

Scope of Grounds for Reasonable Restrictions on the Freedom of Speech and Expression

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Abstract

Freedom is the condition of being free i.e., set at liberty. The Preamble of the Constitution of India promotes, “Liberty of thought, expression, belief, faith and worship”. Art 19(1)(a) of the Constitution provides that all citizens shall have a right to freedom of speech and expression. Nothing in sub-clause(a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest 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. Art 19(2) states that laws made by State to impose restrictions on freedom of press and expression should be reasonable. It is for the courts to decide as to what is reasonable. The court’s power in examining the question of reasonableness is unlimited. The court must determine the reasonableness of a restriction by objective standard and not by subjective one.

Keywords: Freedom, Speech, Expression, Reasonable Restrictions, Constitution of India

Introduction

Art 19(2) of the Constitution provides that “Nothing in sub section (9) of the clause (i) ie., all citizens shall have the right to freedom of speech and expressions, shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of:

- The sovereignty and integrity of India
- The security of the State
- Friendly relations with the foreign States
- Public order
- Decency or morality or
- In relation to contempt of Court
- Defamation
- Incitement to an offence

In the interest of integrity and sovereignty of India

The restriction can be imposed on the freedom of speech and expression in the interest of integrity and sovereignty of India. This restriction has been inserted in Art 19(2) by the Constitution (16th Amendment) Act, 1963 wef 5-10-1963. Accordingly, Parliament can make law so as to prevent any person from propagating secession of any part of India from the Indian Union. The expression ‘in the interest of’ indicates that the restriction on freedom of speech and expression may be imposed not only when it actually leads to disintegration of the country but also when it has tendency to cause disintegration of the country. This expression also indicates that the restriction imposed must have reasonable connection with the sovereignty or integrity of India¹. Sec 124-A of IPC which punishes the crime of waging war against the State has been upheld as constitutional under this clause.

In the interest of Security of State

In the interest of the security of state, reasonable restriction under Art 19(2) can be imposed on the freedom of speech and expression of a citizen. In the State of Bihar v. Shashibala Deviⁱⁱ, the Supreme Court has held that the term ‘Security of State’ means only to serious and aggravated forms of public disorder like rebellion or waging war against Indian Government.

In Ramesh Thapper v. State of Madrasⁱⁱⁱ, the Supreme Court has explained the words ‘Security of the State’ thus: There are different grades of offences against public order. Every public disorder cannot be regarded as threatening the security of the State. The term ‘security of the State’ refers only to serious and aggregated forms of public disorder eg: rebellion, waging war against the State, insurrection and not ordinary breach of public order and public safety eg: unlawful assembly, riot, affray^{iv}.

The expression ‘in the interest of’ indicates that the restriction on freedom of speech and expression may be imposed not only when it actually cause serious public disorder but also when it has tendency to cause such effect. The expression ‘in the interest of’ also indicates that the restriction must have reasonable and rational relation with the public order^v.

Friendly relation with Foreign State

The restriction on the freedom of speech and expression is aimed at to prohibit unrestrained malicious propaganda against a foreign friendly State which may jeopardize the maintenance of good relations between India and the Foreign State. This ground has been added by the Constitution (1st Amendment) Act, 1951. According to Art 367(3) of the Constitution ‘foreign state’ means any State other than India, provided that, subject to the provisions of any law made by Parliament, the president may be order declare any State not to be a foreign State for such purpose as may be specified in the order^{vi}. The Constitution (Declaration as to Foreign States) Order, 1950 declares that a Commonwealth Country will not be treated as Foreign State for the purposes of the constitution. However in Jagan Nath v. Union of India^{vii}, the SC has made it clear that a Commonwealth Country is a foreign Country for the purposes of Art 19(2).

Public Order

The term ‘public order’ is an expression of wide connotation and signifies “that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established. The concept ‘public order’ includes every ordinary breach of public order like riot, affray but the concept ‘security of State’ refers only to serious and aggravated forms of public disorder like overthrowing the State or waging war against the State etc^{viii}.

In *Kishori Mohan v. State of West Bengal*^{ix}, the Supreme Court has held that every infraction of laws must necessarily affect order but not necessarily public order, and an act may affect public order, but not necessarily security of State^x.

The word ‘sedition’ is not mentioned in clause (z) of Art 19 as one of the grounds on which restriction on freedom of speech and expression may be imposed.

In *Kedar Nath v. State of Bihar*^{xi}, it has been held that Sections 124-A IPC constitutionally valid in the interest of public order and the court further held that the gist of the offence of sedition is that the words written or spoken have tendency or intention of creating public disorder^{xii}.

Decency or Morality

The words ‘decency and morality’ are words of wide meaning. The word ‘indecenty is identical with the word ‘obscenity’ of English Law. 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. In *Rv. Hicklin*^{xiii}, it has been laid down that 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^{xiv}.

Sec 292 to 294 of IPC provide instances of restrictions of freedom of speech and expression in the interest of decency or morality. But it does not lay down any test for determining the obscenity.

Contempt of Court

Restriction on the freedom of speech and expression can be imposed if it amounts to contempt of court. Sec 2 of the Contempt of Courts Act, 1971 defines the term ‘Contempt of courts provides that “contempt of court may be either civil contempt or criminal contempt . However, the following acts are not contempt of courts.

