Law Journals
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Journal of Constitutional Law and Jurisprudence

Volume 3, Issue 2
www.stmjournals.com

Constitutional Perspective of Restrictions on Religious Practice

Joby Bhasker*
Assistant Professor, Government Law College, Thrissur, Kerala, India

Abstract

Maintenance of public order is always considered to be the primary duty of the state. Right to religious practice is a very sensitive issue. Likelihood of clash between believers of one religion and another while exercising their religious practice which may lead to violation of public order of the state is very high. In order to maintain public order among the people of the society while they exercise religious freedom, lawmakers of our country have taken keen steps. Various legal provisions for the management of public order and tranquillity have been comprehensively formulated. The judiciary has asserted that the state authorities have been given police powers to solve like nature of issue which runs parallel to the guarantee given by the Constitution to an individual.

Keywords: *Public order, Reasonable restriction, Religion, Religious freedom, Tranquility*

Author for Correspondence E-mail: jobyviswanath@gmail.com

INTRODUCTION

Right to religious freedom guaranteed by the Indian Constitution is subject to some limitations. In addition to other fundamental rights, this freedom is subjugated to public order and morality [1]. Maintenance of public order is always considered to be the primary duty of the state. Right to religious practice is a very sensitive issue. Likelihood of clash between believers of one religion and another while exercising their religious practice which may lead to violation of public order of the state is very high.

In order to maintain public order among the people of the society while they exercise religious freedom, lawmakers of our country have taken keen steps. Various legal provisions for the management of public order and tranquillity have been comprehensively formulated. Chapter X of the Criminal Procedure Code, 1973 prescribes legal rules for maintenance of public order and tranquillity. Chapter XV of the Indian Penal Code has incorporated some offence relating to religious violations. A detailed analysis of the application of the relevant provisions is possible only after understanding what is meant by public order.

Concept of Public Order

Whenever there is breakdown of public order it ought to have threatened the peaceful existence of society. Even though public order is not considered to be in the same degree as that of national security, maintenance of public order is very important since it has posed serious challenges due to cultural, historical and social elements.

In order to understand the concept of public order, it has to be compared with 'ordinary maintenance of law and order' and 'security of state'. Maintenance of public order is much narrower than maintenance of ordinary law and order whereas it is much wider than 'security of state'. Public order can be viewed as a "measure of peace and observance of basic value patterns of a culture upon which the fruitful pursuit of legitimate interests in the given society depends" [2].

Second Administrative Reforms Commission explains the concept as "Public order implies the absence of disturbance, riot, result,

unruliness and lawlessness. Irrespective of the nature of a polity-democratic or autocratic, federal or unitary-maintenance of public order is universally recognized as the prime function of the state. Anarchy would result if the state failed to discharge this duty. Such persistent anarchy lead to decay and destruction and the eventual disintegration of the State" [3].

Public order is virtually synonymous with public peace, safety and tranquillity [4]. It covers a small riot, an affray, breaches of peace, or acts disturbing public tranquillity [5]. But at the same time public order and public tranquillity may not always be synonymous. For example, a man having a pig farm at his premise may disturb public tranquillity because of his stinking smell, but not public order.

The power of Provincial Legislature to make laws with respect to preventive detention for reasons connected with the maintenance of public order was looked into by the Court in *Rex* v. *Basudev*. In this case respondent was detained on the ground that he was habitually indulged in black marketing as per section 3 (1) (i) of the United Provinces Prevention of Black-marketing (Temporary Powers) Act, 1947.The authority of a Provincial Legislature to make laws with respect to preventive detention is derived from s. 100 of the Government of India Act, 1935, read with entry No.1 of List II in Schedule VII of that Act, which relates, among other things, to "preventive detention for reasons connected with the maintenance of public order." The question is whether the impugned provision falls within the ambit of that legislative power, i.e., whether preventive detention for black-marketing was a reason connected with the maintenance of public order. The Court observed that this requirement is an important safeguard against the improper exercise of the power of preventive detention [6].

