



Ambiguity with Respect to the Term “Public Order” According to Article 19(2) of the Indian Constitution

Nrupalaa Kumar, Srishti Murali

School of Law, Christ University

ABSTRACT

This paper scrutinizes the continuing ambiguity surrounding the term "public order" in Article 19(2) of the Constitution of India. In examining this historical development, the issue bears a clear and dormant definition reveal a lack of clarity, and help to define definitions and subjective. There has been a complicated connection between the right of the state to impose restrictions on freedom of speech and expression. Although attempts have been made to distinguish between "public policy" and broader terms such as "regulatory policy," the interpretive terrain remains dynamic and open to different perspectives. The paper delves into the consequences of this ambiguous notion of freedom of expression, particularly in cases where officials have used the term to curtail dissent or artistic freedom. Emphasizing the vital role of judges, the article suggests ways to strengthen judicial oversight through regular training, review of case law and public engagement. While legal reform and increasing public awareness are recommended as necessary steps to resolve ambiguities in the constitutional order, the main objective is to strike a balance between individual rights and social order.

Keywords: Article 19(2), Constitutional order, Dissent, Public Order

1. Introduction

The paper delves into the ambiguity surrounding the interpretation of "public order" within Article 19(2) of the Indian Constitution, which imposes reasonable restrictions on the fundamental right to freedom of speech and expression enshrined in Article 19(1)(a). It explores the historical context, judicial precedents, and contemporary perspectives surrounding the term "public order," highlighting its broad and vaguely defined nature, which has led to varying interpretations and legal challenges. Initially, when the Indian Constitution was drafted, the term "public order" was not explicitly defined, leaving the boundaries of restrictions open for interpretation. This lack of specificity has allowed authorities to employ it broadly, potentially leading to misuse. The ambiguity surrounding the term has raised concerns about whether the government is using vague and overbroad laws to stifle dissent and criticism against its functioning and to limit free speech. The paper aims to provide a comprehensive analysis of the evolution of legal understanding regarding "public order" and the diverse interpretations offered by courts. By examining historical precedents and contemporary perspectives, it seeks to shed light on the challenges and complexities inherent in balancing individual liberties with the maintenance of public order. The thesis statement of the paper is that resolving the ambiguity surrounding the interpretation of "public order" within Article 19(2) is essential for safeguarding democratic values and ensuring a robust framework for freedom of speech and expression in India. Through a thorough examination of historical context, judicial interpretations, and contemporary debates, the paper aims to contribute to the ongoing discourse on constitutional rights and provide insights that could inform future legal interpretations and policymaking.

1.1 Evolution of Public Order

The ambiguity in the language has been reflected in the various judicial interpretations of the term public order. The judiciary has been tasked with determining the scope and limits of the term public order; over the years various courts have adopted various methods to determine if an act falls under public order in order to impose restrictions which gives rise to ambiguity and making it challenging to arrive at a consistent understanding of the same. The judiciary has not always provided an unambiguous interpretation. It has always been tasked with balancing individual rights and maintenance of public order. The SC of India has recognized the term public order is different from law and order and security of state. In the case of *Ram Manohar Lohia v State of Bihar*¹, the SC referred to public order as maintenance of public orderliness and tranquility while law and order refers to prevention of breaches of peace. The court has also observed that the restriction on freedom of speech and expression must be narrowly tailored and must not be vague or broad in nature. In the case of *Shreya Singhal v UOI*², section 66A was

¹ *Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9*

² *Shreya Singhal v. Union of India, (2015) 5 SCC 1*

struck down which criminalizes sending of offensive messages through communication services on the grounds that it was overbroad and vague and therefore it violated the right to freedom of speech and expression. In the case of *Kameshwar v State of Bihar*³, public order refers to maintenance of order that was necessary for society's normal functioning. This judgment emphasized the importance of preventing acts that disrupt the public's tranquility and peace. However subsequent judges have different perspectives on determining what constitutes public order. It is also evident in the case of Ramila Maidan incident, on the use of sec 144 of the criminal procedure code which empowers authority to impose restrictions on the assembly of the people to maintain public order. The court held the use of section 144 should be confined to situations where there is an imminent threat of violence and not invoked to curtail the right to protest peacefully. The decision highlights the constant struggle to define and apply the term public order consistently.

