

**MEDIA LAW: CENSORSHIP AND RELIGIOUS EXPRESSIONS****Amarnath Gupta<sup>1</sup>, Mamta Rani<sup>2</sup>, Pratishtha Mishra<sup>3</sup>, Pankaj Choudhury<sup>4</sup>**<sup>1</sup>Assistant Professor, Assistant Professor, Faculty of Legal Studies Usha Martin University,  
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**INTRODUCTION**

In the recent years the debate over the freedom of speech have become more contentious where two sides of arguments were advanced of which first was regarding restrictions on the free speech and second was for freedom of speech that there should not be any curtailment on free speech. The problem becomes grave when the free speech is used for religious matters. In past there have been many instances where there have been voracious criticisms on the views expressed by people through different media. In many instances there has happened that that restrictions have been put on the free speech and the religious sentiments of the people have won the game. There have been legal and extra legal restrictions on the free speech. The legal restrictions are those which have been put by the government or court in compliance with the constitutional provision, that is, article 19(2) of the Constitution and the extra legal sanctions are those where the government succumbs to the pressure or violence by the people and put restrictions on the free speech. There is not only constitutional censorship but also through different statutes the government prohibits expression of any form in public.

**Restriction on Criminal Ground**

Restrictions in Indian Penal Code on expression in the media on the ground of religion, section 153 penalizes the promoting of enmity between different groups on grounds of religion, race, place of birth, residence, language etc. section 295A penalizes deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religious or religious beliefs. Section 298 criminalizes any expression made with deliberate intent to hurt the religious feeling of any person. The intent of the parliament enacting these provisions is to prevent any hurt to the religious sentiments of one group by another, secure the public order in the society, to put restrictions on free speech and to uphold the secular fabric of nation.

**Constitutional Framework**

Article 25 of the Constitution talks of propagation of religion, in which media plays an important role and this makes their relationship indispensable but putting excessive restrictions on or attacking these media houses creates a catch over their relationship. Freedom of thought and expression and the freedom of the press are not only valuable freedoms in themselves but are basic

to a democratic form of government which proceeds on the theory that problems of the government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation.<sup>1</sup> Though it is important to note that restriction of free speech on religious grounds is not been mentioned under article 19(2) but it is on the ground of public order, under article 19(2) government put restrictions.

### Recent Incidents

In the couple of past there have been instances where on the alleged basis of hurting of religious sentiments of people restrictions on free speech have been put, like the recent example of Padmavat movie where many states due to the public violence and uproar banned the movie from screening, this was a extra legal sanction on expression.

Many years earlier, MF Hussain faced the same criticism over this painting where he depicted the Indian Goddess as nude and also wrote some blasphemous lyric. After it there was a great uproar eight criminal complaints was filed against him but the Delhi High Court quashed the complaints as prior sanction to prosecute was lacking but even the court in its judgment held that there was malicious intent that could attract liability under the section under which he was charged. Though it did not stop here due to public violence and threat to his life he left India and did not came back and died in London few years back.

The author of the book Lajja, Taslima Nasrin faced the same fortune where his book was banned and was abandoned from Bangladesh. Later when she came to India death threats were given to her. Now present she is living in India but in an undisclosed location. There are just a few of examples the list goes even larger there have always been people who would protest on the ground that the expression affected their religious sentiments.

The same thing happened in the year 1988 when the ban was placed on the book of Salman Rushdie book 'Satanic Verses' It was also banned in Bangladesh, Sudan and South Africa shortly thereafter. In the year 1989, a fatwa was issued against Rushdie by Ayatollah Khomeini, awarding him (as also all those associated with the publication of the book) a sentence of death. Following some reports, Rushdie issued an apology, expressing regret over the fact that the publication had caused great distress to the followers of Islam. The apology was not, however accepted by Khomeini, who reinforced his demand for the execution of Rushdie. He had to run for some months after the fatwa, moving as many as 56 times in the first few months.<sup>2</sup> The fatwa calling for his death was renewed after his recent knighting by the Queen.

### **TEST OF THE FREE SPEECH**

Though it is not that Supreme Court have always succumbed to the demands of these groups and curtailed free speech, the court has devised test to determine that whether the speech was so grave so as to incite the offence. There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular

<sup>1</sup> Express Newspaper Pvt Ltd & Ors v Union of India, AIR 1986 SC 872.