In the Preamble of the Act reference was made to the maintenance of public order. The Court observed that black-marketing in essential commodities may at times lead to a disturbance of public order so as the case of rash driving of an automobile or the sale of adulterated foodstuffs. So Patanjali Sastri, J., opined that activities which are too remote in the chain of relation to the maintenance of public order will not fall under the purview of preventive detention as prescribed in Entry 1 of List II in Schedule VII of the Government of India Act, 1935. The Court held that: "Preventive detention is a serious invasion of personal liberty, and the power to make laws with respect to it is, in the case of Provincial Legislatures, strictly limited by the condition that such detention must be for reasons connected 'with the maintenance of public order. The connection contemplated must, in our view, be real and proximate, not far-fetched or problematical."

Immediately after Constitution came into being, the potential of power of Legislature to restrict freedom of speech on the ground of public order was discussed by Supreme Court in *Romesh Thapper* v. *State of Madras* [7]. In this case, a Government Order issued under section 9 (1-A) of the Madras Maintenance of Public order Act, 1949 banning the entry and circulation of the journal in the State for the purpose of securing the public safety and maintenance of public order. This Order was challenged by the petitioner on the ground that it contravenes the fundamental right of the petitioner to freedom of speech and expression conferred on him by article 19(1)(a) of the Constitution.

The Supreme Court observed "there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. It is therefore perfectly clear that the order of the Government of Madras would be a violation of the petitioner's fundamental right under article 19(1)(a), unless section 9(1-A) of the impugned Act under which it was made is saved by the reservations mentioned in clause (2) of article 19 which saves the operation of any "existing law in so far as it relates to any matter which undermines the security of, or tends to overthrow, the State." So, the question arises as to whether Section 9 (1-A) of the impugned Act is a "law relating to any matter which undermines the security of or tends to overthrow the State."

The Court observed that: "The impugned Act was passed by the Provincial Legislature in exercise of the power conferred upon it by section 100 of the Government of India Act, 1935, read with Entry 1 of List II of the Seventh Schedule to that Act, which comprises among other matters, "public order." Now "public orders" is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of the internal regulations enforced by the government which they have established.

Although section 9(1-A) refers to "securing the public safety" and "the maintenance of public order" as distinct purposes, it must be taken that "public safety" is used as a part of the wider concept of public order, for, if public safety were intended to signify any matter distinct from and outside the content of the expression "public order," it would not have been competent for the Madras Legislature to enact the provision so far as it relates to public safety." Court further pointed out: ""Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety."

The Supreme Court held that: "Unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that section 9(1-A) which authorizes imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional." By the Constitution (First) Amendment Act, 1950, "in the interest of public order" was added to Article 19 (2) to overcome the impact of *Romesh Thapper*'s decision.

Fazal Ali, J. (dissenting) in *Brij Bhushan* v. *State of Delhi*, [8] observed that: "… we find that while 'public order' is wide enough to cover a small riot or an affray and other cases where peace is disturbed by, or affects, a small group or persons, public unsafety (or insecurity of the State) will usually be connected with serious internal disorders and such disturbances of public tranquillity as jeopardizes the security of the State". In *Ramjilal Modi* v. *State of Uttar Pradesh* [9], it was pointed out that "the language employed by the Constitution, that is to say, 'in the interest of' was wider than the expression 'for the maintenance of' and the former expression made the ambit of the protection very wide." It was observed that 'a law may not have been designed to directly maintain public order and yet it may have been enacted in the interest of public order'.

Subbarao, J. observed in *Superintendent, Central Prison, Fatehgarh* v. *Ram Manohar Lohia, [10]* that 'public order' was the same as 'public peace and safety' and went on to observe: "the expression 'public order' was inserted in Article 19(2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of permissible restrictions under Clause (2) of Article 19." [11] Subbarao, J. however, distinguished the American and English precedents observing: "But in India under Article 19(2) this wide concept of 'Public order' is split up under different heads.

It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head 'public order' in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other.

'Public order' is therefore something which is demarcated from the others. In that limited

sense, particularly in view of the history of the amendment, it can be postulated that 'public order' is synonymous with public peace, safety and tranquillity" [12]. Subbarao, J., summarized his analysis by stating that :"Public order" is synonymous with public safety and tranquillity : it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State" [13].