The broad interpretation of the term public order has at times been used to suppress dissent and criticism leading to concerns about erosion of democratic values and the stifling of free speech. This is reflected in cases where the government has cited public order as a reason to curb freedom of expression. For example, the use of sedition laws, which are meant to prevent activities that incite violence or public order, has been criticized for their broad and subjective application. The case of *Kanhaiya Kumar v. Jawaharlal Nehru University*⁴ in 2016 is one such example. Kumar was charged with sedition for his involvement in a protest event on the university campus. The government argued that his speech had the potential to disturb public order while critics contended that it was misuse of the law to suppress dissenting voices. Similarly, the banning of books, censorship of films and restrictions on artistic expression has often been justified in the name of public order.

The subjective nature of this term has allowed authorities to suppress artistic and intellectual freedom on the grounds that it might disrupt public order, leading to concerns about the erosion of creative and intellectual liberties. The scope of restrictions under article 19 (2) was broadened through the first amendment to the constitution of India in 1951 as a reaction by the legislature to the Supreme Court's decisions in the cases of *Romesh Thappar*⁵ and the *Brij Bhushan*⁶. In *Romesh Thappar*, the State's ban on circulation of a magazine on the grounds of public safety and public order was invalidated by court. Another source of ambiguity in the interpretation of public order under article 19(2) is the discretionary power granted to the executive branch of government. The executive has the authority to determine when and how to restrict freedom of speech and expression in the interest of public order. The discretion power can be prone to be misused has led to inconsistencies in the application of his term. Executive discretion can manifest in the form of orders to ban public gatherings, block internet access or impose curfews among other measures. The subjective nature of public order gives significant latitude to the executive in deciding what constitutes a threat to public order and when restrictions should be imposed. This discretion, when exercised without appropriate checks and balances, can result in undue restrictions on individual rights. It becomes crucial to ensure that executive actions are subject to legal scrutiny and adhere to the principles of proportionality and necessity. Lack of clear guidelines for the exercise of executive discretion can contribute to the ambiguity surrounding public order.

1.2 Various acts which suppress freedom by using the reason of public order

The suppression of political dissent in India, even after independence, has been facilitated by various laws and legal provisions that ostensibly aim to maintain public order but often infringe upon the fundamental right to freedom of speech and expression. The Sedition Act, retained from the colonial era in the Indian Penal Code, criminalizes acts that are deemed seditious or against the state. While the Supreme Court of India upheld the constitutional validity of the Sedition Act in *Kedarnath Singh v. State of Bihar*, it clarified that the act could only be invoked in cases of direct incitement to violence or public disturbance. However, the broad interpretation of sedition has led to its misuse, silencing dissenting voices and legitimate criticism of the government. This has created a chilling effect on free speech, with individuals fearing prosecution for expressing dissenting opinions.

Information Technology Act, 2000, criminalizes the transmission of offensive messages over electronic networks, ostensibly aimed at curbing cybercrime.

Vague definitions of what constitutes "offensive" content have empowered authorities to clamp down on online speech, leading to self-censorship and a chilling effect on digital expression.

Unlawful Activities (Prevention) Act, 1967, allows the government to ban organizations deemed terrorist or unlawful, ostensibly to combat terrorism. However, its broad and vague definitions enable authorities to target dissenting voices and civil society organizations, suppressing legitimate activism and advocacy for human rights. Cinematograph Act of 1952: empowers the government to censor films deemed offensive or contrary to public order, decency, or morals. While censorship laws exist to regulate the content of films for public consumption, they have often been used to suppress artistic expression and silence voices challenging societal norms. Contempt of Court Laws, pertaining to contempt of court aim to uphold the authority and dignity of the judiciary. However, these laws have sometimes been used to stifle criticism and commentary on judicial decisions, leading to the silencing of dissenting voices and the restriction of free speech. In essence, these laws and legal provisions, while purportedly enacted to maintain public order, have often been misused to suppress freedom of speech and expression. Their broad and vague definitions empower authorities to clamp down on dissent and criticism, leading to a chilling effect on free speech and