<sup>2</sup> Rajeev Dhavan, Ban, burn, destroy, The Hindu, January 23, 2004.

is at the heart of article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States etc.<sup>3</sup> Right is no absolute and apart from Article 19(2), restrictions cannot be placed on any other ground.<sup>4</sup> In present it is not that the word 'citizen' includes only the humans but after the decision of the court in the case of *Bennett Coleman v Union of India*<sup>5</sup>, expanded the meaning of the word citizen and included the shareholder of corporations.

Article 19(2) protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of" public order, which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalizing such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order.

In the next place Section 295A does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalizes only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalizes such activities, is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution...<sup>6</sup>

#### **APEX COURT AND FREE SPEECH RESTRICTIONS**

In the case of *Virendra v. State of Punjab*<sup>7</sup>, where in the State of Punjab some agitation arose, in relation to the division of the State among linguistic and communal lines. It was supported by some parties but was opposed by the people who were Hindi speaking. And later in retaliation to it other movement was started as "Save Hindi Movement". Seeing the gravity of the situation the government enacted a law which imposed restrictions on newspapers, where the newspapers were

<sup>3</sup> *Shreya Singhal v Union of India*, (2015) 5 SCC 1.

<sup>4</sup> *O.K Ghosh v. E Joseph*, AIR 1963 SC 812.

<sup>5</sup> AIR 1973 SC 106.

<sup>6</sup> *Ramji Lal Modi v.State of U.P.*, AIR 1957 SC 896.

<sup>7</sup> *Virendra v. State of Punjab*, AIR 1957 SC 896.

prohibited to publish certain information or bring such newspaper in the territory of Punjab which could disturb the harmony of the State. Petitioners' filed a case in the court on the ground of the law being unconstitutional and violative of Articles 19(1)(a) and 19(1)(g), and not saved by Article 19(2) or 19(6).

The Court dismissed the contentions of the petitioners and held the restrictions to be reasonable. And the contention that there is total prohibition of article 19(1)(a) and article 19(1)(g) is also untenable as the restrictions have been put only upon the exercise of those rights with reference to the publication of only articles relating to a particular topic and with reference to the circulation of the papers only in a particular territory and, therefore, it is not right to say that these sections have imposed a total prohibition upon the exercise of those fundamental rights.<sup>8</sup>

Also the court citing the case of *State of Madras v. V.G. Row*,<sup>9</sup> and *Ramji Lal Modi v. State of U.P.*,<sup>10</sup> with regard to the test of reasonable restrictions held that the scope of the expression "in the interests of" used in Article 19(2) was very wide. Finding that such censorship of the media due to communal reasons was indeed reasonable, the Supreme Court went on to remark: It is conceded that serious tension had arisen between the Hindus and the Akalis over the question of the partition of the State on linguistic and communal basis. The people were divided into two warring groups, one supporting the agitation and the other opposing it. The agitation and the counter agitation were being carried on in the Press and from other platforms. It was for preserving the safety of the State and for maintaining public order that the Legislature enacted this impugned Statute.<sup>11</sup>

In the case of *Babu Rao Patel v. State (Delhi Administration)*<sup>12</sup> where two articles were published in a magazine called 'Mother India', titled "A Tale of Two Communalisms" and "Lingering Disgrace of History", due to which the appellant was prosecuted under Section 153A. It was contended that the articles, was a political thesis, and merely a protest against the naming of roads in Delhi in honour of Mughals, based on historical truths. The Court held that the articles went on to make several allegations against the Muslim community and held him guilty and noted that: Whether communalism is the weapon of an aggressive and militant minority as suggested by the accused or the "shield of a nervous and fearful minority", the problem of communalism is not solved by castigating the members of the minority community as intolerant and blood thirsty and a community with a tradition of rape, loot, violence and murder. Whether the Mughals were rapists and murderers or not and whether the Delhi roads should be named after them or not it was wrong to present the Mughals as the ancestors of today's Muslims and to vilify the Muslims as the proud descendants of the "foul" Mughals. The Court was convinced that both the articles do promote

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<sup>8</sup> Id.

<sup>9</sup> *State of Madras v. V.G. Row*, [1952] SCR 597, 607.

<sup>10</sup> *Ramji Lal Modi v. State of U.P.*, AIR 1957 SC 620.

<sup>11</sup> *Virendra*, AIR 1957 SC 896, para12.