Restriction on fundamental freedom to form association on the ground of public order was challenged in *O.K. Ghosh* v. *E. X. Joseph*. [14] The respondent E.X. Joseph was the Secretary of the Civil Accounts Association which consists of Non-Gazetted staff of the Accountant-General's Office. In May, 1959, the Government withdrew recognition of the said Association. In spite of the withdrawal of the recognition of the said Association, the respondent continued to be its Secretary General. He was served with a charge-sheet for having deliberately committing breach of Rule 4(b) [15] of the Central Civil Services (Conduct) Rules, 1955 (hereinafter called the Rules).

Appellant, Accountant-General, Maharashtra, who held the enquiry, found the respondent guilty of the charges. The main ground on which the respondent challenged the validity of the departmental proceedings initiated against him was that Rules 4(A) and 4(B) were void in so far as they contravened the fundamental rights guaranteed to the respondent under Art. 19(1) (a), (b), (c) and (g).The learned Solicitor General contends that in deciding the question about the validity of the Rule, we will have to take into account the provision of clause (4) in Art. 19. The main issue in this case was whether the reasonable restriction imposed by the Rule is in the interests of public order.

Gajendragadkar J., held that: "Discipline among Government employees and their efficiency may, in a sense, be said to be related to public order. But in considering the scope of clause (4), it has to be borne in mind that the rule must be in the interests of public order and must amount to a reasonable restriction. The words "public order" occurs even in clause (2), which refers, *inter alia*, to security of the State and public order. There can be no doubt that the said words must have the same meaning in both clauses (2) and (4)." "A restriction can be said to be in the interests of public order only if the connection between the restriction and the public order is proximate and direct." The court also added that another requirement of Clause (4) is that the restriction must be reasonable. Court observed that: "It would be difficult to hold that a restriction which does not directly relate to public order can be said to be reasonable on the ground that its connection with public order is remote or far-fetched."

"If the Association obtains the recognition and continues to enjoy it, Government servants can become members of the said Association; if the Association does not secure recognition from the Government or recognition granted to it is withdrawn, Government servants must cease to be the members of the said Association. That is the plain effect of the impugned rule."

The Court held that the restriction cannot be said to be in the interest of public order and it cannot be said to be reasonable restriction. The Court observed: "it is quite possible that recognition may be refused or withdrawn on grounds which are wholly unconnected with public order and it is in such a set-up that the right to form Associations guaranteed by Art. 19(1)(c) is-made subject to the rigorous restriction that the Association in question must secure and continue to enjoy recognition from the Government. We are therefore, satisfied that the restriction thus imposed would make the guaranteed right under Art. 19(1)(c) ineffective and even illusory."

The constitutional validity of Section 144 of Cr. P. C was challenged in *Babulal Parate* v. *State of Maharashtra and Others*.[16] Petitioners contended that the rights guaranteed by cls. (2) and (3) of Art. 19 of the Constitution can be placed in the interest of "public order" and not in the interest of the "general public" and that Section 144 enables

a magistrate to pass an order in the interest of the general public the restrictions it authorises are beyond those permissible under cls. (2) and (3) of Art. 19. They also contended that sub-section (1) of section 144 does not require the magistrate to make an enquiry as to the circumstances which necessitate the making of an order there under.

These two contentions were negated by the Court by stating that in Section 144 nowhere uses the expression "general public". The Court also observed that: "It is true that there is no express mention anywhere in Section 144 that the order of the magistrate should be preceded by an enquiry. But we must construe the section as a whole. The latter part of sub-section (1) of s. 144 specifically mentions that the order of the magistrate should set out the material facts of the case. It would not be possible for the magistrate to set out the facts unless he makes an enquiry or unless he is satisfied about the facts from personal knowledge or on a report made to him which he prima facie accepts as correct.

