

DEPARTMENT OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD

Advanced Diploma in Media Laws
(Sidharth Chauhan)

Session I: Freedom of Speech and Expression

Reasonable Restrictions on Speech and Expression

What does the Indian Constitution say about the 'freedom of speech and expression'?

19. Protection of certain rights regarding freedom of speech etc

- (1) All citizens shall have the right
- (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations, unions or cooperatives;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India; and
 - (f) omitted
 - (g) to practise any profession, or to carry on any occupation, trade or business
- 2) 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 interests 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.

- 3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.
- 4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to:

i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

CONCEPTUAL FRAMEWORK

Instrumental Reasons (Thinking about rights as a means to pursue desirable objectives)

- Truth-seeking function ('Marketplace of Ideas')
- Deterrence of abuse by those in positions of authority
- Enabling meaningful public participation in governance

Intrinsic Reasons (Thinking about rights as desirable objectives by themselves)

- Principle of 'Equal Respect' (irrespective of differences in status/opportunity)
- Recognition of Human Dignity (every person's opinions are worthy of respect)

Basis for placing restrictions

- Content-Based restrictions v. Platform-Based Restrictions
- Individual's freedom v. Interests of the State / Groups / Other Individuals
- 'Harm Principle' v. Offensive speech

Public Law Remedies: Writ Petitions can be filed under Articles 32 and 226 to protect the freedom of speech and expression against intrusion by the government of the day, be it through legislation or administrative action. We can think of offences in the Indian Penal Code which threaten the freedom of speech and expression, namely Sedition (Section 124A), Obscenity (Section 292), Incitement to Religious Hatred (Section 295A) and Criminal Defamation (Section 499 & 500).

Private Law Remedies: Freedom of Speech and Expression can be both protected and threatened by civil litigation. For example, suits can be filed against media houses, editors and journalists which claim monetary compensation for civil defamation. On the other hand, media houses can seek injunctions against governmental action that threatens their speech and economic interests.

Newer challenges such as the concentration of media ownership in the hands of a few powerful parties, be it political parties or large business houses. This has magnified the problem of 'Paid News', which blurs the distinction between news-coverage and advertising. It is used especially during the time of election campaigns to support or attack candidates and also by business houses to promote their own interests.

We should also think about present problems such as the circulation of 'Fake News' on the Internet, especially on social media platforms (Facebook) and Instant Messaging Services (WhatsApp). There is no verification or independent fact-checking of the content that is circulated on these platforms. What can be the legal and regulatory responses to this problem?

Illustrative judgments

Brij Bhushan v. State of Delhi, AIR 1950 SC 129.

Under the East Punjab Public Safety Act, 1949 the English-language journal 'Organiser' (run by the Rashtriya Swayamsevak Sangh) was required to submit drafts to the Chief Commissioner of Delhi. This was done through an administrative order in order to screen communally provocative content. The Court ruled against the administrative order and found that it amounted to a 'prior restraint' on speech and could not be justified as a 'reasonable restriction'.

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

The sale and distribution of the journal 'Crossroads' (published by Mr. Romesh Thappar in Bombay) was prohibited through orders framed under the Madras Maintenance of Public Order Act, 1949. This publication was seen as having a left-leaning stance favouring the Communist Party of India (CPI) which was the principal opposition party at the time. The Court found that the order could not be justified despite its invocation of 'securing the public safety and maintenance of public order'.

Following these two judgments, the First Amendment to the Constitution of India (enacted in June 1951) brought in the present wording of the grounds for placing 'reasonable restrictions' under Article 19(2). The most significant change was the inclusion of the phrase 'public order'. The original wording of Article 19(2) had enumerated the following grounds:

Libel / Slander / Defamation / Contempt of Court / Decency or Morality / undermines the security of, or tends to overthrow the State

Sedition (Section 124A of the Indian Penal Code)

The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia, AIR 1960 SC 633.

Ram Manohar Lohia, the well-known Socialist leader, was arrested and charged for delivering speeches where he had asked farmers not to pay the enhanced rates for irrigation. This was construed as an offence under the Uttar Pradesh Special Powers Act, 1932 whose language closely resembled the definition of 'sedition' under the Indian Penal Code. The Court found that the speeches did not amount to a direct incitement to commit violent acts and hence gave relief to the petitioner by directing his release from custody.

Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

In this case, there was a challenge to the constitutional validity of Section 124A of the Indian Penal Code. It was brought by four different individuals who were facing charges of 'sedition' in the lower courts, largely for making speeches that were critical of the Congress Party (which was ruling at the

Centre as well as most States at the time). While the Supreme Court upheld the validity of this provision, it did lay down significant qualifications for applying it. It was clarified that words which excited disaffection against the country could not be construed as 'sedition' and that there had to be direct incitement to violence in order to pose a threat to the 'sovereignty and integrity of India' or the 'security of the State' as contemplated in Article 19(2). However, this judicial qualification has been frequently ignored by governments (across the political spectrum) which have used this provision against their political opponents and critical voices in civil society.

Case on Legislative Privileges (Article 194 of the Constitution)

M.S.M. Sharma v. Sri Krishna Sinha, AIR 1959 SC 395.

