

## **FREEDOM OF EXPRESSION IS A CITIZEN'S INALIENABLE RIGHT.**

*“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” – John Milton, Areopagitica.*

### *ABSTRACT*

In the highly globalized and fast-paced world we live in, the freedom of expression of a citizen has come to the forefront and is considered an inalienable right. With individuals across the country becoming more aware of the situation around them, freedom of expression induces them to voice their opinions on various matters for a better standard of living. As constructive criticism is necessary for the development of democracy, freedom of expression is quintessential.

To better explain the notion of freedom of expression, the author purports a hypothetical scenario where an individual, an environmentalist, takes to Twitter, with the intention of voicing her dissent against a political party's policies in combatting climate change. Being a citizen of a democratic country, the right to criticize her representative Government is one that is intrinsic and inalienable.

However, in the same illustration, if the said individual sets off disorderly protests through her strongly-worded criticism, the right to freedom of expression can be qualified in order to further and protect public interest. Using this particular scenario as an exhaustive example, it can be concluded that freedom of expression and its qualified application or restriction are both two sides of the same coin and a just balance must be struck between both.

The world has already been experiencing a paradigm shift from an offline environment to that of an online world. Covid-19, the catastrophic pandemic that has taken our lives by storm since the beginning of 2020 has further intensified the social media bubble, we live in. In dire times like these, one must use every weapon available in their arsenal for the purpose of communication. Freedom of expression, the strongest weapon of them all, has been brought to

the limelight and is being wielded at every single opportunity, proving to us that it is an inalienable right. The freedom to opine one's views is the life-line of a democratic country.

However, this right is in no way an unsubscribed, unrestricted, unchanneled and unfettered one. This essay aims to analyze the absoluteness of freedom of expression as an inalienable right and whether the same can be curtailed for the purpose of a better well-being.

### THE RIGHT TO FREEDOM OF EXPRESSION VIS À VIS THE CONSTITUTION.

The right of freedom of speech and expression is the foundation of a democratic government and it has been provided to citizens by virtue of Article 19 of the Constitution of India. Article 19(1)(a) reads as :- "*all citizens shall have the right to freedom of speech and expression*". It refers to the right to express one's opinions and convictions freely, by word of mouth, printing, writing, picture or electronic media.<sup>1</sup> As held in *Romesh Thappar v. State of Madras*<sup>2</sup>, freedom of speech and expression is essentially, the freedom of propagation of ideas which is ensured by the freedom of circulation and the right to answer the criticism levelled against the view propagated by him.<sup>3</sup>

The words 'freedom of expression' is broadly construed and has multiple facets, one such facet being the freedom of Press. Under the Indian Constitution, freedom of Press is not explicitly guaranteed, however, is implicit in the freedom of expression.<sup>4</sup> The right of freedom of expression includes the right to publish and circulate ideas through the available modes of publication. It refers to the freedom from interference from authorities which would have the ability to interfere with the circulation and content of newspapers. Freedom of speech and expression also includes the right to educate, to inform, to entertain and also the right to be educated, informed and entertained.

Additionally, it includes the right to acquire information and disseminate the same through forms of media such as electronic, print and audio-visual. As advertising is considered to be a means of expression and a channel of communication, commercial speech is considered to be

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<sup>1</sup> *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301.

<sup>2</sup> 1950 SCR 594.

<sup>3</sup> *LIC v. Manubhai D. Shah, Prof.*, AIR 1993 SC 171.

<sup>4</sup> *Virendra v. State of Punjab*, 1958 SCR 308.

a part of the freedom of speech and expression.<sup>5</sup> However, not every advertisement is an expression of ideas and the determination of the same is dependent on the nature and object of the advertisement. . Further, through this freedom, citizens have the right and ability to know about public acts done in a public manner by public functionaries.