³ *State of Bihar v. Kameshwar Singh*, (1952) 1 SCC 528

⁴ *Kanhaiya Kumar v. Jawaharlal Nehru University*, 2017 SCC OnLine Del 10975

⁵ *Romesh Thappar v. State of Madras*, 1950 SCC 436

⁶ *Brij Bhushan and Anr v. The State of Delhi*, 1950 AIR 1920

a restriction of individual rights. Addressing these issues requires a reevaluation of these laws to ensure they are in line with democratic principles and respect fundamental rights.⁷

1.3 Comparison of India's approach with respect to Public order against International standards

In the United States, the First Amendment to the Constitution staunchly protects freedom of speech, encompassing even speech deemed offensive or controversial. However, certain limitations exist, particularly regarding speech that incites violence or poses a clear and present danger to public safety. The U.S. Supreme Court has forged a robust framework for evaluating restrictions on freedom of expression, emphasizing the paramount importance of safeguarding speech, even when unpopular or offensive. Within the European Union (EU), a comprehensive human rights framework, including freedom of expression, is enshrined in the European Convention on Human Rights (ECHR). Article 10 of the ECHR guarantees the right to freedom of expression, albeit subject to limitations necessary in a democratic society, including those aimed at preserving public order. The European Court of Human Rights (ECtHR) has offered guidance on striking a balance between freedom of expression and public order concerns, emphasizing proportionality and necessity in constraining speech.

Canada's approach to freedom of expression is influenced by its Charter of Rights and Freedoms, particularly Section 2(b), which safeguards freedom of speech. Nevertheless, akin to other democracies, this right is not absolute and may be curtailed under reasonable circumstances, including for the maintenance of public order. The Canadian Supreme Court has articulated a framework for evaluating restrictions on freedom of expression, stressing the need to reconcile conflicting rights and interests. The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of expression under Article 19. However, this right is subject to restrictions necessary and proportionate to protect public order, national security, or other legitimate interests. General Comment No. 34 from the UN Human Rights Committee provides extensive guidance on interpreting and applying the right to freedom of expression, emphasizing a balanced approach between individual rights and public order considerations.

Comparison with India: India's approach to "public policy" under Article 19(2) of its Constitution lacks the precision and clarity evident in international standards. While the Indian Constitution allows for restrictions on freedom of expression for public order reasons, the interpretation of "public policy" remains subject to potential ambiguity and abuse. Aligning domestic laws and practices with international standards, such as those outlined in the ICCPR and relevant UN guidance, could help mitigate uncertainty surrounding the term "public policy" and ensure that any limitations on freedom of expression are minimal, necessary, and consistent with democratic principles.

1.4 Role of the Executive in Interpreting and Enforcing Public Order

The executive branch of government plays a crucial role in interpreting and enforcing public order, particularly through the exercise of discretionary powers granted to law enforcement agencies and administrative authorities. Executive agencies, such as the police and administrative bodies, often have the authority to issue orders, impose restrictions, and take preventive measures to maintain public order, such as imposing curfews, banning public gatherings, or restricting access to certain areas. However, the exercise of executive discretion in interpreting and enforcing public order can sometimes be prone to abuse or misuse, leading to arbitrary restrictions on freedom of expression and assembly. It is essential for executive actions related to public order to be subject to legal scrutiny and adherence to constitutional principles, including proportionality, necessity, and respect for fundamental rights.

Strengthening mechanisms for judicial oversight and public accountability can help mitigate the risks of executive overreach and ensure that restrictions on freedom of expression are lawful and justified.