Clearly, therefore, the section does not confer an arbitrary power on the magistrate in the matter of making an order." Finally, the Court rejecting the contentions raised by the petitioner and upholding the validity of Section 144, held that: "anticipatory action of the kind permissible under s. 144 is not impermissible under cls. (2) and (3) of Art. 19. Both in cl. (2) (as amended in 1951) and in cl. (3) power is given to the legislature to make laws placing reasonable restrictions on the exercise of the rights conferred by these clauses in the interest, among other things, of public order.

Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order." Further added that: "But it is difficult to say that an anticipatory action taken by such an authority in an emergency where danger to public order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order. In such circumstances that could be the only mode of discharging the duty."

In *Dr. Ram Manohar Lohia* v. *State of Bihar and Ors*, [17] Hidayatullah J., said that any contravention of law always affected order, but before it could be said to affect public order, it must affect the community at large. He considered three concepts, law and order, public order and the security of the State, and observed that to appreciate the scope and extent of each one of them, one should imagine the concentric circles. It was pointed out that: "Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the security of the State".

In the subsequent case of *Arun Ghosh* v. *State of West Bengal*, [18] the Court pointed out that: "Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another.

People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An Act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality, it may be very different" [19].

In *Madhu Limaye and Ors.* v. *Sub-Divisional Magistrate, Monghyr and Ors*, [20] the major issue that was arose before the Supreme Court was that whether the provisions of Section 144 and Chapter VIII of the Code can be said to be in the interests of public order in so far as the rights of freedom of speech and expression, rights of assembly and formation of associations and unions are concerned and in the interests of the general public in so far as they curtail the freedom of movement throughout the territory of India.

The Court observed that:"…the expression 'in the interest of public order' in the Constitution is capable of taking within itself not only those acts which disturb the security of the State but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give to the expression a narrow meaning because, the expression 'in the interest of public order' is very wide" [21]. The Court pointed out that: "Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented" [22].

By upholding those provisions, the Supreme Court held that: "If prevention of crimes, and breaches of peace and disturbance of public tranquillity are directed to the maintenance of the even tempo of community life there can be no doubt that they are in the interest of public order….'public order' is an elastic expression which takes within it various meanings according to the context of the law and the existence of special circumstances. This power was used in England for over400 years and is not something which is needed only for administration of colonial empires. Its need in our society today is as great as it was before the British left. We find nothing contrary to Article 19(1) (a) (b) (c) and (d) because the limits of the restrictions are well within Clauses (2), (3), (4) and (5)." [23] Public order does not include such acts which only disturbs the serenity of others [24].

In *Kanu Biswas* V. *State of West Bengal*, [25] a writ of habeas corpus was filed by Kanu Biswas, who has been ordered by the District Magistrate to be detained under Section 3 of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order."

The Court observed that: "The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? The acts in question in the very nature of things would adversely affect the even tempo of life of the community and cause a general disturbance of public tranquillity."

In *Rama Muthuramalingam*v. *The Deputy Superintendent of Police*, [26] the petitioner wanted to conduct a public meeting to propagate the principle of his non-political party whose aim is the abolition of caste system. His application was rejected by the Inspector General on the ground that it could affect the law and order in the locality, as there are direct clashes between the members of the appellant organisation and other organisations.

When this order was challenged the Madras High Court observed that maintenance of law and order is ordinarily an executive function and it is ordinarily not proper for the judiciary to interfere in this matter. The administrative authorities have expertise in law and order problems through their long experience and training, and the Courts should not ordinarily interfere in such type of matters. The judiciary must therefore exercise self- restraint and not try to interfere with the functions of the executive or the legislature. By exercising self-restraint, it only enhances its prestige.

Religious Practice: Restriction by Public Order

A concrete definition of the expression 'public order' may not be possible; but the judicial process in this regard continuously has analysed which all things would affect public order or what all circumstances would not affect public order. Generally, public order in the present context would also include the security of the State, and a law of conscription cannot be resisted on grounds of religious belief, [27] so also compulsory military training [28].

The right of the freedom of religion assured by Articles 25 and 26 is expressly made subject to public order, morality and health. Therefore, it cannot be predicted that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interest of public order. Those two Articles in terms contemplate that restrictions may be imposed on the right guaranteed by them in the interests of public order. A law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression can claim protection of Article 19(2).