### ESSENTIALITY OF FREEDOM OF EXPRESSION AND CONCEPT OF INALIENABILITY.

The freedom to express is extremely integral as it is a fundamental, essential human right that paves the way for progress and development in a society. The right of freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties.<sup>6</sup> Freedom of expression has four broad social purposes to serve: (i) it helps an individual to attain self-fulfilment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.<sup>7</sup>

Knowledge of the affairs of governance and invocation of peaceful norms of dissent is a necessary prerequisite for the existence of a stable society formed of informed citizens.<sup>8</sup>

In the landmark judgement of *Maneka Gandhi v. Union of India*<sup>9</sup>, Bhagwati, J., held that ‘democracy is based essentially on free debate and open discussion, for that, is the only corrective of Governmental action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.’

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<sup>5</sup> *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*, (1995) 2 SCC 161.

<sup>6</sup> M. P. Jain, *Indian Constitutional Law*, Lexis Nexis Butterworths Wadhwa, 6th edn., 2012, p. 1078.

<sup>7</sup> *Indian Express Newspapers vs. Union of India & Ors.*, (1985) 1 SCC 641.

<sup>8</sup> Dr. L.M. Singhvi., *Constitution of India*, Modern Law Publications, 2nd Ed., 2007.

<sup>9</sup> 1978 AIR 597.

*“Our liberty depends on the freedom of the press, and that cannot be limited without being lost”- Thomas Jefferson.*

In today’s world, freedom of Press is the heart of political and social intercourse and it has assumed the role of the public educator. Communication channels are conveyors of news and views and make an impact on the mind of the viewer. The press publishes ideas, facts, opinions and ideologies for advancing public interest and serves as a source of information, discussion and advocacy to reach the public. They also have the ability to shape and mould public opinion on vital issues of national importance and allows for meaningful participation in the democratic process. Without the existence of an independent press, the continuous advocacy of one point of view is not conducive to the formation of a healthy public opinion. An independent press makes a stand against authoritarianism, tyranny, reduces maladministration and also provides checks and balances on institutions of law. A free press which is neither subjected to censorship nor directed by the executive<sup>10</sup> is driven by the notion of freedom of expression.

The freedom of Press makes media the fourth pillar of democracy. As the power and reach of the media is tremendous, it bridges the gap between the government and the people as its right to opine freely results in a flow of information through members of a society. Since the foundation of a strong democratic society relies upon its voters, the freedom of Press results in more well-informed citizens. The banning of any matter from publication would be a serious encroachment of this valuable and cherished right.<sup>11</sup> Public opinion is crucial for the purpose of formation of the political will of the people. At the time of elections, freedom of expression is integral as it allows for the democratic electorate to make educated choices which strengthens the notion of democracy. The guaranteed freedom of expression and Press also provides citizens with the liberty to debate and deliberate freely on all matters of public concern which is essential in enlightening the public opinion in a democracy. It can facilitate thought and discussion, advance civilisation, help in creating a world community, promoting comprehension and appreciation of the goals of a free society.<sup>12</sup>

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<sup>10</sup> *M. Hasan v. Government of Andhra Pradesh*, AIR 1998 AP 35.

<sup>11</sup> *Supra* note 4.

<sup>12</sup> *Supra* note 8.

In conclusion, it is indispensable for operation of the democratic system and imperative for self-development and setting up of a homogenous egalitarian society.<sup>13</sup> It is pertinent to quote Justice D.Y. Chandrachud in *F.A. Picture International v. Central Board of Film Certification, Mumbai*<sup>14</sup>; ‘Dissent is the quintessence of democracy. Those who question unquestioned assumptions contribute to the alteration of social norms. Any attempt made by the State to clamp down on the free expression of opinion must hence be frowned upon’.

Inalienability has been defined as that which is unable to be taken away. Certain instances in law read alongside Article 13<sup>15</sup> of the Constitution proves that this is indeed, an inalienable right. Article 19 under the Universal Declaration of Human Rights states that:- ‘*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*’ The rights provided under this Declaration has been affirmed as natural, inalienable rights. This view has been recognised by the Hon’ble Supreme Court in *State of West Bengal v. Subodh Gopal Bose*<sup>16</sup>, wherein the former Chief Justice, Patanjali Sastri had referred to fundamental rights as those which are recognised and guaranteed as natural rights inherent in the status of a citizen of a free country. It was also pointed out by the Supreme Court that the freedom of speech and expression is one which humans acquire on birth and is therefore, a basic human right.<sup>17</sup> Article 19 of the International Convention on Civil and Political Rights, 1966, which had been signed and ratified by India provides that everyone shall have the right to freedom of expression, which includes the right to seek, receive and impart ideas and information of all kind. However, Clause (3) of the same, imposes corresponding duty on the exercise of the right and is hence subject to certain reasonable restrictions.

