

THE CONSTITUTIONAL LAW

TOPIC:

Restrictions To The Freedom of
Speech and Expression
Under Article 19(2)



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CHAPTER I

Introduction

Article 19(1) (a) provides that “all citizens shall have the right to freedom of speech and expression.”

Article 19(2) as originally provided that

“nothing in sub-clause (a) of Cl. (1) shall affect the operation of any existing law, in so far as it relates to, or prevents the state from making any law relating to libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of or tends to overthrow, the State.”

This sub-Article was retrospectively amended by the constitution (1st Amendment) Act, 1951, which provides

“(2) nothing in sub-clause (a) of Cl. (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 interests of 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.”

CHAPTER II

Freedom of Speech and Expression

Cl. (1) (a): Freedom of speech and expression. – This freedom means the right to express one's convictions and opinions freely, by word of mouth, writing, printing, picture, or electronic media, or in any other manner (addressed to the eyes or the ears). It would thus include not only the Freedom of the Press, but the expression of one's ideas by any visible representation, such as by gestures and the like.

Expression, naturally, presupposes a second party to whom the ideas are expressed or communicated. In, short, freedom of expression includes the freedom of propagation of ideas, their publication and circulation and the right to answer the criticism leveled against such views; the right to acquire and impart ideas and information about matters of common interest. It would not, however, include every concomitant right except where, in a given the hoardings, not being advertisers, could not claim any fundamental right. However, owners of the hoardings, not being advertisers, could not claim any fundamental right. However, owners of the liberty of free expression cannot be equated or confused with a license to make unfounded and irresponsible allegations against the Judiciary.

The freedom of speech and expression must be available to all and no person has a right to impinge on the feelings of others on the premise that his right to freedom of speech remains unrestricted and unfettered. It cannot be ignored that India is a country with vast disparities in languages, culture and religion and unwarranted and malicious criticism in the faith of others cannot be accepted.

In order to be justified as a valid restriction upon any of the rights guaranteed by Cl. (1), not only should such restriction be related to any of the permissible grounds enumerated in the relevant limitation clause, but it must further be reasonable.

The right to freedom of speech and expression includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained.

Those who make noise after take shelter behind Art. 19(1)(a), pleading the freedom of speech and right to expression. This fundamental right is not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers, While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his noise trespass into the ears or mind of others, Nobody can indulge in aural aggression. If nay one increases his volume of speech and that too with the assistance of artificial devices do as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, the person speaking is violating the right of others to a peaceful, comfortable and pollution free life guaranteed by Art. 21. Art. 19(1)(a) cannot be passed into service for defeating the fundamental right guaranteed by Art. 21 of the Constitution. The right to speech implies the right to silence. It implies freedom, not to listen, and not to be forced to listen, the right comprehends freedom to be free what one desires to be free from. Free speech is not be treated as a promise to everyone with opinions and beliefs, to gather, at any place and at any time and express their views in any manner, This right is subordinate to peace and order. The use of a loudspeaker may be incidental to the exercise of right. But it is not a matter of right, or a part of the right.

CHAPTER III

Restrictions

Reasonable Restrictions under Article 19(2).- The freedom of speech and of the press does not confer an absolute right to speak or publish, without responsibility, whatever one may choose or an unrestricted or unbridled license that gives immunity for every possible use of language and does not prevent punishments for those who abuse this freedom. Clause (2) of Article 19 specifies the limits up to which the freedom of speech and expression may be restricted. It enables the legislature to impose reasonable restrictions on the right to free speech under the following heads:

- (1) Security of the State
- (2) Friendly relations with foreign States
- (3) Public Order
- (4) Decency or morality
- (5) Contempt of Court
- (6) Defamation
- (7) Incitement to an offence
- (8) Sovereignty and integrity of India

Reasonable restrictions under these heads can be imposed only by a duly enacted law and not by executive action¹. Now we shall consider each head of restriction in the aforesaid order.

¹ Express Newspaper Ltd v. Union of India, (1986) 1 SCC 133;
Bijoe Emmanuel v. State of Kerala (1986) 3 SCC 615

1. Security of the State. - Security of the State means ‘the absence of serious and aggravated forms of disorder’ as distinguished ordinary breaches of ‘public safety’ or ‘public order’ which may not involve any danger to the State itself. Thus, security of the State is endangered by crimes of violence intended to overthrow the Government², levy of war and rebellion against the government, external aggression or war, but not by minor breaches of public order or tranquility such as unlawful assembly, riot, affray, rash driving, promoting enmity between classes and the like³.

