

The role of judiciary for maintaining the reasonable standards of public order and morality

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ABSTRACT

In Constitution of India the State authorities have been allowed to exercise their right for maintaining public order and morality only in emergent situation and in a reasonable manner. For this Art 19 of the constitution guarantees Fundamental Rights to every citizens. Art 19(2) to 6 contain the nature of reasonable restrictions. The court has to keep a vigil on the reason ability of restrictions imposed by the state in exercise of its power to maintain public order and morality. The Criminal Procedure code also contain certain provisions where the Executive magistrate can take preventive action in the event of likely hood of breach of peace under sec,144,145, cr.p.c. In maintaining law and order the state agencies has extraordinary powers and if these powers are exercised unreasonably there is a great danger to freedom and liberties of citizens. The fundamental human rights are of highest value and should be exercised not to adversely effect to general public and social interest. There should be a balance to maintain between fundamental rights and interest of society on one hand and the rights and interests of individual on the other side. Care should be taken for enforcing the public morality but no private morality can be imposed.

Keywords: Role of Judiciary, Standards of Morality and public order

Introduction:-

The Success of democratic government is to be assessed, the extent to which the people are participating in the governance and human Rights of individual citizens are respected and protected. The democratic government means self-rule of people not only in its structure but also in its quality. Even in democratic form of government for maintenance of public order some machinery is required. Every society has its own way of life and standards of morality which keep on changing with the thoughts and views of groups and members in society. The elected representatives of the people are empowered to make arrangements for maintaining public order in accordance with the laws and constitution. In exercise of such powers for maintaining public order, precaution is required to be taken so that the individual rights of citizens are not unreasonably eroded. Some reasonable standard must be fixed for exercise of rights and powers by the authorities who have been empowered by law to maintain public order.

In the constitution of India the state authorities have been allowed to exercise their right for maintaining public order and morality only in emergent situation and in a reasonable manner. Art 19 of the constitution guarantees fundamental human freedoms to every citizens. Art 19(2) to (6) contain the nature of reasonable restrictions on the basis of which alone the fundamental freedoms to a permissible extent can be curtailed or denied under justifying circumstances. If the state with the aim to maintain public order unreasonably encroaches up on the fundamental freedoms of the citizens the constitution provides remedies under Art 32 through S.C and under Art 226 the High court. To approach constitutional court against violation of fundamental Human Rights and unreasonable restrictions placed on such rights is itself a fundamental right of every citizen. The court have to keep a vigil on the reasonability of restriction imposed by the state in exercise of its power to maintain public order and morality. Art 22(4) permits the citizen can be detained to prevent him from committing offence or acts prejudicial to public order but such detention is to be done only reasonable period and on reasonable grounds to be approved by judicial forum of advisory board and can be subjected to scrutiny of constitutional courts.

Criminal procedure code contain provisions where the Executive magistrate can take preventive actions in the event of likelihood of breach of peace under sec 144, 145 cr.p.c. ... The authorities of state can impose curfew, and can detain a person under sec 151 cr.p.c and ask him to execute a bond and security for maintaining peace. In the event of riot or public disorder authorities can order spot punishments. To disperse a violent mob it can direct use of lathi charge and even fire arms. In the name of maintaining public order if the state or police exceed or misuse their powers the remedy through court is the only option left to the aggrieved person. It is therefore necessary that the courts have to be vigilant in zealously guarding the fundamental freedoms of the citizens by insisting on reasonable justification for deprivation of rights of the citizens. The state and the law enforcing agencies and officials have to be trained and their actions controlled so that they use their powers, rights and privileges reasonably and on reasonable grounds.

The provisions of the criminal procedure code are not adequate to protect the fundamental freedoms of the citizens. The Apex court has issued guidelines and directions in the case of D. K. Basu. Vs. State of West Bengal¹ to police authorities indicating the manner in which they should exercise their powers. It has also provided the method of redressal of complaints of the arrested persons. The general public perception regarding police department is that they are a class which suppress and torture not only offenders but also victims, their relatives and witnesses. In order to improve the image and credibility of police different kinds of training has to be imparted to them to educate them on their role and duties as guardians of law and order.

The first and foremost necessity is to change the training of police and the other necessity is to provide the forum of grievance like law courts and Human Rights commission to carry on investigations in complaints of human rights violations by the police. To check abuse and misuse of police powers it is necessary that independent human rights courts with powers to punish guilty police officers should set up without undue delay.

In maintaining the law and public order state agencies through police have extra-ordinary powers. If these powers are exercised unreasonably there is a great danger to freedom and liberties of the citizens. In the case of Joginder Kumar vs. State² of U.P the S.C has laid down reasonable standards which the police should exercise in effecting arrest. On the exercise of powers of the police which must show reasonable grounds to deprive citizens of his liberty the S.C in Kishore Singh Ravinder Dev vs. State³ of Rajasthan strongly deprecated the third degree of method by police. The police are expected to act as guardians of law and not as oppressors. Law and Morality has an intimate connection as law divorced from morality may not receive obedience from the society. If the society treats a particular law to be against the moral norms. Moral and ethical norms of a society continue to undergo with modern thoughts and change in social circumstances. What was considered as immoral more than 50 years ago may not be considered immoral in modern society. The law there fore is required to keep pace with the changing standards of morality as recognized and accepted by the society for whom law is made. Sometimes a conflict is seen between the individuals freedoms and the controls exercised by the state. Indian legal system from the provisions of the constitution and the laws made shows that public morality is recognized as one of the valid ground to judge reasonability of legislation and legal actions taken there under. Our constitution recognizes morality as one basis on which restrictions can be imposed on individual freedom for the interest of the society. The practice of un touchability has been seen as immoral under Art 17 and punishable according to law. Art 25 guarantees the freedom of conscience and religious but subject to public order morality and health. Similar restrictions are imposed on rights guaranteed under article 26 to citizens belonging to a religious denomination or set to manage their own religious affairs as they like. Because of increase of communication under print media issues arise whether certain films and serials produced and shown on television or programs picturized should be allowed to be exhibited without sensor. In modern India many laws and restrictions imposed by the state on the alleged ground of morality and social interest or being questioned by human rights activists calling them as encroachments by the state on individual freedom and basic human rights.