The Constitution determines limitations on the unconditional nature of basic rights. The liberty of speech and expression guaranteed by virtue of Article 19(1)(a) also brings within its ambit, the corresponding duty and responsibility and also places limits on the exercise of that liberty.<sup>18</sup>

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<sup>13</sup> Basu, D.D., *Shorter Constitution of India*, Wadhwa and Co. Law Publishers, Nagpur, 13th Ed., 2001.

<sup>14</sup> AIR 2005 Bom 145.

<sup>15</sup> *The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.*

<sup>16</sup> 1954 SCR 587.

<sup>17</sup> *Supra* note 3.

<sup>18</sup> *Supra* note 8.

Thus, it is argued that the concept of inalienability becomes cloudy when the Constitution, the supreme and fundamental law of the land itself, provides for restrictions on this right of freedom of expression.<sup>19</sup>

### CURTAILMENT OF FREEDOM OF EXPRESSION.

*“With great power comes great responsibility.”*

Freedom of speech and expression is indeed, the “life blood of democracy” but is subject to certain qualifications. Absolute and uncontrolled liberty free from any form of restraint would lead to disorder. Rights are therefore, subject to reasonable restrictions for the purpose of health, order and peace in a community.<sup>20</sup> The Constitution aims to strike a balance between personal liberty and social control.<sup>21</sup> Hence, the freedom of expression must be exercised with utmost responsibility and must not be abused.

Article 19(2) provides for reasonable restrictions on the exercise of Article 19. Additionally, Articles 358 and 359 provides for suspension of provisions of Article 19 and suspension of enforcement of rights during emergencies. Furthermore, it is important to note that a restriction on this fundamental right can only be imposed by the law and not by any administrative direction or departmental instruction which is not statutorily enforceable.<sup>22</sup>

Any restriction imposed on the freedom of expression is *prima facie* unconstitutional unless it is justified under Article 19(2).<sup>23</sup> There have been various instances in law when such a right has been restricted in accordance with the specified grounds under the limitation clause.<sup>24</sup> The grounds of restriction include sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation and incitement to an offence.

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<sup>19</sup> Indian Constitution, Art. 19 Cl. 2.

<sup>20</sup> *Supra* note 13.

<sup>21</sup> *Collector of Customs, Madras v. Sampathu Chetty*, 1962 (3) SCR 786; *Kochuni K.K. v. State of Madras*, 1960 (3) SCR 887.

<sup>22</sup> *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC.

<sup>23</sup> *Rangarajan S. v. Jagjivan Ram, P.*, (1989) 2 SCC 574.

<sup>24</sup> *N.T Rama Rao vs. Telugu Desam*, 1995 (3) ALT 929.

### *Sovereignty and integrity of India-*

This was added as a ground of restriction by the 16<sup>th</sup> Amendment of the Constitution. It was done with the objective to restrict speech and expression which could be detrimental to national integrity and sovereignty. The Apex Court in *Kedar Nath v. State Of Bihar*<sup>25</sup>, held that sedition would affect the sovereignty of the country and that it is the duty of the government to restrict the same in order to prevent a situation of chaos and anarchy.

### *Security of the State-*

No State can, tolerate utterances, which threaten the overthrow of organized government by unlawful or unconstitutional means.<sup>26</sup> Security of the State is of extreme importance and the government must have the power to impose reasonable restrictions on actions that threaten such security. These actions refer to serious and aggravated forms of public order including crimes of violence intending to overthrow the government,<sup>27</sup> rebellion, waging of war against the State, insurrection. It does not include ordinary and minor breach of law and order such as riot, rash driving, affray and unlawful assembly.