Under Clause (2) of Article 19, reasonable restrictions on the freedom of speech and expression can be imposed in the interests of the security of the State. The security of the State may well be endangered by crimes of violence intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc. All utterances intended or calculated to have the above effects may properly be restrained in the interests of the security of the State. Serious and aggravated forms of public disorder are within the expression “security of the State”. Every public disorder cannot be regarded as threatening the security of the State. In *Romesh Thappar Case*⁴ the Supreme Court definitely pointed out that the expression does not refer to ordinary breaches of public order which do not involve any danger to the state itself.

² Santosh Singh v. Delhi Administration, AIR 1973 SC 1091

³ Romesh Thappar v. State of Madras AIR 1952 SC 124

⁴ AIR 1950 SC 124

Incitement to commit violent crimes like murder would endanger the security of the State. Thus, in *State of Bihar v. Shailabala Devi*,⁵ the law which made penal words or signs or visible representations which incited to or encouraged, or tended to incite to encourage any offence or murder or any cognizable offence involving violence was held by the Supreme Court to fall within Article 19(2). After the amendment of the Constitution in 1951 'public order' has been added as a ground for restrictive laws, and there would hardly be any occasion to draw fine distinctions between the two expressions.

2. Friendly relations with foreign States.- the object of this exception is to prevent libels against foreign states in the interest of maintaining friendly relations with them.

This Ground was added by the Constitution (First Amendment) Act of 1951. The State can impose reasonable restrictions on the freedom of speech in the interest of friendly relations with foreign States. The justification is obvious: unrestrained malicious propaganda against a foreign friendly State may jeopardise the maintenance of good relations between India and that State.

It may be pointed out that it is a recognized principle of international law that States in their relation with other States are responsible for acts committed by persons within their jurisdiction. In accordance with this principle, most modern system of law have made provisions for the punishment of libels against the heads of foreign States. The English common law punishes such libels on the ground that they imperil makes it an offence to publish any libel tending to degrade or revile or expose to hatred or contempt any foreign

⁵ AIR 1952 SC 329

prince, ambassador or other foreign dignitaries, will fall within his expression and will be held valid provided that the restrictions are not unreasonable.

3. Public order. – The preservation of public order is one of the grounds for imposing restrictions on the freedom of speech and expression. This ground did not occur in the Constitution as framed in 1950. It was added by the Constitution (First Amendment) Act, 1951. The amendment had become necessary because the Supreme Court, in *Romesh Thappar case*, had refused to permit the imposition of restrictions on the right to free speech in the interest of public order, that ordinary or local breaches of public order were no grounds for restricting the freedom of speech and expression guaranteed by the constitution. The expression public order is synonymous with public peace, safety, and tranquility⁶. It signifies absence of disorder involving breaches of local significance in contradistinction to national upheavals such as revolution, civil strife or war, affecting the security of the State. To illustrate, the State may, in the interest of public order, prohibit and punish the causing of loud and raucous noise in streets and public places by means of sound amplifying instruments; regulate the hours and place of public discussions and the use of public streets for the purpose of exercising freedom; provide for expulsion of hecklers from meetings and assemblies; punish utterances tending to incite breach of the peace or riot and use of threatening, abusive or insulting words or behavior in any public place or at any public meeting with intent to cause a breach of the peace or whereby breach of the peace is likely to be caused, and all such acts as would endanger public safety.

⁶ Central Prison v. Ram Monohar Lohia, AIR 1960 SC 633

It will be noticed that clause (2) has used the words ‘ in the interest of public order’ and not ‘ for the maintenance if public order’. A law may not have been designed to directly maintain the public order and yet it may have been enacted in the interest of public order’, if it assists or is conducive to the maintenance of public order. In other words, this would bring within the protection of clause (2) not only such utterances as are directly intended to incite disorder, but also those that have the tendency to lead to disorder⁷. Thus a law punishing utterances made with deliberate intention to hurt the religious feelings of any class or persons is valid, because it imposes a restriction on the right to free speech in the interest of the public order, since such speech or writing has the tendency to create public disorder even if in some cases those activities may not actually lead to a breach of the peace. But it is necessary that there must be reasonable and proper nexus or relationship between the restrictions and the achievement of public order. If the restriction has no proximate relationship to the achievement of public order, it cannot be said that the restriction is a reasonable restriction within the meaning of Clause (2) . The restriction must not be far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order. In *Superintendent, Central Prison v. Ram Manohar Lohia*, the Supreme Court invalidated Section 3 of the U.P. Special Powers Act, 1932 which punished a person, even if he incited a single person not to pay or defer the payment of government dues because there was no proximate nexus between the speech and public order. The Supreme Court said:

