ordinary or local breaches of public order. The expression ‘public order’ is synonymous with public peace, safety, and tranquility.¹⁷

Decency or Morality – the words ‘morality’ or ‘decency’ are of wide connotations. Decency is the same as lack of obscenity, the State may impose reasonable restrictions on the right to freedom of speech which tends to deprave or corrupt the community. Therefore, any writings or other objects circulated, if obscene, it may be suppressed. Sections 292 to 296 of I.P.C. provide instances of imposing restrictions on freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene material, doing of obscene acts, uttering obscene words etc. Although I.P.C prohibits and

¹⁵ AIR 1950 SC 124

¹⁶ Romesh Thappar v. State of Madras, AIR 1950 SC 124

¹⁷ Supt., Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633

punishes the sale, etc. of such obscene material, it does not lay down any test to determine indecency or obscenity.

In **Ranjit D. Udeshi v. State of Maharashtra**¹⁸, the Supreme Court for the first time called upon to lay down test to determine the obscenity. The Supreme Court applied the test laid down in the English case of **R. v. Hicklin**¹⁹ by COCKBURN C.J. to determine the obscenity of a matter – “whether the tendency of the matter charged as obscene is to deprave and corrupt those minds are open to such immoral influences, and into whose hands a publication of this sort may fall.” In this case, the court upheld conviction of the appellant, a book seller, prosecuted under section 292 of I.P.C for selling keeping the book ‘The Lady Chatterley’s Lover’.

In **Aveek Sarkar v. State of West Bengal**²⁰, the Supreme Court held ‘Hicklin Test’ not correct and applied the ‘Community Standard Test’ to determine obscenity. The court observed that, “obscenity should be determined with respect to contemporary community standards that manifest the sensibilities as well as tolerance levels of an average reasonable person.”

Contempt of Court – restriction on constitutional right to freedom of speech may be imposed if it exceeds the limits and amounts to contempt of court. Section 2 of Contempt of Courts Act, 1971 defines ‘contempt of court’ as: it may be either ‘civil contempt’ or ‘criminal contempt’. Civil contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication (whether by words spoken or written, or by signs or by visible representation or otherwise) or any matter or the doing an act whatsoever, which –

- a) Scandalises or tends to scandalise, lowers or tends to lower the authority of any court;
- b) Prejudices, or interferes or tends to interfere with the due course of any judicial proceedings; or
- c) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Criminal sanction for contempt has been barred unless;

¹⁸ AIR 1965 SC 881

¹⁹ LR 3 QB 360

²⁰ AIR 2014 SC 1495

- 1) The court is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with due course of justice, or
- 2) The court permits the truth as a valid defence in the public interest and bona fide.²¹

Articles 129 and 215 of the Constitution confer the power to the Supreme Court and the High Courts to punish people for their respective contempt. Contempt of Court Act, 1971 defines the power of High Courts to punish of its subordinate courts.²² In case of *E. M. Sankaran Namboodripad v. T. Narayanan Nambiar*²³, the Supreme Court held that right of freedom of speech shall always prevail except where the contempt is mischievous, manifest or substantial.

Defamation – reasonable restrictions may be imposed on defamatory statement which injures the reputation of any person and exposes such person to hatred, ridicule, or contempt. Section 499 of I.P.C provides for criminal law relating to defamation. It makes no difference between libel and slander. The civil law relating to defamation is dealt under Law of Torts which is still not codified in India. In *Subramanian Swamy v. UOI*²⁴, the court held that “everyone is entitled to dignity of a person and reputation; nobody has a right to denigrate others’ right to person or reputation.”

Incitement to an offence – this ground was also added by Constitution (1st Amendment) Act, 1951 with the obvious object that the freedom of speech cannot confer licence to incite people to commit offence. The word ‘offence’ is not defined in the Constitution; however, the General Clauses Act defined it as “any act or omission made punishable by law for the time being in force.”

