Freedom of Expression and Maintenance of Public Order: Contemporary Issues and State Response

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Abstract

We are living in volatile times, where Freedom of Expression which is one of the fundamental human rights is at stake. The threat to this fundamental right is from state which unwittingly curtails the right while performing its primary function of maintaining public order. The paper, which is a part of the thesis “Freedom of Expression and Maintenance of Public Order: Contemporary Issues and State Response” the author is pursuing from Faculty of Law, Jamia Millia Islamia, briefly throws light on the contemporary issues which are cropping up in context of freedom of expression and maintenance of public order.
Freedom of expression without any censorship is regarded as an integral concept of modern day liberal democracies. The basic idea that remains behind the concept is that human beings are considered to be blessed creatures endowed with a distinct ability to express their feelings. Though some rudimentary mechanism of communication is existent in animals and some primates, no living entity has the ability to express itself the way we humans do. Freedom of speech and expression means the right to express one’s own convictions and opinions freely by gestures or words of mouth, writing, printing, pictures or any other mechanism.

There is no denying the fact that freedom of expression is a fundamental right and is quintessential for preserving human liberty and development and growth of an individual. By all means it is the very essence of democracy and a denial to access to it is a hindrance in the growth of individual as well as of the society. But grant of unlimited or unrestricted freedom is nothing but an open invitation to utter chaos and disturbance in the order of society. Time and again it has been argued that absolute and unrestricted individual rights do not and cannot exist because they lead only to breakdown of moral and social order. Freedom of expression is not an end in itself but the means to the attainment of a society in which law and order prevails.

Article 19 of the Universal Declaration of Human Rights grants absolute freedom of opinion and expression without any interference. Article 19 reads: everyone has the right to freedom of opinion and expression; this includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Article 19 of International Covenant on Civil and Political Rights by virtue of para one and two guarantees the freedom of holding opinions and expression. The only restrictions that could be provided by law as being necessary, as per para three of article 19, are in respect of- “rights and reputation of others,” protection of “national security” or of “public order” or “public health” or “morals”. Similarly, article 19(1) (a) of the Indian Constitution guarantees every citizen a right to freedom of speech and expression subject to reasonable restrictions under article 19(2). Article 19(1) (a) reads- All citizens shall have the right to freedom of speech and expression. The state may thus make a law imposing reasonable restrictions on the right by virtue of 19(2) only in the interest of ‘security of the state,’ ‘friendly relations with foreign states,’ ‘public order,’ ‘decency,’ ‘morality,’ ‘sovereignty and integrity of India,’ or ‘in relation to contempt of court, defamation or
incitement to an offence.’ However, prior to the first constitutional amendment in 1951, “public order” did not find any mention in clause 2. The original clause read as under:

19(2)- Nothing in sub-clause (a) of clause (1) 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, 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.

Thus, originally the grounds for restricting freedom of expression were limited to “libel”, “slander”, “defamation”, “contempt of court”, “decency”, “morality” or “security of state”. Constitution was amended in order to meet the peculiar circumstance that arose from the decision of Supreme Court in RomeshThapar\(^1\) wherein the court held that local breaches of public order were no grounds for restricting the freedom of speech guaranteed by the constitution.

Since the amendment of Article 19 clause 2, the scope and ambit of the term “public order” has been interpreted in a plethora of cases by the honourable court. Public order is considered to be an elemental need in any organised society and no association can flourish in a state of disorder. To quote from Introduction of the Federalist by Clinton Rossiler, “No happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality and none of these great goods without stability and order.”\(^2\)Public order is an expression of wide connotations and includes public safety\(^3\) or interest and signifies that the state of tranquillity prevailing among the members of a political society, as a result of the internal regulations enforced by the government which they have instituted.