“We cannot accept the argument of the learned Advocate General that instigation of a single individual not to pay tax or dues is a spark which may in the long run ignite revolutionary

⁷ *Ramji Lal Modi v. State of U.P.* AIR 1957 SC 620; *Virendra v. State of Punjab*, AIR 1957 SC 896

movement, destroying public order. We can only say that fundamental right cannot be controlled in such hypothetical and imaginary consideration.

In another case⁸, 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. Subject to the condition of the proximate relationship, the legislature is competent to pass a law permitting an appropriate authority to place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order.

The restriction, apart from having a rational nexus with public order, must also be reasonable. It is for the courts to decide whether a restriction is reasonable both substantively and procedurally. *Virendra v. State of Punjab*,⁹ is an important decision of the Supreme Court illustrating the scope of permissible restriction under this clause on the right to freedom of speech and expression. The law impugned in that case was the Punjab Special Powers (Press) Act, 1956. It provided for (i) the prohibition of printing or publication of any article, report, news item, letter or any other material relating to or connected with 'Save Hindi Agitation', (ii) the imposition of ban against the entry and the circulation of the said papers published from New Delhi in the State of Punjab and (iii) authorizing the State Government or its delegate to impose pre-censorship.

The first provision relating to ban or publication of news, etc. was upheld in the time of tension brought about and aided by the 'Save Hindi Agitation', taking into consideration the safeguards provided therein, as being a reasonable restriction on the liberty of the press.

⁸ Sodi Shamsheer Singh v. State of Pepsu, AIR 1954 SC 276

⁹ AIR 1957 SC 896

The safeguards which impelled the court to hold the restrictions as substantively and procedurally reasonable were:

- (a) The positive requirement of the existence of the satisfaction of the authority as to the necessity for the making of order for the specific purposes mentioned in the Act.
- (b) The discretion was given in the first instance to the State Government and not to every subordinate officer to determine the necessity of passing the order.
- (c) The order could remain in force only for two months from the making thereof.
- (d) The aggrieved party was given the right to make representation to the State Government which could, on consideration thereof, modify, confirm or rescind the order.

To the objection that the conferment of such wide powers exercisable on the subjective satisfaction of the government with no provision for judicial review made the restriction unreasonable, the Court replied.

Quick decision and swift and effective action must be of the essence of these powers and the exercise of it must, therefore, be left to the subjective satisfaction of the government charged with the duty of maintaining law and order; to make the exercise of these powers justiciable and subject to judicial scrutiny will defeat the very purposes of the enactment.

The second provision of the Act mentioned above, namely, the power to impose a ban against the entry and the circulation of the paper, was not sustained as a reasonable restriction on the freedom of speech because there was no time-limit for the operation of an order made against a paper and also because there was no provision made for any representation being made to the State Government.

In *Babulal Parate v. State of Maharashtra*,¹⁰ the well known section 144 of the CrPC was impugned on the ground of its placing unreasonable restrictions on the right of freedom of speech and expression. Under this section, a Magistrate, if he is of the opinion that there is sufficient ground for immediate prevention, can by a written order direct a person or persons to abstain from certain acts if he considers that such direction is likely to prevent or tends to prevent a disturbance of public tranquility, or a riot or an affray. The court sustained the section, holding that anticipatory action to prevent disorders is within the ambit of the protection. The section did not confer an arbitrary power on the Magistrate in the matter of making the order, because the Magistrate at the time of passing the order had to state the material facts and also because the order could be challenged before the Magistrate who had passed it. Section 124-A, and 505, IPC, have likewise been upheld as reasonable restrictions in the interest of public order. A rule prohibiting strikes would not be violative of freedom of speech¹¹.

