RIGHT TO FREEDOM OF EXPRESSION: AN EVALUATION OF THEORIES OF SELF-FULFILMENT AND DEMOCRATIC PARTICIPATION

Meera Mathew

This article can be downloaded from: https://www.hpnu.ac.in/page.aspx?page=35

Recommended Citation:

This Article is published and brought to you for free and open access by Himachal Pradesh National Law University, Shimla. For more information, please contact shimalawreview@hpnu.ac.in
# Contents

**Volume I  2018  Shimla Law Review**

## Articles

<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Address of Hon’ble Justice Shri Ranjan Gogoi on the Occasion of Second Orientation Programme, HPNLU Shimla</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>State and Equality from Sadācār(a) to Bazaar: Searching Alternative Impressions in Light of the Sanskriti Litigation <em>Chanchal Kumar Singh</em></td>
<td>7</td>
</tr>
<tr>
<td>3</td>
<td>Right to Privacy in a ‘Posthuman World’: Deconstructing Transcendental Legacies &amp; Implications of European Renaissance in India <em>Mrityunjay Kumar Singh</em></td>
<td>52</td>
</tr>
<tr>
<td>4</td>
<td>The Unending Conundrum of Extra-Territorial Trade Measures and the ‘Green Provisions’ of the GATT: Deconstructing the Existing Approaches <em>Utkarsh Kumar Mishra</em></td>
<td>89</td>
</tr>
<tr>
<td>5</td>
<td>Administrative Adjudication: A Comparative Understanding With Special Reference to Tribunals <em>Alok Kumar</em></td>
<td>105</td>
</tr>
</tbody>
</table>

## Notes and Comments

<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Standards of Refugee Protection: International Legal Framework and European Practice <em>S.S. Jaswal</em></td>
<td>124</td>
</tr>
<tr>
<td>7</td>
<td>Contours of Right to Privacy in the Information Age: Some Random Reflections on the Puttaswamy Judgment <em>Meena S. Panicker</em></td>
<td>136</td>
</tr>
<tr>
<td>8</td>
<td>In Re Muslim Women’s Quest for Equality: Analysis of the Judgement of Supreme Court on Issues of Fundamental Rights and Personal Laws <em>Ritesh Dhar Dubey</em></td>
<td>146</td>
</tr>
<tr>
<td>9</td>
<td>Principle of Proportionality: Extent and Application in Industrial Disputes <em>Namita Vashishtha</em></td>
<td>158</td>
</tr>
</tbody>
</table>
10. Biomedical Technology and Human Rights: The Emerging Milieu in Human Protection
   **Navditya Tanwar**
   170

11. Right to Freedom of Expression: An Evaluation of Theories of Self-fulfilment and Democratic Participation
   **Meera Mathew**
   179

12. An Anodyne Mode of Negotiation: Mediation in Dissension of Indian Family Matters
   **Rattan Singh & Shikha Dhiman**
   190

13. Formative Concept of ‘Women Criminality’ in Sexual Assault under IPC and POCSO: An Investigation into Judicial Decisions and Legislative Initiatives
   **Santosh Kumar Sharma**
   199

   **Varun Chhachhar**
   208

15. Analyzing the Role of Press in Bringing Dalits of India in the Social Mainstream
   **Sarita**
   218

16. Bid-Rigging and Role of Competition Commission of India: With Special Reference to its Impact on Infrastructure Development
   **Mahima Tiwari**
   225

17. Strategic Corporate Social Responsibility: Avenues by Jindal Steel and Power Limited
   **Avantika Raina**
   235

   **Anurag Bhardwaj**
   244
Right to Freedom of Expression:
An Evaluation of Theories of Self-fulfilment and Democratic Participation

Introduction

‘Expression’ is a term encompassing sufficient range of gestures, words or signs. In general, it can be said that expression is a sort of interaction, which correspondingly develops thought process and feelings to any living being whoever the receptor is. If we give look to the earlier stages, what the mode of human expression was, we find people communicated through signs, symbols and gestures. Speech and dialect came over time. Since expression was the mode of communication hence, it was also manifested as symbol of individual liberty to put across the feelings or emotion or, imaginations. The perception always thus exist that speech include the expression as well.