It is however to be distinguished from the popular concept of “law and order” and “of security of state”. Absence of public order is an aggravated form of disturbance of public peace which affects the general current of public life or the community at large,\(^4\) and any act which merely affects the security of others may not constitute a breach of public order. For an act to be held prejudicial to public order it must be shown that it is likely to affect the

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\(^1\)RomeshThapar v State of Madras AIR 1950 SC 124.
\(^3\)See Brijbhushan State of Delhi AIR 1950 SC 129; State v Ramanand AIR 1956 Pat 188; Dalbirv State of Punjab AIR 1962 SC 1106.
\(^4\)Ram Manohar v State of Bihar AIR 1966 SC 740.
public at large and is not limited to affecting an individual. By virtue of the penal laws, anticipatory action can be taken by the authorities in case of likelihood of *immediate danger of breach of peace.* Now what could be considered as *likely* to affect the public at large is a question to be decided objectively on basis of the circumstances prevailing at the time the expression was made or to the audience it was targeted at. Public safety ordinarily means security of the public or their freedom from danger, external or internal. From a wider point of view, public safety would also include the securing of public health by prevention of adulteration of foodstuffs and the like but from the point of view of public order, it has a narrower meaning and offences against public safety would include- creating internal disorder, interference with the supply or distribution of essential commodities or services, inducing members of police to withhold their services or to commit breach of discipline, or inducing public servants engaged in services essential to the life of the community to withhold their services.

India is a land of diversity where people belonging to various cultures, language, religion, communities live in harmony with occasional spurts of breach of peace. Slightest of religious/regionalist/linguist passions might spark communal discord and disrupt public order. Penal laws provide for the tackling of situations that might upset public peace and cause disorder. The IPC has provisions relating to sedition, offences against public tranquillity, safety, obscenity, and blasphemy.

Indian history is abound by instances where communal/linguist/regionalist riots have erupted because of hate or incriminating speeches by individuals. However, it is argued at times that having penal laws putting an absolute bar on such speeches that tend to offend some sections of the society, is not a very good option as it unduly restricts the freedom of expression. It is argued that insulting the religion or the religious beliefs of a class of citizens of India may not lead to public disorder in all cases although it may do so in some case. The approach of the courts has been to balance the values underlying freedom of expression with maintenance of public order. The court generally tends to permit the criticism of a religion or religious beliefs provided they do not descend to vile or vituperatively abuse any religion or

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5 Section 144 Cr. P. C, 1973 confers power to the District Magistrate to issue order in urgent cases of nuisance or apprehended danger.
6 Chapter VI, Offences against State.
7 Chapter VIII, Offences against the Public Tranquility.
8 Chapter XIV, Offences affecting the Public Health, Safety, Convenience, Decency and Morals.
10 Chapter XV, Offences relating to Religion.
its founder. One may legitimately criticize the tenets of a particular religion and characterise them as illogical or irrelevant or historically inaccurate but it is not permissible to condemn the founder of a religion or the prophet it venerates as immoral persons. Courts generally tend to infer a “deliberate and malicious intention” to insult the religion. However, ultimately it depends on the approach of the judge hearing the case whether he gives more weight to the freedom of expression or thinks that the expression is imminently likely to disrupt public order and preservation of public peace tops his priority.

The means of expression have expanded exponentially in the past decade. The internet has revolutionized the way people express and connect. Freedom of expression has been interpreted broadly to encompass within its domain right to freedom of thought, keep silence, criticism etc. One important right that stems from freedom of expression is the freedom to dissent from popular opinion. In India, however, we have a culture that thrives on mob mentality. Any deviation from the popular view is considered to be abhorrent. Any expression offending the sensibilities or religious/spiritual beliefs of one group or section of society could trigger a frenzied mob vandalising theaters/art galleries/universities/news channel offices/private property etc.

In January 2012, author Salman Rushdie infamous for his book *Satanic Verses* was invited to attend the Jaipur Literary Festival, which is an annual literary festival organized in Jaipur. However, after five years of his last visit to India in the same fest and after almost two and a half decades of the publication of the objectionable work of fiction which fetched him the *fatwa* of death, Rushdie was forced to cancel his visit for the literary festival apparently because of governmental pressure. Although the state government expressed its oblivion about Rushdie’s plans and it was clarified by Rushdie himself that he cancelled his visit owing to death threats. The organizers tried to get him speak via video conference but permission for the same was denied by the authorities who feared a law and order situation by a section of people who had apparently gathered outside the venue and were ready to create ruckus if Rushdie were to address the gathering via the video conference. The cancellation of Mr. Rushdies visit and non-occurrence of Rushdie’s video conference poses certain questions. Can the citizenry in a democratic country like India be really so bothered about arrival of a man accused of blasphemy in the country so much so as to cause a threat to public

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order? Even if we assume that the state had reliable intelligence report of threat of violence in case Mr. Rushdie turns up, isn’t it the duty of the state maintain public order?