### *Friendly Relations with Foreign States-*

In the highly globalised world we live in, it is the need of the hour to cultivate strong and healthy relationships with foreign nations for national and international interests. Therefore, the object of such restrictions is to prevent malicious propaganda and speech which jeopardizes such relationships. Under Article 367(3), a foreign State means any State other than India.

The President, however, may, subject to any law made by Parliament, by order declare any State not to be a foreign State for such purposes as may be specified in the order. The Constitution (Declaration as to Foreign State) Order, 1950, directs that a Commonwealth country is not to be a foreign State for the purposes of the Constitution.<sup>28</sup> However, in *Jagan*

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<sup>25</sup> AIR 1962 SC 955.

<sup>26</sup> Basu, D.D., *Commentary on the Constitution of India*, Vol. 2, Wadhwa and Co. Law Publishers, New Delhi, 8th Ed., 2007.

<sup>27</sup> *Santokh Singh v. Delhi Administration*, (1973) 1 SCC 659.

<sup>28</sup> M. P. Jain, *Indian Constitutional Law*, Lexis Nexis Butterworths Wadhwa, 6th edn., 2012, p. 1107.

*Nath v. Union of India*<sup>29</sup>, the Supreme Court observed that a country may not be regarded as a foreign State for the purposes of the Constitution, but may be regarded as a foreign power for other purposes and that Commonwealth country is a foreign country under Article 19(2)

#### *Public Order:*

This ground was introduced by the Constitution (First Amendment) Act, 1951 in order to meet the situation arising from the *Romesh Thappar*<sup>30</sup> case's decision that an ordinary breach of public order was not a ground for restriction of speech. 'Public order' is synonymous with public peace, safety and tranquillity.<sup>31</sup> The notion of 'public order' is to be distinguished from that of 'security of the State' and 'law and order'. These concepts refer to three concentric circles wherein 'law and order' represents the largest circle followed by 'public order' and 'security of the State' respectively. Therefore, an activity affecting 'law and order' may not affect 'public order' and an activity prejudicial to 'public order' may not affect 'security of the State'<sup>32</sup>.

As held in *Madhu Limaye v. Sub Divisional Magistrate, Monghyr*<sup>33</sup>, the expression 'public order' is to be narrowly construed and all acts which disturb public tranquillity may not necessarily be restrained in the interest of 'public order'. Furthermore, a restriction made on freedom of speech and expression on this ground must have a proximate relationship to the achievement of public order.<sup>34</sup> The connection contemplated between public order and the restriction must be direct and not remote or far-fetched.

#### *Decency or Morality-*

Expressing one's opinions must not have an adverse impact on the society. Therefore, the objective of this ground is to restrict speech and expression which undermines public morals.<sup>35</sup>

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<sup>29</sup> (1960) 2 SCR 942.

<sup>30</sup> *Supra* note 2.

<sup>31</sup> *Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia*, (1960) 2 SCR 821.

<sup>32</sup> *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740.

<sup>33</sup> AIR 1971 SC 2486 (para 16).

<sup>34</sup> *Supra* note 31.

<sup>35</sup> *Ranjit D. Udeshi v. State of Maharashtra*, (1965) 1 SCR 65.

Decency and morality are dynamic concepts that does not confine to sexual morality alone. Decency indicates that the action must be in conformity with the current standards of behaviour or propriety.<sup>36</sup> The basis of this ground is to control proliferation of indecent or morally degrading material.<sup>37</sup> However, the problem lies in ascertaining the standard of decency and morality.

Section 292 to 294 of the Indian Penal Code prohibits certain instances of obscenity in the interests of decency and morality. The word ‘obscene’ is restricted to something offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas, or being impure, indecent, or lewd.<sup>38</sup> In *Ranjit Udeshi*<sup>39</sup>, one of the earliest cases regarding this subject, the Supreme Court had indicated the concept of obscenity fluctuates and what might have been obscene at one point of time would not be considered as obscene at a later period. This principle was also reiterated in *Chandrakant Kalyandas Kakodkar*<sup>40</sup>, wherein it was observed that the standards of a contemporary society in India are fast-changing.