Constitutionally, the freedom of expression guarantees double-fold liberty: the freedom of thought and the freedom to express one’s thoughts. By this freedom, one can assume or imagine or visualize anything with no limitation, however the moment it is communicated to other person, be it by way of expression or speech, the limitation chips in. These intrinsic features of expression were deliberated, even from ancient ages, however the documentation of these was found in Greek Philosophies. While dealing with polis, state and various forms of governance, Greek philosophers gave ample stress on people’s freedom of expression. Plato in his anthology Republic, has discussed freedom of thought and conscience, where he asserted the principle of freedom of conscience as superior to all commitments by the State.\(^1\)

Man being a social animal and being a part of society, therefore has to adjust his liberty, appropriately considering the liberty of others. Some sort of parameters of human conduct and behaviour are essential in social life. The primary maxim of liberty is that law is the stipulation of liberty. There are two interpretations concerning liberty of speech and expression, which government is obliged to safeguard. They are:

a. Individuals are born free in nature and therefore freedom of speech and expression are fundamental in their characteristics.
b. This above liberty exist even prior to Constitutional liberties granted to the citizens, wherein they should be set free from any governmental encroachment.

It can be further added to this discussion, that an act of communication entails both an objective to represent or express some state of affairs or fact and intent to put across or ‘communicate’ that demonstration to another person. Thus, while acknowledging that a person is trying to communicate, the audience also distinguish if the act is important. Laying emphasis on the human expression and its significance presently, all the Constitutions universally give special standing to individual liberty, attributing it as the highest value, and additionally, by legal provisions entrusting upon the state duty to protect an individual’s liberty. Of this, the most cherished right is the freedom of speech and expression as the first stipulation of liberty. This right indeed has a preferred place in the ladder of the liberty, and is considered as indestructible.

From the pre-historic ages, as is evident in the writings of Plato and Roman Philosophers, it can be inferred that adequate safeguard had been provided to one’s expression. However, many legal systems vary in the extent of safeguard of freedom of speech, given the profound historical dissimilarities. Depending upon the political, social, cultural, economic set up of the society, the freedoms available to citizens vary. The implication of freedom of speech and expression in a society had been analysed by various philosophers varyingly and that makes it to the distinct theories of freedom of speech and Expression. All the theories and philosophies involving freedom of expression protect the freedom to communicate. All over the world, jurists unanimously hold the opinion that so long as any activity is directed to an audience and are projected to be momentous to that audience, they must be considered as ‘communicative’.

---


As far as India is concerned, the ancient history was influenced by roots of dependence on individual rights. The jurisprudence is founded on the mythological perception of ‘Dharma’ demonstrating the dominance of law (ruler). The notion of a guaranteed right to personal liberty in its modern sense was almost absent in Indian jurisprudence. It is the merely belief of ‘protection of subjects under its ruler’ that had been observed by the historians and the ruler has no legal rights beyond that. With the post-colonisation and constitution drafting, it was necessary to permit government to execute its functions, which contain, essentially the enforcement of laws intended at defending the rights of individuals from their fellow citizens, simultaneously making it complex for government itself to infringe upon these rightful jurisdiction that are the precondition for human flourishing.


4 Infra notes 10, 12 & 16.
Theories of Self-fulfilment

The term self-fulfilment connotes the realization of being content and gratified. Self-fulfilment can be realized if one performs using his talents to the best of his abilities. This theory has its foundation on the premise that the main objective of the human beings is, the persuasion of happiness within the community and with fellow beings. Man has to live in companionship with other humans. Among the other reasons, he needs state also to put across his viewpoints and opinion. This makes the freedom of expression a distinguishing right that confers on an individual a right to articulate audaciously, enthusiastically and sensibly. The speech and expression exposes one’s innermost ability to reveal and contemplate, thus provides self-fulfilment. The underlying bliss that comes out of speech is inter-related to individual’s skill to visualize, assume and foresee. The concept of self-fulfilment and self-determination was appropriately associated with freedom of expression by the philosophers such as Immanuel Kant and John Locke. The same notion was mooted to be recognized as basic and fundamental right by many American philosophers who are extensively identified as ‘First Amendment jurists’. Professor C. Edwin Baker is one among them who gave prominence to self-fulfilment theory of speech. He states,

‘Speech is confined not as a way of a collective good but because of the significance of speech behaviour to the individual’.

