



# FACULTY OF JURIDICAL SCIENCES

**COURSE:** LL.M. 1st Semester

**GROUP:** Constitutional Law

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# Lecture-12



## LECTURE 12: Restrictions

### Grounds of Restrictions

It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some restrictions on this freedom for the maintenance of social order because no freedom can be absolute or completely unrestricted. Accordingly, under **Article 19(2)** of the Constitution of India, the State may make a law imposing “reasonable restrictions” on the exercise of the right to freedom of speech and expression “in the interest of” the public on the following grounds: Clause (2) of **Article 19** of the Indian constitution contains the grounds on which restrictions on the freedom of speech and expression can be imposed:-

**1) Security of State:** Security of state is of vital importance and a government must have the power to impose a restriction on the activity affecting it. Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of the security of State. However, the term “security” is a very crucial one. The term “security of the state” refers only to serious and aggravated forms of public order 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 State.

**2) Friendly relations with foreign states:** In the present global world, a country has to maintain a good and friendly relationship with other countries. Something which has the potential to affect such relationship should be checked by the government. Keeping this thing in mind, this ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India and that state.

**3) No similar provision is present in any other Constitution of the world:** In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government. However, it is interesting to note that member of the commonwealth including Pakistan is not a “foreign state” for the

purposes of this Constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.

**4) Public Order: Next restriction prescribed by constitution is to maintain public order:** This ground was added by the Constitution (First Amendment) Act. ‘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.”

Here it is pertinent to look into meaning of the word “Public order. Public order is something more than ordinary maintenance of law and order. ‘Public order’ is synonymous with public peace, safety and tranquility. Anything that disturbs public tranquility or public peace disturbs public order. Thus communal disturbances and strikes promoted with the sole object of accusing unrest among workmen are offences against public order. Public order thus implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. Public order also includes public safety. Thus creating internal disorder or rebellion would affect public order and public safety. But mere criticism of government does not necessarily disturb public order.

The words ‘in the interest of public order’ includes not only such utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. Thus a law punishing utterances made with the deliberate intention to hurt the religious feelings of any class of persons is valid because it imposes a restriction on the right of free speech in the interest of public order since such speech or writing has the tendency to create public disorder even if in some case those activities may not actually lead to a breach of peace. But there must be reasonable and proper nexus or relationship between the restrictions and the achievements of public order.

**5) Decency or morality:** The way to express something or to say something should be a decent one. It should not affect the morality of society adversely. Our constitution has taken care of this view and inserted decency and morality as a ground. The words ‘morality or decency’ are words of wide meaning. **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 or morality. These

sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fix standard is laid down till now as to what is moral and indecent. The standard of morality varies from time to time and from place to place.

**6) Contempt of Court:** In a democratic country Judiciary plays a very important role. In such situation, it becomes essential to respect such an institution and its order. Thus, restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. According to **Section 2** 'Contempt of court' may be either 'civil contempt' or 'criminal contempt.' But now, Indian contempt law was amended in 2006 to make "truth" a defense.

However, even after such amendment, a person can be punished for the statement unless they were made in public interest. Again in *Indirect Tax Practitioners Assn. vs R.K.Jain*, it was held by court that, "Truth based on the facts should be allowed as a valid defense if courts are asked to decide contempt proceedings relating to contempt proceeding relating to a speech or an editorial or article". The qualification is that such defense should not cover-up to escape from the consequences of a deliberate effort to scandalize the court.

**7) Defamation:** One's freedom, be it of any type, must not affect the reputation or status of another person. A person is known by his reputation more than his wealth or anything else. Constitution considers it as ground to put restriction on freedom of speech. Basically, a statement, which injures a man's reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. The civil law relating to defamation is still uncoded in India and subject to certain exceptions.

**8) Incitement to an offense:** This ground was also added by the **Constitution (First Amendment) Act, 1951**. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offense. The word 'offense' is defined as any act or omission made punishable by law for the time being in force.

**9) Sovereignty and integrity of India:** To maintain the sovereignty and integrity of a state is the prime duty of government. Taking into it into account, freedom of speech and expression can be restricted so as not to permit anyone to challenge sovereignty or to permit anyone to preach something which will result in threat to integrity of the country.

From above analysis, it is evident that Grounds contained in **Article 19(2)** show that they are all concerned with the national interest or in the interest of the society. The first set of grounds i.e. the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest, whereas, the second set of grounds i.e. decency, morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society.

Expression through speech is one of the basic guarantees provided by civil society. However in modern world Right to freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. It is a right to express and self realization.

**Two big democracies of world i.e. America and India have remarkably protected this right.** As far as India is concerned, this important right is mentioned in **Article 19(1) (a)**, which falls in fundamental right category. Indian courts have always placed a broad interpretation on the value and content of **Article 19(1) (a)**, making it subjective only to the restrictions permissible under **Article 19(2)**.

The words 'in the interest of public order', as used in the **Article 19** include not only utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. There should be reasonable and proper nexus or relationship between the restriction and achievement of public order.

