

Reasonable Restrictions on the Freedom of Speech and Expression

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Abstract: While it is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some curbs on this freedom for the maintenance of social order. No freedom can be absolute or completely unrestricted. Accordingly, under Art 19 (2), the state may make a law imposing 'reasonable restrictions on the freedom of speech and expression can be imposed

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1. Security of the state

Under clause (2) of Article 19 reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of the state. In *Ramesh Thapper V. State of Madras*,¹ the Supreme Court has occasion to interpret the meaning of the words 'security of the state'. The court said that there are different grades of offences against 'public order'. Every public disorder cannot amount to be regarded as threatening the security of the state. The term 'security of the state' refers only to serious and aggravated forms of public disorder e.g., rebellion, waging war against the state, insurrection and not ordinary breaches of public order and public safety, e.g., unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual which incite to or encourage the commission of violent crimes, such as, murder are matters which would undermine the security of the State.²

The words "in the interests of" before the words "security of the state" clearly imply that the actual result of the act is immaterial. Thus acts which may indirectly bring about an overthrow of the state would come within the expression. An incitement to an armed revolution, though infructuous, ultimately, is enough to attract the term "security of the state".

2. Public Order:

This ground was added by the constitution (First Amendment) Act, 1951, in order to meet the situation arising from the Supreme Court's decision in *Ramesh Thapper's case*.³ In that case it was held that ordinary or local breaches of public order were no grounds for imposing restriction on the freedom of speech, expression guaranteed by constitution. The Supreme Court said that 'public order' is an expression of wide connotation and signifies "that state of tranquillity which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established. In that case the Supreme Court struck down a law banning the entry of a journal in the State of Madras in the interest of 'public order' because Article 19 (2) did not contain the expression 'public order'. It was held that restrictions could

only be imposed on the grounds mentioned in Article 19 (2). As a result of this decision the expression 'public order' was added to Article 19 (2) as one of the grounds for imposing restrictions on the freedom of speech and expression.

Public order is something more than ordinary maintenance of law and order. 'Public order' is synonymous with public peace, safety and tranquillity. The test for determining whether an act affects law and order or public order is to see whether the act leads to the disturbance of the current of life of the community so as to amount to a disturbance of the public order or whether it affects merely an individual being the tranquillity of the society undisturbed.⁴ In *Kishori Mohan V. State of W.B.*,⁵ the Supreme Court explained the differences between three concepts: law and order, public order, security of state. The difference between these concepts, the Court said, can be explained by three functional concentric circles, the largest representing law and order, the next public order, and the smallest, the security of the state. Every infraction of law must necessarily affect law and order but not necessarily public order and an act may effect public order but not necessarily security of the state and an act may fall under two concepts at the same time affecting public order and security of the state. One act may affect individual in which case it would affect law and order while another act though of a similar kind may have such an impact that it would disturb even the tempo of the life of the community in which case it would be said to affect public order, the test being the potentiality of the act in question.

In *Sadho Samsher V. State of Pepsu*,⁶ a vitriolic attack upon the character and integrity of the Chief Justice of a High Court was held to have no rational connection with the maintenance of law and order. An action in advance to maintain public order is not prohibited. In *Babulal Parate V. State of Madras*,⁷ Section 144 of the Cr. P.C. was challenged on the ground that it imposed unreasonable restriction on the right of freedom of speech and expression. The court upheld validity of section 144, holding that anticipatory action to prevent disorder is within the ambit of clause (2) of Article 19. Under Section 144, Cr. P.C., if a Magistrate is of the opinion that there is sufficient ground for immediate danger of breach of peace he can by a written order

¹ AIR 1950 SC 124

² State of Bihar v Shaibala Devi, AIR 1952 SC 329

³ AIR 1950 SC 124

⁴ Kanu Biswas v State of W.B., AIR 1972 SC 1656.

⁵ AIR 1973 SC 1749; Dr. Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740.

⁶ AIR 1954 SC 276.

⁷ AIR 1961 SC 884.

direct a person or persons to abstain from certain acts if he considers that such direction is likely to prevent or tend to prevent a disturbance of public tranquillity or a riot or affray.

3. Decency Or Morality

The words "morality or decency" are words of wide meaning. The word 'obscenity' of English law is identical with the word 'indecent' under the Indian Constitution. The test of obscenity is 'whether the tendency of matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences' and into whose hands a publication of this sort is likely to fall. Thus a publication is obscene if it tends to produce lascivious thoughts and arouses lustful desire in the minds of substantial numbers of that public into whose hands the book is likely to fall. This test was laid down in an English case of *R. v. Hicklin*.⁸

Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency and morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. But the Indian Penal Code does not lay down any test to determine obscenity. In *Ranjit D. Udeshi V. State of Maharashtra*,⁹ the Supreme Court accepted the test laid down in the English case of *R. v. Hicklin* to judge the obscenity of a matter. In this case, the Court upheld the conviction of the appellant, a book seller, who was prosecuted under Section 292, I.P.C., for selling and keeping the book, "The Lady Chatterley's Lover". Applying the above test, the Court held the novel as obscene.

4. Defamation

A statement which injures a man's reputation amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. In India, Section 499 of the I.P.C., contains the criminal law relating to defamation. It recognises no distinction between the defamatory statement addressed to the ear or eyes, i.e., slander and libel. These sections are saved as being reasonable restrictions on the freedom of speech and expression.¹⁰ The civil law relating to defamation is still uncodified in India and subject to certain exceptions follows generally the English law.

5. Incitement To An Offence:

This ground was also added by the Constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a licence to incite people to commit offence. The word 'offence' used here is not defined in the Constitution. It is, however, defined in the General Clauses Act as meaning "Offence shall mean any act or omission made punishable by any law for the time being in force". What constitutes incitement will, however, have to be determined by the court with reference to the facts and circumstances of each case.

6. Integrity And Sovereignty Of India:

This ground was added to clause (2) of Article 19 by the Constitution (Sixteenth Amendment) Act, 1963. Under this

clause freedom of speech and expression can be restricted so as not to permit to any one to challenge the integrity or sovereignty of India or to preach secession of any part of India from the Union. In *Niharendra V. Emperor*,¹¹ the Federal Court held that mere criticism or even ridicule of the Government was no offence unless it was calculated to undermine respect for the Government in such a way as to make people cease to obey it or to disobey the law, so that only anarchy can follow. Public disorder is the gist of the offence. But the Privy Council overruled this decision and held that the offence of sedition was not confined to only incitement to violence or disorder.

It is to be noted that sedition is not mentioned in clause (2) of Article 19 as one of the grounds on which restriction on freedom of speech and expression may be imposed. But it has been held in *Devi Saren V. State*,¹² 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 *Kedar Nath v. State of Bihar*,¹³ the constitutional validity of Section 124-A, I.P.C., was considered by the Supreme Court. The Court upheld the view taken by the Federal court in *Niharendu's case*,¹⁴ that the gist of the offence of sedition is that the words written or spoken have tendency or intention of creating public disorder and held the section constitutionally valid.

⁸ LR 3 QB 360.

⁹ AIR 1965 SC 881.

¹⁰ *Dr. Suresh Chandra v. Panbit Goala*, AIR 1958 Cal. 176.

¹¹ AIR 1942 PC 22.

¹² AIR 1954 Pat. 254.

¹³ AIR 1952 SC 955.

¹⁴ AIR 1942 PC 22.