- Innocent publication and distribution of any matter
- Publication of fair and accurate report of judicial proceedings
- Fair criticism of judicial act
- Complaint against Presiding Officers made in good faith
- Publication of fair information relating to proceedings in in-camera.

Art 125 and Art 215 of the Indian Constitution authorize the Supreme Court and the High Court respectively to punish for their contempt. In CK Daphtari v. OP Gupta^{xv}, the Supreme Court ruled that a law relating to contempt imposes reasonable restrictions on the right guaranteed by Art 19(1)(a)^{xvi}.

Defamation

Sec 499 and 500 of IPC define defamation which means exposing a man to hatred, contempt or ridicule. A Statement which injures a man’s reputation amounts to defamation. Defamation consists in exposing a man to hatred, ridicule or contempt. The laws made by State to impose reasonable restriction on freedom of speech and expression in relation to defamation are protected under Art 19(2). No person can so exercise his freedom of speech and expression as to injure the reputation of another person. In Printers Mysore v. Assistant Commercial Law Officer^{xvii}, it has been held that the press is not immune from the general law of liability for defamation.

Incitement to commit an offence.

The grounds of incitement to commit an offence as a restriction on the freedom of speech and expression was added by the Constitution (First Amendment Act, 1951). The right to freedom

of speech and expression does not give permission to citizens to incite a person to commit an offence. In *Kedar Nath v. State of Bihar*^{xviii}, it has been held that mere instigation not to pay tax may not necessarily amount to incitement to an offence.

Reasonableness of restrictions on the freedom of speech and expression

Art 19(2) states that laws made by State to impose restrictions on freedom of press and expression should be reasonable. It is for the courts to decide as to what is reasonable. The court's power in examining the question of reasonableness is unlimited. The court must determine the reasonableness of a restriction by objective standard and not by subjective one. In considering the reasonableness of legislative provisions restricting the exercise of fundamental right of freedom of speech and expression under Art 19(1) the courts may take into consideration factors like Directive Principles of State Policy, Matters of a Common Knowledge, History of the times, Background of the facts and circumstances, Contemporaneous legislation^{xix}.

In order to judge the meaning of reasonable restriction, the following aspects of the matter be kept in view:

- In order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve and must not go in excess of that object.
- Reasonableness of a restriction has to be determined in an objective manner.
- It is the effect of a law which constitutes the test of its reasonableness. Its objects whether good or bad is immaterial for this purpose.
- In adjudging the validity of restriction, the courts have necessarily to approach it from the point of view of furthering the social interest.
- A restriction to be valid must have a rational or proximate relation with the grounds which the legislature is entitled to impose.

Endnotes

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- ⁱ Gunatilleke, G., 2021. Justifying limitations on the freedom of expression. *Human Rights Review*, 22(1), pp.91-108.
- ⁱⁱ AIR 1952 SC 329
- ⁱⁱⁱ AIR 1950 SC 124
- ^{iv} Kumar, A., 2021. Reasonable Restriction regarding Freedom of Speech and Expression. *Law Essentials J.*, 2, p.255.
- ^v De Montigny, Y., 1992. The Difficult Relationship Between Freedom of Expression and its Reasonable Limits. *Law and Contemporary Problems*, 55(1), pp.35-52.
- ^{vi} Ashford, C.R., 1950. Constitutional Law: Freedom of Speech: Permissible Extent of Limitation. *Michigan Law Review*, 48(3), pp.337-346.
- ^{vii} AIR 1960 SC 675
- ^{viii} Weinrib, J., 2009. What is the purpose of freedom of expression. *U. Toronto Fac. L. Rev.*, 67, p.165.
- ^{ix} AIR 1972 SC 1749
- ^x Pollicino, O. and Bassini, M., 2014. Free speech, defamation and the limits to freedom of expression in the EU: a comparative analysis. In *Research Handbook on EU Internet Law* (pp. 508-542). Edward Elgar Publishing.
- ^{xi} AIR 1952 SC 955
- ^{xii} Okoronkwo, H.U., 2015. Interrogating the scope of the right to freedom of speech and expression. *Mass Communicator: International Journal of Communication Studies*, 9(1), pp.9-15.
- ^{xiii} LR 3 QB 360
- ^{xiv} Scanlon Jr, T.M., 1978. Freedom of expression and categories of expression. *U. Pitt. L. Rev.*, 40, p.519.
- ^{xv} AIR 1971 SC 1132
- ^{xvi} Raza, A., 2016. 'Freedom of Speech and Expression' as a Fundamental Right in India and the Test of Constitutional Regulations: The Constitutional Perspective. *Indian Bar Review*, 43(2), pp.87-110.
- ^{xvii} 1994, 2 SC 434
- ^{xviii} AIR 1962 SC 955
- ^{xix} O'Dowd, T.J., 2010. Pilate's Paramount Duty: Constitutional 'Reasonableness' and the Restriction of Freedom of Speech and Assembly. *COMPARATIVE CONSTITUTIONALISM IN SOUTH ASIA*, Khilnani, Sunil, Raghavan, Vikram and Thiruvengadam, Arun, eds., Oxford Univ Press India.