Initially, India followed the restrictive *Hicklin* test of obscenity but has gradually opted for and adopted a more liberal approach. The ‘contemporary community standard’ approach as laid down in the *Miller* test is now followed to ascertain obscenity. However, this creates a conflict as India has only incorporated the ‘community standard’ prong of the three pronged test, thereby neglecting the remaining two. This isolated application is disadvantageous to a dynamic society and hence, the Courts should consider applying the *Miller* test in its entirety.

It must be acknowledged that the freedom of expression is not a scapegoat for motion pictures to propagate or promote immortal and indecent ideas. The treatment of movies is different from that of other art forms. Censorship is fully permitted in the field of filmography as censoring is done in the interests of society. However, if the regulations put forth are irrational, the abuse of authority can be questioned.

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<sup>36</sup> *Ramesh Yeshwant Praboo (Dr.) v. Prabhakar Kashinath Kunte*, (1996) 1 SCC 130 (paras 28, 29).

<sup>37</sup> M. Hidayatullah, Thoughts on Obscenity, 2 S. ILL. U. L. J. 283, 283 (1977).

<sup>38</sup> *R. v. Beaver* (1905) 9 O.L.R. 418, per Maclaren, J.A., at pages 424, 425.

<sup>39</sup> *Supra* note 35.

<sup>40</sup> (1969) 2 SCC 687 (para 12)

### *Contempt of Court:*

In the exercise of one's right of freedom of speech and expression, one cannot be allowed to interfere with the due course of justice or lower the prestige and authority of the Court.<sup>41</sup> The occurrence of contempt of court is not an unfamiliar one and in India, it is governed by the Contempt of Courts Act, 1971. While reasonable criticism of a judicial act or judgement of the Court is permitted for public good, allegations that cast scurrilous aspersions on, or that which would scandalise and undermine the judiciary cannot be permitted in public interest. Fair criticism of the judicial proceedings outside the pleadings of the Court is a democratic feature so as to enable the Court to look inward into the correctness of the proceedings and the legality of the orders of the Court by the Court itself for introspection. The liberty of free expression is not to be confounded or confused with license to make unfounded allegations against any institution, much less the judiciary.<sup>42</sup> Respecting the judicial dictum is absolutely essential however, freedom of speech and expression cannot and should not be curtailed easily by virtue of the contempt power of the Courts.

### *Defamation-*

Freedom of speech and expression certainly does not include the freedom to defame. It cannot be used to injure another person's reputation and therefore, defamation is a reasonable restriction. A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem.<sup>43</sup> Due to this, laws that penalise defamation, does not constitute infringement of freedom of expression.<sup>44</sup>

### *Incitement to an offence-*

By virtue of this ground, individuals are prohibited from making statements that incite other persons to commit an offence. A State may punish those who abuse the constitutional freedom

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<sup>41</sup> *Supra* note 13.

<sup>42</sup> *D.C. Saxena (Dr.) v. Hon'ble the Chief Justice of India*, (1996) 5 SCC 216.

<sup>43</sup> *Pandey SurindraNath Sinha v. Bageshwari Pd.*, AIR 1961 Pat. 164.

<sup>44</sup> *Gopalan A.K. v. Noordeen*, AIR 1970 SC 1694.

of speech by utterances inimical to the public welfare tending to corrupt public morals, incite to crime, or disturb the public peace.<sup>45</sup> It permits legislation to not only punish and prevent incitement to commit serious offences which would lead to a breach in public order, but also to commit any 'offence'.<sup>46</sup> Hence, it is not permissible to instigate one to do an act which is prohibited and penalised by the law.

Only under these eight grounds can a restriction be imposed on the freedom of expression. Creativity is encouraged and artists have substantive freedom to express their views on society through their work, provided, that its display does not incite an offence, affect public order, defamation, decency and morality. It is integral to ensure that this right is protected zealously so that there is a constant stream of creativity.

It is important to keep in mind that mere disaffection towards the government, cannot be penalised under the Constitution. Criticising the government is not a ground for restricting freedom of expression, unless, it is intended to or has a. pernicious tendency to incite commission of an offence or undermine the security of the State and public order.<sup>47</sup> Therefore, mere unorthodoxy or dissent is not to be condemned. Additionally, telephone tapping would infringe Article 19(1)(a), unless it comes within the grounds of restrictions under Article 19(2).<sup>48</sup> Restrictions can be imposed, if the utterances create feelings of hatred and enmity between different sections of society.

