



# FACULTY OF JURIDICAL SCIENCES

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**NAME OF FACULTY:** Ms. Anjali Dixit

# Lecture-27



## LECTURE 27: Constitutionality of Censorship

### CONSTITUTIONALITY OF CENSORSHIP UNDER ARTICLE 19(1)(A)

**The Supreme** Court for the first time came across the issue of censorship of films under Article 19(1) (a) of the Constitution of India, in *K.A. Abbas v. Union of India*, in this case the Supreme Court upheld the censor of films on the ground that films have to be treated separately from other forms of art and expression because a motion picture is able to stir up emotions more deeply than any other product of art. A film can therefore, be censored on the grounds mentioned in Article 19(2) of the Constitution. The Supreme Court held the view that "censorship of films, their classification according to the age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interest of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression."

Further the Court held that: "Censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition in cinema films. We need not generalise about other forms of speech and expression here for each such fundamental right has a different content and importance. The censorship imposed on the making and exhibition of films is in the interest of society. If the regulations venture into something which goes beyond this legitimate opening the restrictions, they can be questioned on the ground that a legitimate power is being abused. We hold, therefore, that censorship of films including prior restraint is justified under our Constitution."

Constitutionality of censorship was also held in *S. Rangarajan v. P. Jagjivan Ram*. The case came to the Supreme Court in an appeal relating to the revocation of 'U' certificate to a Tamil film. Reversing the judgment of the Madras High Court, the Supreme Court opined that: "Though movie enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movies and the other modes of communication. Movie motivates thought and action and assures a high degree of attention and retention. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It has a unique capacity to disturb and arouse feelings. It has as much potential for evil as it has good. It has an equal potential to instill or cultivate violent or good behaviour. With these qualities and

since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market place just as does the newspapers and magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary.”

### **WHY CENSORSHIP OF FILMS, NOT THE PRESS** After discussing in detail about the

censorship of films, one question automatically comes to our mind, i.e. why censorship of films, not the press? This question was dominating the Indian scenario for quite a long period. To find a clear cut answer we have to take in to consideration several other factors and aspects along with some of the important decisions of the Supreme Court. The freedom of speech and expression guaranteed under our Constitution most probably draws its inspiration from the First Amendment of the American Constitution. The First Amendment which deals with freedom of the press is as follows: “Congress shall make no law respecting an established religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the Press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.”

The American Supreme Court in *Associated Press v. U.S.*, referring to the First Amendment observed that: “it is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which truth will ultimately prevail, rather than to countenance monopolisation of that market whether it be by the Government itself or a private licensee.” If we analyse the American First Amendment it is clear that in the first place it advocates for the freedom of the press, and secondly no restrictions are imposed on the freedom of the press. But on the other hand Article 19 (1) (a) of the Indian Constitution guarantees to all the citizens the right to „freedom of speech and expression“ and this freedom includes the right to express one’s own views and opinions at any issue through any medium he likes. This right also includes the freedom of the press or the freedom of the communication and the right to propagate or publish opinion. But unlike American Constitution, this freedom is not absolute, and is subject to restrictions imposed by Article 19 (2) of the Constitution. Despite the restrictions, in our country the citizens and the press in real practice enjoy this freedom to a large extent because in a democratic set up, such freedoms are necessary and quite helpful for the proper functioning of the democratic process.

It has been rightly remarked by Justice Bhagawati in *Maneka Gandhi v. Union of India* in the following words: “Democracy is based essentially on free debate and open discussion, for that it is the only corrective of Government 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 choice, free and general discussion of public matters is absolutely essential”. It is clear now that the freedom of press certainly enjoys importance in our democratic process as it seeks to advance public opinion and matters of public interest by publishing it which enables them to form a responsible judgment. Our Supreme Court through various judgments also upheld the dignity of the press and freedom it enjoys by nullifying the attempts to put a curb on it. Accordingly imposition of pre-censorship on a newspaper as held in *Brj Bhusan case*, or prohibiting the newspaper from publishing its own views as in *Virendra*, or imposing a ban on the entry of newspapers and its circulation as in *Sakal Papers case*, and in *Romesh Thapper case*, or trying to put restrictions in some way or other in *Express News paper case* and the *Bennett and Coleman case*, were held by the Supreme Court as encroachment in freedom of speech and expression and opposed to Article 19 (1) (a).

### SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	The term 'censorship' comes from the Latin 'censere' meaning to give one's opinion, or to assess.	True	False
2.	In ancient Rome the censors, two Roman magistrates, conducted the census and regulated the manners and morals of the citizens.	True	False
3.	Censorship's may be applied to both written and oral communications. Its span encompasses books, magazines, newspapers, radio, TV, movies, dramas, paintings, plays, speeches, dance, music, art, literature, photographs, mails, emails,	True	False

	websites etc. deemed to be offensive, indecent, obscene and sexually explicit.		
4.	Films are considered as a great medium of communication with the people.	True	False
5.	we have the Cinematograph Act, 1952 to see the films fulfill the norms prescribed by the law	True	False

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