‘Freedom of speech’ can be deemed a right to rebelliously, vigorously and practically converse one’s mind. The accomplishment of that expression, arising out of speech is related to individual’s aptitude to assume, envisage, and generate. The association of speech to deliberation, to man’s innermost ability to explain and speculate, rationally places it, ahead of the routine jurisdiction of the state. The primary reason for the existence of a state is to maintain the social order thereby promoting and endorsing the well-being of any individual. The state and society survive, to serve the maximum interests of individuals. In addition to this, construing the philosophy surrounding the theory of equality, it can be asserted that every human being is at liberty to correspondingly dissent in common decisions. From these perceptions, there originate the right of the human being to access to information; to articulate his own observation; to converse his desires, keenness and priorities; thus can come in terms with the very objective and essence of his life and his survival.

Further to add here, that this theory has its foundation on the fact that State rationalizes the regulation of speech on certain grounds and settles on what is best for the citizens in the media. Such regulations are practically applied as this is the occasion to formulate their thought about it. Autonomy-based protestation to

5 BLACK’S LAW DICTIONARY (10th edn., 2014).
6 Immanuel Kant, CRITIQUE OF PURE REASON (1929).
paternalism can cover the questions about individual taste, preferring ideologies, the living etc, which must be decided by individuals themselves.\textsuperscript{10} Hence inhibition of confidence assessment and expression, is perhaps disrespect to the solemnity of man, a repudiation of man’s vital nature. The arguments go down within that the caption of paternalism.

One’s thought and their communication are the source of all expression of an individual’s personality. It is to be understood that freedom at this peak is vital to all other freedoms. Fulfilment is assembled upon individual rising or her own faculties and forms of life. Consequently, society must keep back its right of repression until the phase of accomplishment. Strong free speech protection, in so far as it keeps the public expression of ways of life, is essential for constructing pluralist and tolerant society. The supremacy of the public and the state over an individual person is invasive. However, creation of doctrines, establishment of managerial activities, that are to restrict this control is a difficult task. Sketching such a defending mark between expression and the corresponding deeds, can possibly hit a safe equilibrium among authority and liberty. Speech provides the occasion for individuals to articulate societal opinions that might influence others politically, aesthetically, and collectively.\textsuperscript{11}

Jonathan W. Edmord is another post-modern philosopher, that can be referred, who viewed the same theory, but in a different manner.\textsuperscript{12} He observed that there are two prevailing, but contradictory First Amendment values. First, a non-consequentialist view claims, that free speech is meant to foster individual growth and self-fulfilment, that free expression is a goal unto itself. This is a Kantian approach, in which the goal is to allow each person to be treated as a sovereign citizen. The second one is, an instrumentalist view. It argues that free speech is necessary to achieve societal goals, particularly protecting political speech in order to maintain a democratic society. Adherents to the former notion argue that limiting full First Amendment protection to political speech is a cramped concept of freedom of expression, leaving very important but non-political speech to the vagaries of at best, the due process clause of the Fifth Amendment. Those favouring the latter approach, claims that self-fulfilment can be achieved in many ways other than speech, and that under a self-realisation approach, the First Amendment would be expanded to include action that should not be and has not been given protection.

In the celebrated case of \textit{New York Times Co. v. Sullivan}\textsuperscript{13}, self-fulfilment theory was specifically considered:

\textquote{To permit the continued building of our politics and culture, and to assure self-fulfilment for each individual, our people are guaranteed the right to express any thought free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of

its content would completely undercut the profound national commitment to the principle, that debate on public issues should be uninhibited, robust, and wide-open.’

Indian Judiciary has adopted this theory and played a pivotal role in interpreting this theory, with regard to the freedom of speech and expression. It has been reiterated, that communication being an inherent as well as indispensable social activity serves fulfilment and satisfaction. Freedom of expression plays a dual role; one as freedom to converse one’s voice to the public, second the freedom to develop unique voice of one’s own distinct from others. Therefore restriction on expression affects not only the individual but also the public. This is precisely what the judiciary has upheld in these cases below:

In *Indian Express Newspapers (Bombay) Private Ltd and Ors v. Union of India and Ors*14, it was held as follows:

‘Freedom of expression has four broad social purposes to serve: (i) it helps an individual to attain self-fulfilment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others.’

This principle was applied in various other decisions as well, where the fundamental principle always was upheld as the people’s right to know. It is reiterated that when it comes to freedom of speech and expression, it must obtain a liberal support in the participation of people in the governance. It is on account of this unique interest, which society has in the freedom of speech and expression, that the approach of the Government should be more cautious while imposing anything that concerns matters affecting newspaper industry. Further, in *Naveen Jindal v. Union of India* case15, it was held that freedom of expression is the realization of individual’s earnest desires and competence.