The caveat, however is that such a restriction must be reasonable and any such restriction on the freedom of expression shall stand to the test of reasonableness. Restrictions must not only be for the benefit of the public; they must be reasonable and the reasonableness is decided upon a conspectus of all the relevant facts and circumstances.<sup>49</sup>

The term 'reasonable' cannot be easily defined<sup>50</sup> and there exists no definite mechanism or test that can determine the reasonableness of a restriction. Each case is to be judged separately,

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<sup>45</sup> *Gitlow v. New York*, 69 L ed 1138 (1146).

<sup>46</sup> General Clauses Act, 3(38).

<sup>47</sup> *Abbas K.A. v. Union of India*, (1970) 2 SCC 780.

<sup>48</sup> *Supra* note 1.

<sup>49</sup> *Saghir Ahmed v. State of Uttar Pradesh*, AIR 1954 SC 728.

<sup>50</sup> *Gujarat Water Supply v. Unique Electro (Gujarat) (P)*, (1989) 1 SCC 532.

based on the facts and circumstances and that there is no definite, uniform standard which can be applied universally. Reasonability implies deliberation and intelligent care or the choice of a course which reason dictates.<sup>51</sup> The Court must see whether the social control envisaged by Article 19(1) is effectuated by the restriction imposed. Despite the importance of an individual's right, it must yield to the larger interests of the community.

In order to avoid utter ambiguity, the Indian judiciary has laid down certain guidelines which help in determining the reasonability of a restriction. The restriction must be reasonable from both substantive and procedural aspects of law.<sup>52</sup> In the landmark case of *M.R.F. Ltd. v. Inspector Kerala Govt.*<sup>53</sup>, the Supreme Court emphasised on the fact that restrictions must not be arbitrary or that of an excessive nature which goes beyond the interest of the general public. It was also observed that reasonability of restrictions vary from case to case due to constantly changing conditions, values of human life and social philosophy. The Directive Principles of State Policy is also meant to be kept in mind when determining reasonability.

The judicial approach in such cases must be pragmatic, elastic and dynamic. It is also necessary to examine whether such a restriction is meant to protect social welfare in accordance with the prevailing social values. The judiciary must keep in mind the need of the community and the social, political and economic changes. Despite the principles of law remaining unchanged, its application is to be changed with the changing circumstances of time.<sup>54</sup> A society is constantly evolving and therefore, a narrow, syllogistic approach cannot be put forth towards the understanding of constitutional provisions. There must be a broad interpretation towards reasonability as the Constitution must serve the needs of an ever-changing society.

An exhaustive test to ascertain the reasonableness was provided in *State of Madras v. V.G. Row*<sup>55</sup>. The underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied through the same, the proportionality of the imposition, the prevailing conditions at the time are all factors which play a role in the process of determination. The manner of imposition of the restriction must also be fair and just.

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<sup>51</sup> *Chintaman Rao v. State of M.P.*, 1950 SCR 759.

<sup>52</sup> *Khare N.B. (Dr.) v. State of Delhi*, 1950 SCR 519; *Gurubachan v. State of Bombay*, AIR 1952 SC 221.

<sup>53</sup> (1998) 8 SCC 227.

<sup>54</sup> *Supra* note 8.

<sup>55</sup> 1952 SCR 597 (607).

A restriction cannot be said to be an unreasonable one, merely because of its harsh operation. The reasonableness of a restriction is to be determined in an objective manner, keeping in mind the interests of the general public and not from the standpoint of the persons upon whom the restrictions have been imposed.<sup>56</sup> Furthermore, ‘there must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved.’<sup>57</sup> If such a nexus does indeed exist, there is a strong presumption in favour of constitutionality of the restriction.