<sup>12</sup> *Babu Rao Patel v. State (Delhi Administration)*, AIR 1980 SC 763.

feelings of enmity, hatred and ill-will between the Hindu and Muslim communities on grounds of community and this cannot be done in the guise of political thesis or historical truth.<sup>13</sup>

### RELIGIOUS SENTIMENTS SHOULD BE RESPECTED

In the *Baba Khalil Ahmad v. State*<sup>14</sup>, where there were certain publication books which were forfeited by the State Government under the provisions of the Code of Criminal Procedure, 1950, as it maliciously and deliberately intended to outrage the religious feelings of any class. The Allahabad Court pointed out that since Section 295A had been upheld the impugned provisions could not be challenged either. The Court noted that the main ingredient of Section 295A was:

- an insult to the religion or religious beliefs of a class of persons in India, and that a person having great regard for Muwaiya would be insulted by the statements made in the books.
- The next aspect of the provision to keep in mind was that the statements should have been made with a deliberate and malicious intent to outrage the religion or religious feelings of a group of citizens.

The applicant had written six books in reply to certain pamphlets, which can be clearly understood they were written deliberately, and that could be no excuse to save him from Section 295A. The appellants contended that the things written in the books were to be true but the Court rejected this contention and dismissed the application holding:

“...I decline to decide the question whether Muawiya was a man of bad character as urged by the applicant, or a pious man as urged on behalf of Abdul Malik. In such cases the truth of the language can neither be pleaded nor proved. The present enquiry has to be confined to the question whether there was malicious intention of outraging the religious feelings of a class of citizens of India. Even a true statement may outrage religious feelings. It is, therefore, unnecessary to record a verdict about the true nature of Muawiya's character.

In *Veerabadran Chettiar v. Ramaswami Naicker*,<sup>15</sup> it was held: Section 295, I.P.C. has been intended to respect the religious susceptibilities of persons of different religious persuasions or creeds. Courts have got to be very circumspect in such matters, and to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs irrespective of the consideration whether or not they share those beliefs, or whether they are rational or otherwise, in the opinion of the Court.

### RESTRICTIONS ON EXPRESSION ON INTERNET

Few years back, section 66A of the Indian Technology Act was abolished by the Supreme Court on the ground it the provision was vague and ambiguous due to which many people have been prosecuted under this section not on a rational ground. Internet in the present time has grown widely and many contents are being posted on it but there is still no mechanism to impose

<sup>13</sup> Babu Rao Patel, AIR 1980 SC 763, para 7.

<sup>14</sup> *Baba Khalil Ahmad v. State*, AIR 1960 All 715.

<sup>15</sup> AIR 1958 SC 1032

ensorship on the things posted on internet. The CERT-IND (Indian Computer Emergency Response Team) is the sole authority for blocking websites in the country, and has the power to do so under a notification released by the Ministry of Communications and Technology under the Information Technology Act, 2000. The Ministry notifies CERT-IND of the websites that poses a security threat. As per section 67 of the IT Act, the websites which is presume to contain obscene material may be blocked with penalties. In relation to religion, it may be observed that action may be taken by such a body not merely for the reason that some religious expression hurts the sentiments of any religious group, but only if this translates into a security threat or if it is “obscene” as well. It is also to be kept in mind that the CERT-IND is a responsive body which acts not only on the advice of government but also of others, and they cannot take proactive steps on themselves.<sup>16</sup>

### CONCLUSION

The relationship of media and religion is indispensable but the same relationship has also become problematic. There is hard to draw a line that which forms of religious expression may incite violence or which may not, it is more of a subjective thing. In past many people have come out on the alleged hurting of their religious sentiments when on the objective look of it where wasn't any such expression, which led to the curtailment of the free speech of individuals.

Though it is not that the freedom of speech should be absolute, there should be restrictions on the this freedom which on the objective look has such gravity, but the subjective interpretation which people does of any form of expression and come on the street should not be a reason for putting restrictions on the freedom of speech. It is not doubt that religion always has been a burning issue from many centuries. In every religion, people have taken the role of defending their religion and in the name of ‘we’, that is, for the interest of that whole community they take law in their hands and commit offences, despite the fact that the ‘we’ which they people refer to have condemn such attacks and killings. Though it is easy to say that censorship on the basis of religion is not right but it cannot be saved because most of the time because of the incidents affecting the ‘public order’ such restrictions are put not on the content being blasphemous or obscene or derogatory. The thing which is required is change of the mentality of the people and look things with an open mind and the State should not succumb to the extra legal censorship and must fight it so that the freedom of speech should be saved of an individual.

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<sup>16</sup> Harini Sudershan, Religion and Censorship in the Indian Media: Legal and Extra-legal, 1 MLR 2010.