However, in *State of Bihar v. K.K. Misra*¹², the Supreme Court held that an unreasonable restriction was imposed upon the freedom of speech, assembly and movement by Section 144(6) of the Criminal Procedure Code which authorized the State Government to extend the life of an order issued by a Magistrate under clause (1) of that section beyond two months if it was necessary, for preventing danger to human life, health, safety or a likelihood of a riot or an affray. This power was not to be exercised judicially and therefore

¹⁰ AIR 1961 SC 884

¹¹ *Radhey Shyam Sharma v. P. M. G.*, AIR 1965 SC 311

¹² AIR 1971 SC 1667

was opened to be exercised arbitrarily. There was no provision for the party to make a representation nor was the order of a temporary nature. The clause has since be amended.

Section 123(3-A) of the Representation of Peoples Act which declared promotion of or attempts to promote feeling of enmity or hatred between different classes of citizens on grounds of religion, race, etc. as corrupt practice in elections has also been justified on the ground of public order.¹³

4. Decency or Morality. – This exception has been engrafted for the purpose of restricting speeches and publications which tend to undermine public morals¹⁴.

Decency or morality is another ground which freedom of speech and expression may be reasonably restricted, Decency connotes the same as lack of obscenity. Obscenity becomes a subject of constitutional interest since it illustrates well the clash between the right of the individual to freely express his opinions and the duty of the State to safeguard the morals.

Decency and Morality is not confined to sexual morality alone. It indicates that the action must be in conformity with the current standards of behavior¹⁵.

It is obvious that the right to freedom of speech cannot be permitted to deprave and corrupt the community, and therefore, writings or other objects, if obscene, may be suppressed and punished because such action would be to promote public decency and morality. In English law, it is misdemeanor to write and publish obscene criminal books, pictures etc., which have a tendency to deprave and corrupt those whose mind are open to immoral influences. In India, the scope of indecency or obscenity under the existing law is illustrated in Section

¹³ Ramesh Yeshant Prabhuo v. Prabhakar K. Kunte, (1996) 1 SCC 130

¹⁴ Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881

¹⁵ Ramesh yeshwant PRabhu v. Prabhakas Kashinath Kunte(1996) 1 SCC 130

292 to 296 of the Indian Penal Code. These sections prohibit the sale or distribution or exhibition of obscene matter or the doing of obscene acts or signing of obscene songs or uttering obscene words, etc., in public places. Books, pamphlets, writings or paintings used for bona fide religious purposes or paintings in any temple are exceptions to Section 292. Although the Indian Penal Code prohibits and punished the sale, etc. of obscene books and articles, it does not lay down the test to determine obscenity. In *Ranjit D. Udeshi v. State of Maharashtra*,¹⁶ the Supreme Court for the first time was called upon to lay down the test to determine obscenity. The facts were that the appellant, a Bombay bookseller, was prosecuted under Section 292 of the Indian Penal Code for selling and for keeping for sale the well-known book, *Lady Chatterley's Lover* (unexpurgated edition) written by D. H. Lawrence. The Magistrate held that the book was obscene and sentenced the appellant. The appellant took three defenses before the Supreme Court. Firstly, Section 292 was void as it imposed an impermissible and obscure restriction upon the freedom of speech, Secondly, even if the impugned section was taken as valid, the novel did not offend public morals because, read as a whole, it was a work of art, and finally, under the general doctrine in criminal law, *actus non facit reum nisi mens sit rea*, the rule was that *actus reus*, the *mens rea* with which it was done had also to be *rea*. In other words, before the sale or possession of a book could be punished, it had to be established that it was done with the intention to corrupt the public. All the three pleas were rejected and the conviction of the appellant was upheld.

As to the first arguments, the court gave short and clear reply that the section was *intra vires* inasmuch as Article 19(2), itself and restricted the right of freedom of speech and expression on grounds of decency and morality.

¹⁶ AIR 1965 SC 881

As to the third plea, lack of mens rea, the court made a distinction between knowledge and guilty intention (mens rea). The former was not an essential element of the offence under Section 292 and there was no need for the prosecution to establish it. The latter was an essential element and had to be proved. But the prosecution was not required to give positive evidence to prove guilty intention, It could be inferred from the circumstances of each and every case. In the instant case, such an inference could be drawn since the book was possessed for sale.