Self-fulfilment can also be termed as ‘self-realization’ and ‘self-actualization’. All three of these terminologies indicate not only a type of impulsive relation but also a constructive improvement, wherein persons accomplish goals by recounting certain of their dormant powers. The potentialities of each human being are highly exclusive and differ from person to person. Hence, it is quite natural that individuals search for unearthing more sense in their life and a rigid sense of connectedness to others and society they seek out to fulfil these needs. In this way, each development is both a procedure of previous development and the conclusion of that process.16 Individuals, as they grow up to mature as self-actualized citizens, they seek to find more meaning in

---

their life and thereby, it is the expression and communication that help to put forth their views for individual growth. The crux of this theory is that the social need can be contented by interpersonal relationships, thus often obliges the individuals to convey and communicate what they desire. If such desires are restricted, human beings cannot attain the self-fulfilment, meaning thereby there will be a control over satisfaction by achieving the needful.

Theories of Democratic Participation

Under this theory, it is assumed that an individual who moulds value judgments and who is involved in the governing progression, will be familiar with vital societal benefit and will grow as informed person. Likewise, by applying means of free expression and through related values, individuals participate in various forms of human good, such as companionship and thus build up a society of insightful human beings. It is a pre-requisite in a democracy to have free and open exchange of information that makes everybody capable in various fields to contribute by expressing their ideas. Only through a liberated society, individual’s ideas on various issues could be highlighted in decision-making process, including the process of enacting laws.

The champion of this theory is Alexander Meiklejohn, who stated that free speech is a means of democratic self-governance. To him, it is the right of every individual to contribute generously and uniformly in the speech, by which individuals administer themselves. He states, that any sort of dialogue about community matters taken exclusively, is not only of worth for the speaker or to the state as a total, but also for the public person and is exhibiting who exist in the field of private and external sphere. Further, he argued that the democratic sovereignty requires general public to review for themselves the wisdom or sprit of any governmental strategy. This assumption has potential only if citizens are familiar with any information or estimation pertinent to the issue. People chosen government, would necessitate people being aware of various aspects of all questions of governing significance, which are requisite for the distinction and dissemination of opinionated information. Therefore, the issues of public importance are brought to the table, discussed, debated and argued over, but ultimately decided upon by the people. This is coined as Meiklejohn’s informed-voter priority theory of democratic self-governance under freedom of speech.17

The crux is that when governmental policies do reflect citizen interests, although those interests are neither knowledgeable nor the scope of knowledge widened by public deliberation, good amount of citizens are less contented than they would have been, had their choice of interests been well premeditated to proceed with either their benefits or their ideas of the general good18. However, this ideology faces criticism, for the lack of appropriate elucidation, as to what constitute a public issue in the area of governing

---

18 Ibid.
importance. It also condemned the idea, that citizens on pretext may not be barred from speaking their views and thoughts that turn out to be false or dangerous.\footnote{See, \textit{Switzman v. Elbing}, [1957] S.C.R. 285.} Considering these criticisms, Alexander Meiklejohn expanded that free speech protects the freedom of the activities of thought and communication by which citizens are administered. While the decisive expression of self-governance is casting of votes, or adjudicating the resolution that the delegated representative formulates about those subjects, or putting up the methods to alter, modify or substitute the judgment in order to better accomplish public well-being. All this may require shielding statements from which voters draw from the accurate facts, aptitude and feeling to human principles. This also includes education, the discussions about philosophy and science, literature and art and public issues, however it does not include libel, slander, conspiracy and so on.