Additional Examples of Ambiguity Surrounding Public Order:

- **Banning of Books and Censorship:** Instances where books or literary works deemed controversial or critical of the government have been banned or censored under the pretext of maintaining public order. For example, the banning of books that discuss sensitive political or social issues has been justified by authorities as necessary to prevent public unrest.
- **Censorship of Artistic Expression:** Cases where artistic works, including films, music, and visual art, have faced censorship or suppression due to concerns about their potential to incite public disorder or offend societal sensibilities. This censorship often results from vague or subjective interpretations of public order by regulatory bodies or government officials.
- **Restrictions on Social Media and Online Platforms:** Instances where governments have imposed restrictions on social media platforms or online content in the name of maintaining public order. For example, blocking access to social media websites or censoring online content critical of the government has been justified as necessary to prevent the spread of misinformation or incitement to violence.
- **Selective Application of Laws:** Cases where laws related to public order, such as sedition laws or laws prohibiting hate speech, have been selectively enforced against individuals or groups expressing dissenting views or advocating for minority rights. This

⁷ <https://vidhilegalpolicy.in/blog/article-192-and-public-order/>

selective application of laws undermines the principle of equality before the law and contributes to the perception of bias or discrimination in law enforcement.

1.5 Strengthening Judicial Oversight

Strengthening judicial oversight is crucial in ensuring the protection of fundamental rights, particularly in cases involving freedom of expression and public order. For strengthening judicial oversight, training and education for judges with leveraging technology to improve case law review and consolidation, along with additional recommendations for promoting public participation and applying a strict test in evaluating government actions must take place.

Regular Training and Education for Judges:

- **Specialized Workshops and Seminars:** Organize workshops and seminars focusing on freedom of expression, public order, and constitutional law. These programs should include discussions on international human rights standards, landmark judgments, and emerging legal trends.
- **Collaboration with Experts:** Collaborate with academic institutions, legal experts, and international organizations to develop comprehensive training modules tailored to the needs of judges. This collaboration ensures that training programs are up-to-date and reflect best practices.
- **Interactive Learning:** Incorporate case studies, hypothetical scenarios, and interactive discussions into training sessions to enhance practical understanding and application of legal principles. This hands-on approach allows judges to apply theoretical knowledge to real-world situations.
- **Peer Learning Initiatives:** Encourage judges to participate in judicial exchanges, study visits, and peer learning initiatives to gain insights from their counterparts in other jurisdictions. This exposure to diverse perspectives enriches judges' understanding of legal issues. **Challenges:** Address limited availability of resources and ensure the participation of judges from remote or underserved regions by offering online training options and providing incentives for attendance.

Role of Technology in Improving Judicial Oversight:

- **Online Platforms for Legal Resources:** Developing more efficient online platforms or databases to provide judges with easy access to relevant case law, legal precedents, scholarly articles, and international treaties related to freedom of expression and public order.
- **AI and Machine Learning:** Implement AI and machine learning algorithms to analyze judicial decisions and identify patterns in the interpretation of public order. This technology assists judges in understanding legal trends and making informed decisions.
- **Virtual Libraries and Collaboration Tools:** Create virtual libraries or repositories for judges to collaborate, share resources, and exchange insights on complex legal issues. Digital collaboration tools facilitate knowledge sharing and foster a community of practice among judges.
- **Data Visualization:** Leverage data visualization techniques to present complex legal concepts and trends in a more accessible format for judges and other stakeholders. Visualization tools enhance understanding and facilitate decision-making. **Challenges:** Ensure the security, privacy, and integrity of legal data stored on digital platforms, and address concerns about algorithmic bias in AI-driven analysis to maintain the credibility of technology-enabled oversight mechanisms.

Additional Recommendations:

- **Public Participation:** Engage with civil society organizations, legal experts, and the public to gather views and opinions on the definition of "public policy" in Article 19(2). Public participation ensures that judicial decisions reflect societal values and expectations.
- **Strict Test:** Apply a strict test in evaluating government actions that restrict free expression in the name of "public policy" to ensure necessity and consistency with constitutional principles. This rigorous evaluation safeguards fundamental rights and prevents abuse of power.
- **Awareness and Education:** Educate citizens on their rights under Article 19(2) and the limits of these rights. Increased awareness empowers citizens to challenge restrictions on freedom of expression and hold officials accountable for their actions.