As to the second question – when can an object be said to be obscene– in spite if the protest the counsel of the appellant that the test was outmoded and needed modification, the Court agreed with the Hicklin Test which is as follows:

“ Whether the tendency of the 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 may fall¹⁷, But exception could be made if some prepondering social purpose or profit was served by the obscene object.

Applying the above principles, the Court held the novel in question as obscene. To the plea of the accused that the overall effect of the book was to be the test of obscenity and not the effect of stray passages or words here and there, the Court said that “the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall.

¹⁷ Rex v. Hicklin, (1868) 3 QB 360,371

It is submitted that the Supreme Court has erred in not rejecting the Hicklin Test which has become obsolete. It lays down a vague and arbitrary standard for judging obscenity and has a tendency to curtail the guaranteed right of freedom of speech.

The Supreme Court has also negated the requirement of scienter as a necessary ingredient of the offence under Section 292 and if the word 'obscenity' is given as wide a meaning as was given in the Hicklin case, there is a danger that many a literary work will not be available to the public. The publisher and booksellers may withhold a publication from being circulated for fear that they might be committing an offence under the Penal Code. Such self-censorship of books and publications would affect the right of public to have access to works of art and literature. It would also curtail the right of its author to produce. When Section 292 was enacted, Indian citizens enjoyed no fundamental rights. But after the coming into force of the Constitution, if Section 292 is allowed to stand as it is, the meaning of obscenity has been narrowed down.

It will be noted that clause (2) has used the expression, decency or morality. the scope of the word 'morality' is not very clear. The conception of morality differs from place to place and from time to time. Thus, birth control and contraceptives were considered immoral at one time and have been convictions for publishing literature dealing with contraception¹⁸. But now the view has changed and it is not offence to discuss such matters. Rather use of contraceptives is encouraged and subsidized by the state.

Other instance of existing law dealing with obscenity and furnished by the Post Office Act, 1893, which prohibits obscene matters being transmitted through post, the Sea Customs

¹⁸ R. v. Bradlaugh, 3QB 607

Act, 1878 which prohibits the import of obscene literature, the Dramatic Performances Act, 1876, which prohibits obscene plays, the Cinematograph Act, 1952 which makes provision for censorship of films¹⁹, and the Press Act, 1951 which prohibits grossly, indecent, scurrilous or obscene publications.

Section 123 of the Representation of People's Act which declares appeal to voting or refraining from voting on grounds of religion, race, caste, community or language has been upheld as reasonable restrictions on grounds of decency and morality.

5. Contempt of Court. – The constitutional right to freedom of speech would not prevent the courts to punish, as contempt of themselves, spoken or printed words calculated to have that effect²⁰. The expression 'contempt of court' is now defined by Section 2 of the Contempt of Courts Act, 1971 as under:-

'contempt of court' means civil contempt or criminal contempt.

(a) 'civil contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

(b) 'criminal contempt' means the publication (whether by words spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due

¹⁹ K. A. Abbas v. Union of India, (1970) 2 SCC 780: AIR 1971 SC 481

²⁰ L. R. Fey v. R. Prasad, AIR 1958 Punj 377

course of any judicial proceedings; or (iii) interferes or tends to interfere with, or obstruct or tends to obstruct, the administration of justice in any other manner.

It is not possible here to enter into a detailed discussion of the law of contempt. But one thing is certain. Judges have no general immunity from criticism of their judicial conduct, provide that it is made in good faith and does not impute any private motive to those taking part in the administration of justice; it must be genuine criticism and not malicious or attempt to impair the administration of Justice. Justice is not a cloistered virtue, said the Privy Council in *Amard v. Attorney General for Trinidad and Tobago*²¹, she must be allowed to suffer the scrutiny and respectful, though outspoken, comments of ordinary men.

Articles 129 and 215 of the Constitution empower the Supreme Court and High Courts respectively to punish for their respective contempt. The Contempt of Courts Act, 1971 defines the power of the High Court to punish contempt of its subordinate courts. In *E.M.S. Namboodripad v. T. N. Nambiar*²², the Supreme Court observed that freedom of speech shall always prevail except where contempt of court is manifested, mischievous or substantial. In that case Mr. Namboodripad had made certain remarks about the judiciary at a press conference and sought to justify his remarks as doing no more than giving expression to the Marxist Philosophy. THE Supreme Court confirmed the decision of the High Court holding him guilty of contempt of court. While the right of expression of free opinions is essential to a free society, the constitutional law itself imposes restrictions in relation to contempt of court, and it cannot be said that the right abolished the law of contempt, or that attack on

²¹ 1946 AC 335

²² AIR 1970 SC 2015

Judges and courts will be condoned. Power to punish for contempt of court under Articles 129 and 215 is not subject to Article 19(1)(a).