Restrictions can also be imposed on the freedom of Press. The importance of the press cannot be minimised, however, a responsible press is expected to exercise restraint and ascertain the genuineness and authenticity of the material to be published before reporting. In a democratic society, the rights of the press have to be in consonance with its duties and responsibilities towards that society. Therefore, this freedom is in no way unlimited or absolute at all times as under certain circumstances, it could lead to anarchy and chaos.<sup>58</sup>

A restriction directly imposed on the right to publish, disseminate information or circulate constitutes a restriction on freedom of Press. Unreasonable restrictions upon this freedom include singling out the press with excessive prohibitive burdens which would restrict circulation and imposing specific taxes upon the press in order to limit circulation of information.<sup>59</sup>

In the words of Blackstone<sup>60</sup>:

*“Every free man has an undoubted right to lay what sentiment he pleased before the public; to forbid this, is to destroy the freedom of the press. But if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity.”*

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<sup>56</sup> *Hanif Quareshi Mohd. V. State of Bihar*, AIR 1958 SC 731.

<sup>57</sup> *B.P. Sharma vs Union Of India And Ors*, (2003) 7 SCC 309; *O. K. Ghosh And Another vs E. X. Joseph*, AIR 1963 SC 812.

<sup>58</sup> *Harijai Singh, Re*, (1996) 6 SCC 466.

<sup>59</sup> *Bennett Coleman & Ors. v. Union of India & Ors.*, (1972) 2 SCC 788.

<sup>60</sup> Blackstone’s Commentaries, Vol. IV, (151, 152), referred in *Surya Prakash Khatri v. Smt. Madhu Trehan*, 2001 Cri LJ 3476 (3481).

## CONCLUSION:

The essential nature of the freedom of expression is evident from the vital role it plays in a democracy. Free speech and expression is inviolate and no individual can be deprived of the same as it is the backbone of our country. Freedom of expression is necessary for the development of the personality of an individual and for the mental health and well-being of society as it promotes and reflects diversity of opinion and view. Freedom of expression is a citizen's inalienable right as it serves as an instrument of social change.

It removes governmental restraints from public discussion and deliberation thereby, producing a more capable citizenry. Citizens must be entitled to participate in the democratic process and their liberty to express paves the way for such participation. Therefore, freedom of expression, widens transparency and accountability, bolsters good governance and eliminates corruption.

However, this right to express is in no way absolute or unqualified; there must be a balancing and weighing of interest. Restrictions and censorship affects our society in multiple ways; it affects the music we listen to, the movies we watch, the books we read and many other aspects of our everyday lives. Even though many might argue that there is no place for curtailment of liberty in a democracy that emphasises freedom of speech and expression, it is an indispensable part of our growing society. In a world where not reading a newspaper makes you uninformed, while reading a newspaper makes you misinformed, the ultimate need of the house is moderation; somewhere between the very two distant extremes of absolute freedom and total restriction. Despite civil rights and personal liberty being at stake; when looking at the bigger picture, it is the society and its citizens that matter. It is crucial to uphold social order within the country as a failure to do so will result in a collapse of the society as a whole.

As only reasonable restrictions can be imposed on the freedom of expression, the limitation must be proportionate and the right can only be curtailed if there exists a pressing social need. It is appropriate to quote the observations of the Apex Court in *S. Rangarajan v. P. Jagjivan Ram*,

*“the expression of thought should be intrinsically dangerous to the public interest. The expression should be inseparably locked up with the action contemplated like the equivalent of a ‘spark in power keg’.”*

Thus, restrictions are justified only on the anvil of necessity and not the quicksand of convenience and expediency.<sup>61</sup> With the advent of technology, the cyber world has evolved into a completely new platform for the medium of expression. In this regard, restrictions, censorship and curtailment are words that frighten many. However, if this is imposed in a thoughtful, measured manner which is in accordance with societal standards, the vulnerable sections of the population can be protected from harmful expression.

A democracy is dynamic only when there exists a free market for circulation of ideas and debate is not only permitted, but also encouraged. Therefore, the responsibility is two-fold; firstly, citizens must ensure that they do not cross boundaries and misuse their liberty to express. Secondly, the Government must make it a priority to safeguard citizens' right to freedom of expression as this inalienable right provides strength to the community.

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<sup>61</sup> (1989) 2 SCR 204.

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