Right to change one's sex is also being claimed as a fundamental right. In this the question of morality is not much involved but the recognition of homosexuality is concerned that the state and law courts have to decide in established moral standards of Indian society, such a right can be recognized and enforced. Since the electronic media has a global coverage it has become a necessary to have a proper controlling infrastructure so that corrupting influence on the venerable section of our society is avoided.

The protagonists of fundamental freedom of speech and expression plead loudly that state cannot be allowed to arrogate powers to impose its concept and standards of morality on individuals. The moral standards of society are not written in one religious book. They are not rigid in a changing society. It is always difficult task to decide what is fair standard of morality which may be imposed as reasonable restriction on the fundamental rights of citizens. Recently the Government of Maharashtra state imposed a complete ban on night dancing cabaret and disco dance in hotels and restaurants in the cities of the state and the government has justified the ban on the night dancing shows against to decency and morality. The concept of morality has not derived from any particular religious book and should not taken the aid. If at all

¹ AIR 1997 SC 610

² 1994 4SC 260.

³ AIR 1981. SC 625.

the aid is to be taken it should from general public opinion in the society and the sections of the society. The rule of proportionality can guide the law enforcing agencies in this regard.

Conclusion:-

In democratic country like India it aims essentially to preserve and promote the dignity and fundamental rights of the individual to achieve social justice, foster the economic and social development of the community. Strengthen the cohesion of society and enhance the national tranquility as well as to create a climate that is favorable for international peace. Since individual freedom has to be guarded jealously, the constitution allows the courts to put the restrictions imposed to a stricter test. Many times it becomes necessary to decide for the law making authorities and courts whether a particular restriction on fundamental rights in the name of public order and morality is reasonable or not. Many of such conflicts between claims of individual freedoms and state control or seen in modern India. Article 19(1) (A) of the constitution guarantees to every citizen freedom of speech and expression and article 19(.2) permits the imposition of reasonable restrictions on such fundamental freedoms on the ground of public order decency or morality. No fundamental freedoms are absolute and it cannot be allowed to exercise unchecked. All basic human freedoms should conform to social moral norms.

In case of R.k.Garg vs Union of India⁴ Justice Bhagawati expressed that morality alone may not be directly relevant for judging the constitutional validity of legislation ,but it may be a relevant ground with other for testing its validity .Reasonable restrictions based on public morality have been upheld by S.C in several cases like Saroj rani vs Sudershan⁵ by upholding the provision of restitution of conjugal rights in Hindu marriage Act and in case of Gian kaur vs State of Punjab⁶ in upholding the penal provisions of attempt to commit suicide as an offence ,and in Coovergi vs Excise commissioner⁷ and in banning Tandav dance with human skull on public streets and in case of Anand Margees⁸ and in case of Air Hostess⁹, termination of their services on first pregnancy .In the Indian legal system the philosophy and principles on the basis of which constitution has been framed has definitely moral basis although it has enough in built flexibility to change itself to changing needs The constitution explicitly uses morality as relevant in Art17 19,25,and 26 recognizing fundamental freedoms.

Fundamental Human Rights are of highest value but should be allowed to be exercised as not to adversely affect to general public and social interest. In1936 the Privy Council described the fundamental right of Freedom of expression as Free speech does not mean Free speech it means speech hedged by all the law against defamation blasphemy sedition and so farth .It means the freedom governed by law .A recognized morality is necessary to society and there should be a balance to be maintained between rights and interests of the society on one hand and the rights and interests of individual on the other side. But care should be taken that public morality can be enforced but no private morality is imposed.

The public order is synonymous with public peace and the test for deciding whether the act affect the law and order is to see whether the act leads to the disturbance of the current life of community .There must be reasonable and proper nexus or relationship between the restriction and the achievement of public order .Public order implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. A law punishing utterances made with deliberate intention to hurt the religious feelings of any class of of persons is valid because it imposes a restriction on the of free speech in the interest of public order.Art 25 of the constitution of india provides the restrictions on the freedom of religion which says that no act can be done against public order ,morality,and health of the public .In the name of religion un touchability or traffic in human beings (ie) Devadasis can not be tolerated Right to propagate ones own religion does not give right to any one to ;forcibly convert any person to ones own religion .Forcible conversion of any person to ones own religion might disturbed the public order and prohibited by law.The freedom of religion under Art 25 is subject to public order morality and health and permits a legislation in the of social welfare and reform A legislation prohibiting forcible conversion of ones own religion in the interest of public order can be passed and is valid.Even if there is any such religious practice it can be used to violate right to others or to disturb their peace. The standard of morality varies

⁴ 1981 4 SC 675.

⁵ 1984 4 SC 90.

⁶ 1996 2 SC 648.

⁷ AIR 1954 SC 220.

⁸ Jogeshwaran and Awadhuta Vs. Commissioner of Police 1983. 4 SC 525.

⁹ Air India vs. Nargesh Mirza AIR 1981 SC 1829.

from time to time and from place to place .and it is the duty of the court to check and verify whether the standards maintained for public order and morality are reasonable or not. .

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