Since *Namboordripad case*, the Court has liberalized the law of contempt. In *S. Mulgaokar*,²³ the Court dropped the contempt proceedings which were initiated against the comments published in the Indian Express with reference to a letter written by Beg. C.J. to the Chief Justices of High Courts suggesting a code of conduct for the judges. The comment, in short, was: "So adverse has been the criticism, that the Supreme Court Judges, some of whom had prepared the draft code, have disowned it. "After the proceedings were dropped Beg. C.J. wrote a sort of dissent in support of contempt law while Krishna Iyer, J. wrote a long essay to keep the contempt law within very narrow limits. Similarly in *Sham Lal, Re*²⁴, notice against the editor of The Times of India for contempt proceedings was issued for publication of a criticism of the Supreme Court's decision in the *Habeas Corpus case*.²⁵ But after hearing the Court dropped the proceedings without giving any reasons. Again, in *M. R. Parashar v. Farooq Abdullah*²⁶ contempt proceedings were initiated against the respondent Chief Minister of Jammu and Kashmir for alleged speeches that justice in the courts can be bought, courts give unfounded stay orders which need not be obeyed, etc. In view of clear denial by the Chief Minister that he made such a speech the court dismissed the petition for want of proof. In the course of judgment, however, Chandrachud, C. J. observed that since in contempt proceedings the judge also acts as prosecutor, the courts must be reluctant to resort to such proceedings and punish persons for contempt so that the rule is upheld and people do not have any impression that the judges are acting in their own defence. Moreover, it

²³ (1978) 3 SCC 339; AIR 1978 SC 727

²⁴ (1978) 2 SCC 479; AIR 1978 SC 489

²⁵ A.D.M. Jabalpur v. S. Shukla, (1976) 2 SCC 521; AIR 1976 SC 1207

²⁶ (1984) 2 SCC 343; AIR 1984 SC 615

involves the fundamental right to freedom of speech and expression which allows people to express themselves about any institution, including judiciary. Bona fide criticism of any system or institution is aimed at including the administration of that system or institution to look inwards and improve its public image. Courts do not like to assume the posture that they are above criticism and that their functioning needs no improvement.” This is a sign of healthy development in the law of contempt of court vis- a- vis freedom of speech and expression.

But making baseless allegations in the pleadings against the Chief Justice of India that he has maliciously dismissed the petition and must be prosecuted for that is a clear Contempt of Court not protected by Article 19(1)(a)²⁷. Entertaining a petition against certain remarks of the leaders of the Narmada Bachao Andolan the Court has noted that the freedom of speech and expression does not include the freedom of distort orders of the Court and present incomplete and one sided picture deliberately which has the tendency to scandalize the Court. After expressing its anguish on these remarks the Court dropped the proceedings²⁸.

6. Defamation. – just as every person possesses the freedom of speech and expression every person also possesses a right to his reputation which is regarded a property. Hence nobody can use his freedom as to injure another’s reputation. Defamatory matter is matter which exposes a person about whom it is published, to hatred, ridicule or contempt. The law of defamation is divided into libel and slander. Defamatory matter, if in writing, printing of some other permanent medium, is libel; if in spoken words or gestures, a slander. It is not possible to deal here with the contents of the law of defamation. Right to free speech does

²⁷ D.C. Saxena, in re, AIR 1996 SC 2481

²⁸ Narmada Bachao Andolan v. Union of India, (1999) 8 SCC 308

not entitle one to violate the right of others. Laws penalizing defamation do not, therefore, constitute infringement of the freedom of speech and expression.

7. Incitement to an offence. - This is also a new ground added in 1951. Obviously, the freedom of speech cannot confer a license to incite people to commit offence. During the debate on this clause in Parliament, it was suggested that the phrase should be 'incitement to violence' as the word 'offence' is a very wide expression and could include any act which is punishable under the Indian Penal Code or any other law. The suggestion was rejected. IN *State of Bihar v. Shailabala Devi*,²⁹ the Supreme Court held that incitement to murder or other violent crimes would generally endanger the security of the State; hence a restriction against such incitement would have be a valid law under clause (2) of Article 19.