Joseph Raz, in his article too, emphases that freedom of expression is a liberal puzzle however, it promotes democratic self-governance\footnote{Joseph Raz \textit{Free Expression and Personal Identification} 11 \textit{Oxford J. L. Studies} 301 (1991).}. He states that communication, being more the communication of propositional information, including any act of symbolic expression, undertaken with the intention that it be understood to be by the public or part of the public. It includes all the forms of language-dependent communication and also pictorial and musical communication. Thus it is essentially a right actively to participate in and contribute to the public culture. According to the author, many other interests most people have are much more valuable to them than their interest in this freedom. Yet it is the freedom to express oneself publicly, rather than the more valuable interests, which enjoys special protection. The other point forwarded by the author in this regard is, freedom of expression, is it a public good. To elucidate this point, it was stated that rights exist only if the interest they protect is sufficient to hold another person to be under a duty to respect that interest. That is so, only if the interests in question are greater than the disadvantages, if there are such, of being subject to the duty to respect them. Judgment of the existence of a right does, therefore, involve a comparison of interests protected and sacrificed. Additionally, freedom of expression as a right is an important element of a democratic regime, explicitly, one based on some form of institutional arrangements designed to ensure significant responsiveness of government to the wishes of the governed. Members of the public in general, be they infants or convicts without the vote, or without a right to free expression, have an interest in the prosperity of democracy, hence its existence is, in part, the existence of the right to free public political expression. Going by this, right is a public good, a good not merely to its holders but to the public at large. Thus Prof. Raz’s assumption on freedom of expression, is highlighted on the elemental requirement for public corroboration of one’s method of life, and on the requirement for public acknowledgment as a way of disseminating, holding and improving system of life.

Democracy thus, requires free speech to the extent that the same ethical or moral commitments that require democracy itself and has support from within the system also justify free speech. In a democracy freedom of speech is not a vested obligation; it is a
prerequisite. This view of the First Amendment is in harmony with limitations on free speech and press clause, which upholds that, it is only through this regulation of speech and through the restrictions on the open flow of information- that the goals which the First Amendment is intended to provide are promoted. Taking the Indian example, in Maneka Gandhi judgment\(^\text{21}\), it was stated as:

'Democracy is based essentially on free debate and open discussion, for that is the only corrective means of Governmental 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 a choice, free and general discussion of public matters is absolutely essential. Manifestly, free debate and open discussion, in the most comprehensive sense, is not possible unless there is a free and independent democracy.'

Further, in Anand Chintamani v. State of Maharashtra while invalidating an order of forfeiture as sought under Section 95(1) of the Code of Criminal Procedure, 1973 relating to Me Nathuram Godse Boltoy a play critical of Mahatma Gandhi, it was held:

'The law does not have to accept the views which have been expressed by the petitioner as a playwright to express those views. Respect for and tolerance of a diversity of viewpoints is what ultimately sustains a democratic society and Government. The right of a playwright, of the artist, writer and of the poet will be reduced to husk if the freedom to portray a message, whether it be on canvas, prose or verse-is to depend upon the popular perception of the acceptability of that message. Popular perceptions, however strong cannot override value which the constitution embodies as guarantees of freedom in what was always intended to be a free society.'

Hence, these theories of ‘expression’ finally reach at the conclusion that freedom to express is the original freedom which is a necessary attribute and mode of self-expression by virtue of being an individual. It can thus be inferred that expression is not merely of fundamental importance for democratic societies, but it is one of the most basic rights of an individual that enables him to form and develop his opinions, and thereby to realize himself.

**Nexus between State, Individual and Expression**

When the individual liberty itself is interpreted differently by various jurists, the forethought is whether speech and expression deserves the utmost protection. The cohesive pre-eminence of society is adequate to hold back the free speech in the course of the right process, if the discourse to which the restrictions apply has a private nature or does not symbolize a relevant contribution to public discourse.\(^\text{22}\) Meaning thereby, it is the relation of democracy as a system in which society’s thinking process occupies a prominent role in assuring legitimacy. It is for this reason every law needs to be tested

\(^{21}\) (1978) 2 S.C.R. 621.

by the notion ‘presumption in favour of liberty’. It conveys that if one feels that any particular law would restrict individual liberty, the burden falls on the state to illustrate that there is a rightful reason to be achieved by such restraint. If again, it infringes the liberty and any petition is filed by any citizen, it is then a mission for judiciary to determine, which state purposes are sufficiently weighty that they justify such a check on individual liberty. Hence, as general strategy, the presumption in favour of liberty could be accepted as a procedural assumption.