By implementing these comprehensive strategies, judicial authorities can enhance their capacity to provide effective oversight and guidance on issues related to freedom of expression and public order, promoting consistency, fairness, and adherence to constitutional principles in legal decision-making processes.

1.6 Suggestions

1. Legislative Reform for Clarity on Public Order Definition:

Implementation: Legislative reform could involve several steps to provide a clearer definition of "public order" within the Constitution or relevant laws:

- **Defining Terms:** Clarifying the meaning of "public order" through precise language within legislation, perhaps through amendments to existing laws or the introduction of new statutes.
- **Guidelines and Standards:** Developing detailed guidelines and standards for interpreting and applying "public order." These guidelines can offer specific criteria and boundaries for its interpretation, ensuring consistency in its application across different contexts.

Potential Challenges: Some policymakers or political parties may resist efforts to define "public order" more precisely, preferring the flexibility that ambiguity provides in its application. It might be challenging to achieve consensus on a precise definition of "public order" due to diverse perspectives and interests within society, potentially leading to prolonged debates or stalemates in the legislative process.

2. Strengthening Judicial Oversight:

Implementation: To strengthen judicial oversight, the following steps could be taken:

- **Training Programs:** Implementing regular training and education programs for judges and legal professionals on international human rights standards related to freedom of expression and public order.
- **Case Law Review:** Reviewing and consolidating case law related to public order to establish clear principles and guidelines for its interpretation and application by the judiciary.
- **Public Engagement:** Initiating public engagement initiatives, such as public hearings or consultations, to gather feedback and input from various stakeholders on issues related to public order and freedom of expression.

Potential Challenges: Conducting regular training and education programs for judicial professionals may be constrained by limited resources and capacity. Some quarters may resist judicial activism or intervention in legislative or executive decision-making processes, potentially undermining efforts to strengthen judicial oversight.

3. Addressing Executive Discretion:

Implementation: Efforts to address executive discretion could involve:

- **Establishing Mechanisms:** Creating clear mechanisms and safeguards to ensure that executive actions restricting freedom of expression in the name of public order undergo legal scrutiny and adhere to principles of proportionality and necessity.
- **Accountability:** Strengthening accountability mechanisms to hold executive authorities accountable for their actions, particularly in cases where restrictions on freedom of expression may be perceived as arbitrary or politically motivated.

Potential Challenges: Executive authorities or law enforcement agencies may resist increased oversight, viewing it as an encroachment on their authority or discretion. There may be limited institutional capacity or resources for effectively monitoring and enforcing compliance with accountability mechanisms, posing challenges to their implementation.

4. Increasing Public Awareness and Engagement:

Implementation: Efforts to increase public awareness and engagement could include:

- **Awareness Campaigns:** Conducting public awareness campaigns to educate citizens about their rights under Article 19(2) of the Constitution and the implications of restrictions on freedom of expression for democracy and individual liberties.
- **Facilitating Dialogue:** Facilitating dialogue and debate among diverse stakeholders to promote greater understanding and consensus on issues related to public order and freedom of expression.

Potential Challenges: **Overcoming Apathy:** Some segments of the population may be apathetic or disengaged regarding freedom of expression issues, making it challenging to mobilize public support for reform efforts. **Combating Misinformation:** Addressing misinformation or propaganda campaigns that seek to undermine public awareness efforts may require concerted efforts to promote accurate information and combat falsehoods.

2. Conclusion

The ambiguity surrounding "public order" in Article 19(2) of the Constitution of India has led to inconsistent interpretation and application, sometimes stifling freedoms and undermining democratic values. Addressing this requires legislative reform, judicial oversight, and public

awareness. Clarity through legislative changes and guidelines, coupled with rigorous judicial scrutiny, can strike a balance between individual rights and social order. Collaborative efforts among lawmakers, judicial authorities, civil society, and the public are crucial for meaningful reform to uphold freedom of expression and democratic principles.

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