8. Integrity and Sovereignty of India. - This ground had been added by the Constitution (Sixteenth Amendment) Act, 1963. The present amendment is made to guard from the freedom of speech and expression being used to assail the territorial integrity and sovereignty of the Union. Thus, it will be legitimate for Parliament under this clause to restrict the right of speech it is preaches secession of any part of India from the Union. It will be noted here that the restriction is with respect to the territorial integrity of India and not on the preservation of the territorial integrity of the constituent States, The Constitution itself contemplates changes of the territorial limits of the Constituent States.³⁰

Sedition. - 'Mere disaffection cannot be penalized under the constitution'

-It will be noticed that sedition is not mentioned as one of the grounds on which restrictions on the freedom of speech and expression may be imposed. The word 'sedition' has been a

²⁹ AIR 1952 SC 329

³⁰ Article 3 of the Constitution.

word of varying import in the English law. One hundred and fifty years ago, holding a meeting or taking out a procession was considered sedition. Even holding an opinion which will bring ill-will towards the government was treated as sedition. The interpretation, however, is now changed. Sedition now embraces all those practices, whether by word, deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to subvert the government³¹. Incitement to violence or public disorder is the gist of the offence, The time is long passed when mere criticism of government as sufficient to constitute sedition, for it is recognized that the right to utter honest and reasonable criticism is a source of strength to the community rather than a weakness. Criticism of an existing system or the expression of a desire for different system altogether is not prohibited. In India, Section 124-A of the Indian Penal Code defines the offence of sedition . The language of the section has been adopted from the English law. The section, however, has been interpreted very widely by the courts in India. Under these decisions criticism of the government could amount to sedition if the words excited or attempted to excite hatred, enmity, dislike, contempt or ill-will towards the government, though there was no incitement to violence or disorder. The federal Court in *Nihrendu v. Emperor*,³² construed the section liberally in accordance with the general principles of the English law. The Chief Justice in that case said:

“Public disorder or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.

³¹ R. v. Sullivan, (1968) 11 Cox Cases 55

³² AIR 1942 FC 22

The Privy Council did not accept the interpretation of the Federal Court in *Nihrendu v. Emperor* and preferred to interpret the section in accordance with the previous line of decisions which had not confined the offence of sedition to incitement to violence or disorder. The constitutional validity of Section 124-A, Indian Penal Code, in relation to the freedom of speech was questioned in *Kedar Nath Singh v. State of Bihar*.³³ The Court, after an exhaustive review of the case-law confirmed the interpretation of Section 124-A of the Federal Court in *Nihrendu* case, and held it not ultra vires the Constitution. The gist of criminality, in an offence of sedition, as defined in Section 124-A, Penal Code, is that the words written or spoken should have a tendency or intention of creating public disorder or disturbances of law and order.

The Constitution (Fortieth Amendment) Act, 1976, incorporated the Prevention of Publication of Objectionable Matter Act, 1976, in the Ninth Schedule. Objectionable matter has been defined as that which incites disaffection towards the government or to commit any offence or to interfere with the production and distribution of essential commodities or seduction of any member of Armed Forces, defamation of the President, Vice President, Prime Minister, Speaker, or Governor of a State. Restrictions imposed on any of these grounds could not be challenged on the ground of unreasonableness. Also with the inclusion of fundamental duties by the Forty-second Amendment, the implication is that nobody should exercise his freedom of speech and expression so as to violate the fundamental duties, and it is likely that the courts may be inclined to give a harmonious interpretation of the restrictions imposed on the exercise of the right and the fundamental duties, as has been the case with the directive principles of State Policy.

³³ AIR 1962 SC 955

CHAPTER IV

Conclusion

Therefore it is true that the Constitution guarantees to its people various freedoms but these freedom have certain restrictions too. If these restrictions were absent there could be disorder in the State. Hence the restrictions are necessary for the smooth functioning and to see that there is no misuse of the freedoms given. Same is in the case of Freedom of Speech and expression, the freedom has restrictions too for the well being of the State, community and individuals.

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