Better known as the 'Searchlight' Magazine, this case examined the conflict between the press freedom to report proceedings inside the legislature and the power of the Speaker of the Vidhan Sabha to control the content of such publication. The Court ruled that the scope of legislative privileges (meant to protect serving legislators from external interference or retaliatory action) extended to justify restrictions on press freedom.

Newspaper Regulation cases

Express Newspapers Pvt. Ltd. v. Union of India, AIR 1958 SC 578.

A Wage Board was set up for the Newspaper Industry Under Section 9 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. Its stated objective was to implement the recommendations of the Indian Press Commission in respect of matters such as wage-structures and retrenchment compensation. A group of Newspaper Owners (employers) objected to the scales that were prescribed by the Wage Board and saw this as an interference with their speech and economic rights under Article 19(1)(a) and 19(1)(g) respectively. Their main argument was that the Wage Board had prescribed these scales without considering the employers' capacity to pay and had not meaningfully heard their views during its deliberations. The Court ruled in favour of the Newspaper Owners and set aside the scales prescribed by the Wage Board.

Sakal Newspapers v. Union of India, [1962] 3 SCR 842.

Bennett Coleman & Co. v. Union of India, AIR 1973 SC 60.

Indian Express v. Union of India, [1985] 2 SCR 287.

Express Newspapers Pvt. Ltd. v. Union of India, AIR 1986 SC 872.

The Union Government had threatened to cancel the lease given by the Delhi Development Authority (DDA) for the Indian Express building on Bahadur Shah Zafar Road. The notices cited irregularities in its construction and non-compliance with local bye-laws pertaining to Floor Area Ratio (FAR) among other aspects. However, there is a broad consensus that this was a retaliatory action against the Indian Express newspaper for its reporting which was frequently critical of the ruling party at the time. The Court protected the newspaper by quashing the notices which had been issued by the DDA.

Commercial Speech

Hamdard Dawakhana v. Union of India, AIR 1960 SC 554.

Tata Press v. Mahanagar Telephone Nigam Limited, AIR 1995 SC 2438.

Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal, AIR 1995 SC 1236.

Obscenity (Section 292 of the Indian Penal Code)

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

Samaresh Bose v. Amal Mitra, AIR 1986 SC 967.

Bobby Arts International v. Om Pal Singh Hoon, (1996) 4 SCC 1.

Aveek Sarkar v. State of West Bengal, (2014) 4 SCC 257.

M.F. Hussain v. Raj Kumar Pandey, (2008) Cri L J 4107 (Delhi High Court).

S. Tamilselvan v. Govt. of Tamil Nadu (Judgment given by Madras High Court on July 5, 2016)

Defamation (Section 499 of the Indian Penal Code) & related subject-matter

S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.

R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632.

S. Khushboo v. Kanniammal, (2010) 5 SCC 600.

Shreya Singhal v. Union of India, AIR 2015 SC 1523.

A Two-Judge Bench of the Supreme Court of India agreed with a challenge to the constitutional validity of Section 66A of the Information Technology Act, 2000

Subramaniam Swamy v. Union of India, (2016) 7 SCC 221.

A challenge was filed against the constitutional validity of Section 499 of the Indian Penal Code which lays down the definition of 'criminal defamation' – A Constitution Bench (Five Judges) upheld the validity of the same citing a 'right to reputation' that flows from Article 21 of the Constitution – This decision has been heavily criticized, especially since complaints of 'criminal defamation' are often filed by powerful parties to silence their critics

Offence to Religious Sentiments (Section 295A & 153A of the Indian Penal Code)

State of Uttar Pradesh v. Lalai Singh Yadav, AIR 1977 SC 202.

Restrictions sought on the sale and circulation of the 'Periyar' Ramayana through orders issued by the State Government under Section 99-A of the Code of Criminal Procedure, 1898. The Court found that the concerned order did not state the ground for placing such restrictions and hence set it aside.

Sujato Bhadra v. State of West Bengal, (2005) Cri L J 368 (Calcutta High Court).

The State Government had issued orders under Section 95 of the Code of Criminal Procedure, 1973 directing the forfeiture of the printed copies of Taslima Nasreen's novel 'Dwikhandita'. The ostensible ground was that the contents of the book insulted the religious sentiments of the Muslim community

and amounted to an offence under Section 295A. The High Court invalidated the orders for forfeiture since it found that the contents of the book did not attract the ingredients of this offence.

State of Maharashtra v. Sanghraj Damodar Rupawate, (2010) 7 SCC 398.

The State Government had issued orders under Section 95 of the Code of Criminal Procedure, 1973 to direct the forfeiture of the printed copies of the historian James Laine's book 'Shivaji – Hindu King in Islamic India'. This had followed an armed attack on the Bhandarkar Oriental Research Institute, Pune where the author had conducted a substantial part of the research for this book. The Court found that the orders directed forfeiture were improper since they did not adequately demonstrate how the contents of the book would amount to offences under Section 153A and 295A of the IPC.

Current debate about State-Level Amendment to Section 295A of IPC in Punjab which is meant to punish desecration of religious books (akin to 'Blasphemy' Law)