State government is entitled to pass legislation to prevent forcible conversion as this amount to disturbance of public order and raises communal passions. It is likely to affect the community at large. Entry I of List II of the Seventh schedule empowers the state to pass such legislation as they are meant to avoid disturbance to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community. An order directing the shifting of graves to prevent recurring disputes between two sects was upheld on the ground of public order [29].

Earlier, the Supreme Court had observed that no rights in an organized society can be absolute. Enjoyment of one's right must be consistent with the enjoyment of rights also by others. Where a free play of social forces is not possible to bring about a voluntary harmony the State has to step in to set right the imbalance between two competing interests [30].

To publish opinion denying the truth of established church or even of Christianity itself was no longer held to amount to the offence of blasphemous libel so long as such opinions were expressed in temperate language and not in terms of offence, insult or ridicule [31].

On the other hand, no action can be taken to ban the Koran under Section 153A or 295A of the IPC, on the ground of containing passages insulting other religions, because it is a religious book, so that to condemn it would be violation of Article 25 [32]. Similar view has been taken regarding the Bible [33]. Section 153A punishes a person (inter alia) who makes or publishes any imputation that any class or persons cannot by reason of being the member of any religious group or community, bear true allegiance to the Constitution or uphold the sovereignty or integrity of India. Activities punishable under Sections 153A or 153B are also unlawful activities under the Unlawful Activities (Prevention) Act, 1967, for banning an association as 'unlawful' [34].

Section 295A of the IPC deal with the offences relating to religion. These acts cannot be committed by a person even though they may be committed by a person even though they may be sanctioned by the tenets of his own religion, e.g., injuring or defiling a place of worship, with intent to insult the religion of any class, disturbing a religious assembly, trespassing on burial places, etc. uttering words or making representations with deliberate intent to wound religious feelings of another person or class.

A calculated tendency of an aggravated form of insult is clearly to disrupt the public order and the section which penalises such activities are protected under Article 19(2), as a law being reasonable restriction on the exercise of freedom of speech and expression. The section only penalise those acts which insults to or to 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 [35].

The right to take out a religious procession, subject to public order follows from Article 25 [36]. It was held that subject to the order of local authorities regulating traffic and subject to the Magistrate's directions under any law for the time being in force and the rights of the public, the citizens have a right to take out both religious and non-religious processions with the accompaniment of music on the highways [37].

In the landmark decision of *Acharya Jagadishwarananda Avadhuta* v. *Commisssioner of Police*, [38] the apex court held that prohibiting *tandava* dance in processions or at public places by Ananda Margis carrying lethal weapons and human skulls was held valid in the interest of public order and morality. Even if tandava dance is considered as a religious rite, it does not follow that it should be performed at public place. It was held that courts have the power to determine whether a particular rite or observance is regarded as essential by the tenets of a particular religion [39]. This difficulty has been avoided in the Indian Constitution, by specifically guaranteeing freedom of conscience, profession, practice and propagation of religion, and making all these component rights equally subject to 'public order, morality and health' and 'to the other provisions' of Part III of the Constitution.

In *Gulam Abbas &Ors.* Vs. *State of U.P. & Ors*. [40], a dispute between Shia and Sunni with respect to shifting of graves and performance of religious rites, practices and observances in connection with it were in issue. In spite of the permanent injunction issued by the Supreme Court in an earlier case [41], during the previous two Muharram festival grave apprehension of breach of peace and break down of public order occurred.

In order to find out a permanent way out to perform religious ceremonies and functions without any violence and disturbance of the public order in the future, the Court appointed a Committee to submit a report. The Committee opined that the shifting of two graves is quite feasible as there is sufficient space in the suggested area and that such shifting of the two graves will totally separate the places of worship of Shias and Sunnis. Sunni objected the report on the ground that it hurt the sentiments of the majority community.