Freedom of speech and expression is the bulwark of democratic government. This freedom is essential for the proper functioning of democratic process and is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving protection to all other liberties. It has been truly said that it is the mother of all other liberties. That liberty include the right to acquire information and disseminate the same. It includes the right to communicate it through available media without interference to as large a population of the country, as well as abroad, as is possible to reach. Right to know is the basis right of the citizens of a free country and **Art. 19(1)(a)** protects that right. Right to receive information springs from **Art 19(1)(a)**.

## **The Censor Scissor**

There is no provision in the Indian Constitution permitting or proscribing censorship. The sting of censorship lies in prior restraint which affects the heart and soul of the freedom of press. Expression is snuffed out before its birth. Suppression by a stroke of the pen is more likely to be applied by the censoring authorities than by suppression through a criminal process, and thus there is far less scope for public appraisal and discussion of the matter. This is the real vice of the prior censor. In *Express Newspapers v Union of India*<sup>24</sup> the Supreme Court held that a law which imposes pre-censorship or curtails the circulation or prevents newspapers from being started or require the Government to seek Government aid in order to survive was violative of Art 19(1)(a). The Bombay High Court in its landmark judgment in *Binod Rao v Masani*<sup>25</sup> declared that “Merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication” The Guwahati High court in a path breaking judgment laid down that the representation to any Government was not adequate because censorship was often invoked against its own policies and in such a situation an appeal to the government would be nothing short of an appeal from Caesar to Caesar.

## **REASONABLE RESTRICTIONS ON MEDIA**

It is strange, unique and paradoxical that what is provided as a right by our Constitution on the one hand is taken away by some sub-clause in the same situation. Mr. M. C. Chagla has given a general reply to this paradox, which may be put in the following ways: It has been said that our Constitution gives fundamental rights with one hand, and with other hand takes them away. It is also said that, our Constitution circumscribes the given rights by numerable exceptions and provisions. This is a very wrong criticism. Article 19 of our Constitution deals with the right to freedom and it enumerates certain rights regarding individual freedom of speech and expression etc. These provisions are important and vital, which lie at the very root of liberty. It is true that in the sub-clauses that follow, certain limitations are placed upon these freedoms with regard to freedom of speech and expression. In addition, there are many laws that relate 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. It can be seen that these limitations are related to the objective standards laid down by the Constitution. Similarly, the legislature is given the right to impose reasonable restrictions in the interest of public order on the right to

assemble peaceably and without arms. Whether a restriction is reasonable or not is not left to the determination of the legislature, and of the executive. But it is again an objective consideration, which has got to be determined by the Court of law. Only such a restriction would be reasonable as the Court thinks as reasonable. It is clear therefore that the Constitution has not left the laws to the mercy of the party in power or to the whims of the executive. No one is allowed to limit, control or impair our fundamental rights by changing, amending, or introducing new laws that easily. Any limitation of a fundamental right has to be before a Court of law. Legislatures, indeed, have been empowered to impose reasonable restrictions on freedom of speech and expressions on the following grounds: o Integrity of India, o Security of the State, o Friendly Relations with neighboring Countries, o Public order, o Decency or morality, o Contempt of Court and Contempt of Legislature, o Defamation, and o Incitement to an offence.

By and large the necessity for imposing "reasonable restrictions" by the legislature has not been seriously challenged by the newspaper world (and media world) where matters of state security or the integrity of India are concerned. And where the superior judiciary is concerned, Justice Mudholkar has remarked, there has been a long tradition of non-interference with the freedom of the press (and other mass media) except where newspaper was found guilty of contempt of court. Thus, it is evident that the freedom conferred by Article 19 (1) (a) in fairly general terms. It does not for example, even refer specifically to the freedom of the Press (or mass media) as is envisaged in the corresponding provision in the American Constitution. Judicial decisions have, however, affirmed that Article 19 (1) is sufficiently wide to include the freedom of the Press and implicitly, the freedom of other mass media. In addition to the provisions mentioned above, there are several important laws, which a media person must know.



## SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	.....of the Constitution of India, the State may make a law imposing “reasonable restrictions” on the exercise of the right to freedom of speech and expression “in the interest of” the public	Article 19(2)	Article 19(3)	Article 19(4)	Article 19(5)
2	The law of sedition under section 124A of the I.P.C. was also subjected to dispute	Kedarnath vs. State of Bihar	Ramesh Thapar vs. State of Madras	Hamdard Dawakhana vs. Union of India	Virender vs. State of Punjab
3	Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press and the same is included in the freedom of expression, which is conferred on all citizens	Virender vs. State of Punjab	Kedarnath vs. State of Bihar	Ramesh Thapar vs. State of Madras	Hamdard Dawakhana vs. Union of India
4	freedom of the press under the Indian Constitution is not higher than the freedom of an ordinary citizen.	Sakal Papers vs. Union of India	Virender vs. State of Punjab	Hamdard Dawakhana vs. Union of India	Kedarnath vs. State of Bihar
5	It has been held by the Supreme Court that right of speech and expression includes right to acquire and import ideas and information about the matters of common interests	Hamdard Dawakhan a vs. Union of India	Ramesh Thapar vs. State of Madras	Kedarnath vs. State of Bihar	Virender vs. State of Punjab

**Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)**