There are various other incidents in the past few years that have ignited the debate on the legitimacy of use of the ground of public order for restricting artists and individuals. Artists and authors are condemned for creating pieces of art which few might find objectionable or offending religious or cultural morality. Cinematographic films are censored, effigies of celebrities/artists are burnt, galleries are vandalised, works are banned and authors are banished from their motherland. The latest disturbing trend is that of arresting individuals for expressing opinions on the social networking sites on the pretext of the provoking flash mobs, disturbing public order as a consequence of the expression. In November 2012, a young Mumbai girl who had posted a comment on her Facebook account questioning the shutdown of the City on the death of a political leader was arrested by the police under section295-A of the IPC for allegedly hurting the sentiments of people along with her friend who had liked her post. A hospital run by her Uncle was vandalized by a mob in protest of her comment on facebook. The girls were arrested under section 66A of the Information Technology Act, 2000. Although the criminal case against the girls was quashed later, the moot question that arises here is that was the state action which was taken primarily for the purpose of pacifying the unreasonable behaviour of the mob justified in the first place. Is the government justified in suppressing expression in the name of maintenance of public order?

With the advent of high speed internet, the ease with which doctored information or hate speech is spread has multiplied a million times. Internet which is capable of mobilizing public opinion, making the otherwise oblivious public aware of the political realities, is now becoming a very dangerous tool in the hands of bigots and hate mongers who find themselves easily armed with the enormous power of social media and use it to spread hatred, arouse ill-will, encourage enmity and disrupt public order. The lack of sophistication of the recipients of such information poses a complicated threat to social order. The basic few questions posed before us while deliberating on freedom of speech and expression in modern day India are many. The basic problem that India faces today is the growing intolerance as a threat to “public order” and its ill effects on individuals’ freedom of speech and expression. We need to stop and ponder- do we need more repressive laws in order to preserve public order or we

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need more free speech to combat bigotry and promote a culture of tolerance? Is putting a leash on artistic freedom and expression the solution to public order situations?

The second issue that needs to be addressed is the role of government in balancing individual freedom of expression and maintaining public order. Does the government succumb to pressure groups too easily and in the process end up restricting the fundamental right of expression of certain individuals? Is the government protecting the lawbreakers by bowing down to their violent outbursts expressing their beliefs? For instance, in the Rushdie case in JLF fiasco, wasn’t it the responsibility of the state to protect the individual from the apprehended fury of the mob. Similarly, how could one justify the arrest of girls for posting an innocuous status on Facebook and consequent overlooking of the subsequent vandalization of hospital of the girls relatives by a mob who found the expression offensive? Who is the victim here? Who needs to be protected by the state? Is it the girl who was wrongfully arrested, her uncle whose hospital was vandalized for no reason except for the fact that he happened to be related to the girl who allegedly hurt some sentiments? Or is it the mob whose sentiments are to be protected at all costs? Also, it is a matter of deliberation if there is actually a threat of public order or the state ends up restricting freedom of expression based on mere speculative apprehensions.

We are living in weird times. On one hand, there is this stress on human rights and individual liberty and on the other hand, there are these restrictions being put on by the state for restricting individual liberty for the sake of appeasing the mob. There cannot be a civilized society without order and no doubt that when it comes to choosing between individual freedom and social order; the latter would be given primacy. But is that rationale justified in the individual scenarios where we have seen the problem is not with the individual but with the mob that tries to seize the system for its ulterior motive? Although, censorship on work can be warranted in some cases but censorship of individuals cannot be justified under any circumstances. It is the duty of the state to protect these individuals from the unjustifiable conduct of the mob and not vice versa.