Accepting the proposal laid down by the Committee, the Court observed that Articles 25 and 26 of the Constitution, on which strong reliance was placed by counsel for the contesting respondents representing the Sunni community in that behalf, undoubtedly guarantee (a) to all persons freedom of conscience and free profession, practice and propagation of religion and (b) to every religious denomination of any section thereof freedom to manage its own affairs in matters of religion but both these fundamental rights have been expressly made "subject to public order, morality and health". In other words, the exercise of these fundamental rights is not absolute but must yield or give way to maintenance of public order [42].

Again, it was asserted that no community could be permitted to exercise their fundamental rights under Art 25 and 26 so as to put public order in jeopardy and as such there is no question of the impugned suggestion being destructive of any fundamental rights of the Sunnis. If the Court finds the implementation of the suggestion to be eminently fit in the interest of maintenance of public order consent of either party would be immaterial.

Under Shariat Law respecting of graves is the religious obligation of every Muslim, that shifting of dead bodies after digging old graves in which they are lying buried is not permissible and to do so would amount to interference with their religious right. But the religious rights of every person and every religious denominations are subject to "public order", the maintenance whereof is paramount in the larger interest of the society.

The edict clearly implies that it may become necessary to shift graves in certain situations and exigencies of public order would surely provide the requisite situation, especially as the fundamental rights under Articles 25 and 26 are expressly made subject to public order. In the circumstances in directing the shifting of two graves in question for the purpose of maintaining public order which would be in the larger interest of the society, the apex court found nothing wrong.

Another instance is *Ramesh. S/O Chotalal Dalal* Vs. *Union Of India & Ors [43]***,** wherein the petitioner's contentions are: (1) The exhibition of the serial in question is against public order and is likely to incite the people to indulge in the commission of offences and is therefore violative of section 5B(1) of the Cinematograph Act, 1952 and destructive of principles embodied under Article 25. The court held that there cannot be any apprehension that it is likely to affect public order or it is likely to incite into the commission of any offence. On the other hand, it is more likely that it will prevent incitement to such offences in future by extremists and fundamentalists.

The court appreciated that the attempt of the author in this film is to draw a lesson from our country's past history, expose the motives of persons who operate behind the scenes to generate and foment conflicts and to emphasise the desire of persons to live in amity and the need for them to rise above religious barriers and treat one another with kindness, sympathy and affection [44]. It is possible only for a motion picture to convey such a message in depth and if it is able to do this, it will be an achievement of great social value.

In *Mohamed Gani* v. *The Superintendent of Police, Dindigul [45],* the petitioner, who is a Muslim, has prayed for the issuance of a writ of mandamus directing the respondents 1 to 4 to give adequate security to the Muslims of Balasamudram village in Dindigul District while they take out the dead bodies to their graveyard in the said village. Here the court affirmed that in the name of public order one cannot prohibit a person from performing the essential rites and ceremonies prescribed by one's religion.

Hence the court held that the Government authorities cannot prohibit the Hindus from going to Temples or the Muslims from saying their Namaz on the ground that this would result in a breach of public order. And, it added that the right to take out religious processions would include the right to take dead bodies for burial in the graveyard. As observed by the Supreme Court, this right cannot be interfered with, on the ground that it offends the sentiments of another community. Again, the court found that the carrying or transporting the dead body to the cremation place or graveyard forms part of the rites and ceremonies that are essential and integral part of that religion, and hence cannot be prohibited in a secular State.

If it is said that merely on the objections of members of some other community the members of a community can be prohibited from performing their religious rites and ceremonies, on the ground that otherwise there would be breach of public order, then logically one will have to go to the extent of holding that merely if a non-Hindu objects to a Hindu going to temples, or a non-Muslim objects to a Muslim saying his Namaz, the authorities can prohibit Hindus from going to Temples or Muslims saying their Namaz on the ground that there may be breach of public order if that is permitted. No such view can be countenanced or accepted, otherwise the right under Article 25 of our Constitution to practice one's religion can be made wholly illusory and redundant on the mere objection of members of another religious community that performance of such religious rites and ceremonies offends their feeling, and there may be a breach of public order.

In *C. Stephen* Vs *the District Collector* [46], it was held that there is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence. The court upheld the view in *Jagrupa Kumari* v. *Chotey Narain Singh*,

which had the same view. The court found that disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented.