SEDITION AS GROUND OF RESTRICTION

Notably, ‘sedition’ is not specifically mentioned under article 19(2) as one of the grounds of restrictions. During the Constituent Assembly debates sedition was vehemently opposed by the members and they were unanimously in favour of deletion of ‘sedition’ from Article 13 of the Draft Constitution corresponding to Article 19 of Indian Constitution, as it was used by the Colonial regime to muzzle the political dissent.

²¹ The Contempt of Court Act, 1971 (Act No. 70 of 1971) s. 13

²² *Id* s. 10

²³ AIR 1970 SC 2015

²⁴ AIR 2016 SC 2728

Thus, the word ‘sedition’ which occurred in Article 13(2) of the Draft Constitution²⁵ was omitted by the Drafting Committee before the article was finally passed as Article 19(2) in 1950. But it remained in Indian Penal Code under Section 124-A.²⁶

It has been held in *Devi Saren v. State*²⁷, that sections 124-A and 153-A of I.P.C impose reasonable restriction in the interest of public order and is saved by article 19(2). In case of *Kedar Nath v. State of Bihar*²⁸, the Constitutional validity of ‘sedition’ (s. 124-A of IPC) was upheld and it was held that “though the section imposes restrictions on the fundamental freedom of speech and expression, the restrictions are in the interest of public order and are within the ambit of permissible legislative interference with the fundamental right.” The also maintained that:

“...the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order.”²⁹

However, the relevance of the colonial era law of ‘sedition’ in modern democratic state like India has been the subject of continuous debate. Because of rampant misuse by the contemporary governments in order to muzzle or stifle the political dissent or criticism it has become draconian. Chief Justice of India N. V. RAMANA while hearing petition in *S. G. Vombatkere v. UOI*³⁰, asked “is this law still needed after 75 years of Independence?” Drawing

²⁵ The Draft Constitution of India, 1948 art. 13(2) reads: “Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, ‘sedition’ or any other matter which offends against decency or morality or undermines the authority or foundation of the State.”

²⁶ The Indian Penal Code, 1860 s. 124-A reads: “Whoever by words, either spoken or written, or by sign, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may be extended to three years, to which may be fine may be added, or with fine.”

²⁷ AIR 1954 Pat 254

²⁸ AIR 1962 SC 955

²⁹ *Ibid*

³⁰ Writ Petition(s) (Civil) No(s). 682/2021

attention towards its misuse, the CJI N.V. RAMANA said, “If you see the history of charging under this section, the conviction rate is very low. The enormous power of this section can be compared to a carpenter being given a saw to make an item, (but) uses it to cut the entire forest instead of a tree. That’s the effect of this provision.”³¹

CONCLUSION

Liberty to express one’s own ideas, thoughts or opinions without any hindrance or fear of punishment plays significant role to attain self-fulfilment of an individual and development of society and ultimately democratic State. However, absolute or uncontrolled freedom would always be detrimental to proper functioning of State and lead to wither away of the State. Liberty has to be limited in order to be effectively possessed, for liberty of one must not offend the liberty of others.³² PATANJALI SASTRI J., in *A. K. Gopalan case*³³ observed, “man as a rational being desires to do many things, but in civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals.”

But, to what extent the State can regulate the individual’s conduct? The fear of invocation of punishment or sanction compels the people to self-censor their views by producing ‘chilling effect’ on exercise of their right to freedom of speech and expression. Freedom of speech and expression open up channels for free discussion on relevant issues and every viewpoint, speech or comment whether in favour or against is necessary for thriving democracy. Thus, there ought to have a proper balance between the freedoms which are guaranteed and restrictions imposed.

³¹ “Is it still necessary to... after 75 years of Independence: CJI Raman to Centre”, *Live law.in*, July 15, 2021 available at: <<https://www.livelaw.in/top-stories/supreme-court-sedition-law-section-124-constitutional-validity-misuse-british-177494>> (last visited on August 19, 2021).

³² J. N. Pandey, *Constitutional Law of India* 208 (Central Law Agency, Allahabad, 2020)

³³ *A. K. Gopalan v. State of Madras*, AIR 1951 SC 21