The keynote of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. At the same time, annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.

Our country is the world's most heterogeneous society with a rich heritage. Several races have converged in this subcontinent and they have carried with them their own cultures, languages, religions and customs affording positive recognition to the noble and ideal way of life unity in diversity? While granting permission for any public meeting, particularly to any religious association in the name of awareness, State should be more cautious and bear in mind their responsibility towards maintaining religious and communal harmony, and the law and order problem. Even one 'word' uttered by any of the speakers may cause serious problems, in the area, where there is religious and communal sensitivity.

Question arises, who is to determine the matter relating to Public Order? Definitely, maintenance of law and order is the function of the State. With their experience and training, and in particular, in the matter of granting permission to a meeting, procession etc., Police should be given the latitude to take an executive decision as to whether a meeting should be conducted at a particular place or not.

In *Subhankar Chakraborty & Anr* Vs. *The State of West Bengal & Ors. [47],* an announcement was made by the Hon'ble Chief Minister of West Bengal that there would be a restriction on the immersion of Durga Idol on September 30, 2017 beyond 06.00 p.m. and a complete prohibition on October 1,2017. The a fore said announcement was widely published and circulated through different medias and affects the religious sentiments of the Hindu community, more particularly, the citizens of the State where the Durga Puja is considered to be one of the major festivals.

Rabindra Kumar Pal @ Dara Singh Vs. *Republic of India* [48] was analysed by the court in support of the contention that the State must treat all religions and the religious groups equally as opposed to any decision or order defeating the very solemn object of the founding fathers of the Constitution and the Constitution itself. The court held that the maintenance of law and order is within the domain of the State and the decision to prevent and protect any untoward incident should be founded on the cogent and convincing material and not merely on one's perception.

Again, in *Dhannuram*v. *State of Chhattisgarh*, petitioners approached the court praying that directions be given to the authorities to protect the life and liberty of the petitioners and their family members so that they can practice their religion without any fear or threat. The court highlighted that as has been settled in various cases that conditioning of thought process cannot be made prescribing what to read and what not to read, insofar as, religious beliefs are concerned. The religious practices and performances of acts in pursuance of a religious belief are as much a part of religion as faith and belief in a particular doctrine.

The essential part of religion and religious belief cannot be curtailed by any mob or group of people by flexing their muscles. So long as the freedom of individual group do not trench upon the further group of people who follow a different religion, the same cannot be curtailed. The religious freedom guaranteed by Article 25 of the Constitution of India is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands. It extends to acts

done in furtherance of religion, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of a religion.

CONCLUSION

The judiciary has asserted that the state authorities have been given police powers to solve like nature of issue which runs parallel to the guarantee given by the Constitution to an individual. If the muscle power of a group of people or undue influence through superstition are allowed to suppress another religion, it would be a fraud on the constitution and in India wherein the social fabric and culture is so much diversified, it will lead to entire fragmentation of society and safety of each individual.

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6. Ibid
7. AIR 1950 SC 124, 1950 Cri L J 1514, [1950] 1 SCR 594
8. AIR 1950 SC 129: 1950 Cri L J 1525
9. AIR 1957 SC 620, p. 624;1957 Cri L J 1006
10. AIR 1960 SC 633 : 1960 Cri L J 1002
11. Superintendent, Central Prison, Fatehgarh, AIR 1960 SC 633,p. 640.
12. Id., p. 641.
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39. (1984) 1 SCC 81
40. main Writ Petition No. 467,5 of 1978, referred on November 3, 1981,
41. Id., p. 3
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45. This was a PIL to prevent the Hindu Awareness General Meeting scheduled to be conducted on 12.04.2015 at 04.00 p.m. at Arumani Junction, Soorakattu Vilai, Kanyakumari District.
46. Decided on 21 September, 2017, available at http://indiankanoon.org/doc/103849130/
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Cite this Article
Joby Bhasker. Constitutional Perspective of Restrictions on Religious Practice. *Journal of Constitutional Law and Jurisprudence*. 2020; 3(2): 20–31p.