The broad assortment of opinions arise from two major schools of thought and their contradicting norms for limiting of free speech, standards often signified as the standard of ‘harm’\(^\text{23}\) and the standard of ‘offence’.\(^\text{24}\) Public discourse must be kept in harmony to encourage that citizens have the opportunity to receive the quantity and range of information adequate for making good decisions. Consequently, it can be observed that the true evaluation of such a freedom is to be established not alone in the terms of constitutional requirements but also in the degree to which those who seek out to put into effect the freedom are in fact legalized to do so. It is significant to bear in mind that judiciary is equipped in striking down such endeavour to check that freedom and is of enormous value in such a mission. Hence expression and speech does not necessarily guarantee the accurate information. There comes the relevance of press and its duty to impart true information. When speech or expression merely conveys the opinions— that are characterized by a subjective point of view or contain a judgment of facts, ideas, or person— information is a verified fact that has some value added. It is on that presumption, the common law countries jurisprudence, entails freedom of speech or/ freedom of press as special right and civil law countries have their statutes dealing with these rights and other countries have a strong judiciary to interpret and review these rights in a visible manner.\(^\text{25}\)

The state as found was not formed on one fine day. Ever since the period of pre-historic Greece, philosophers like Socrates, Plato, and Aristotle have highlighted, that individual freedom is an indispensable component for the welfare and blooming of a society and its fellow members. The concept of state sovereignty has been developed from then, which was later on emphasized by various jurists wherein fundamentally all theories stresses, that every states have the right to choose its own internal arrangement; that no unknown power should interfere in those internal affairs. From there, the relevance of state responsibility stems, this primarily means the accountability of sovereign states to bring in a mixture of political supplies and package to its citizens. Soon, the intrinsic

\(^\text{23}\) The harm principle is John Stuart Mill, who in his famous work ‘On Liberty’ Argues: The only purpose for which power can be rightfully exercised over any member of civilized community, against his will, is to prevent harm to others.

\(^\text{24}\) The propounder of offence principle was Joel Feinberg who stated that limitations on speech is to be imposed for its supposed offensiveness, rather than the harm that is caused. Unlike the harm principle, it is not necessary for speech to set back our interests, for it to be prohibited under the offence principle. The result of balancing between the seriousness of the offensiveness and the reasonableness of the offending conduct, which might be very complex and uncertain, will determine whether the speech at issue is subjected to offence principle or not.

dogmas of sovereignty was developed, for instance, non-intervention, territorial integrity, absolute power in the boundaries of a state margin and so on emphasizing the need of state protection to its citizens. Though citizens, their rights, their freedoms are fundamental, these cannot be the predominate elements. Thus follows the query - how much can liberty be maximised under the ambit of individual freedom!

Conclusion
The discussion in this paper elucidates that the debates surrounding the rationality of restrictions, on speech or expression has conflicts from a liberal-egalitarian perspective and a collectivist approach. From the liberal-egalitarian point of view, the freedom to communicate is defensible principally by the axiom of human fundamental equality, whereas, under collectivist approach, vibrancy of democracy through self-governing citizens is a given value. It is for that reason, once right to freedom of speech and expression when guaranteed under Constitutions, it has been interpreted not merely from individualistic point of view, rather societal point of view. While the liberty of the early liberals, was comprehended to be limited to the behaviours led by human rationale, but modern philosophers pose the existence of any patently obvious, coherent restrictions on individual choice. Liberty, consequently, often denotes drastically broader concept of what manner must be, not only allowable but privileged. Often liberty is named as ‘Freedom of Choice’ too. The formation of displeasure, hostility, animosity, or aggression towards the state or between citizens is to be seen objectively. If expression would incite something close to an insurrection or a rebellion such the expression should be outlawed. In such circumstances, the merits or demerits are weighed on the impact it would have on the state not simply to right of the person expressing the view. The phrase ‘reasonable’ involves intelligent concern and consideration that is, the preference of a course which reason utters. Laws which randomly or terribly march into the right cannot be believed to hold the value of equanimity and unless it hits a proper steadiness between the freedom and the social controls permitted, it must be held to be wanting in that quality. Form of expression should be presumptively regulatable if it hinders with normal public execution to a scale materially and considerably beyond that happening in relation to communication of the same thought through basic expressive doings.

At the same time, the appropriate values of state action in all the times and how its power should be implemented in a liberated civilization is to be checked, laying on one side the constitutional question of power, considering with every suitable supposition in favour of its exercise even if there is no constitutional restrictions. They also believe that undue scrutiny and unwarranted confidentiality can cause threats to the exercise of civil liberties, civic conviction, and governance. Government must be subject to the rule of law. In all modern states there are definite preset values of law articulated and stretched based on the verdict of judges or by statute which reveals that personal rights are by no means unqualified but are constrained by few margins in the interest of

26 Conor Gearty Rethinking Civil Liberties in a Counter-Terrorism World EUROPEAN HUMAN RIGHT LAW REVIEW 111 (2007).
security of the State, public order, decency, public health, morality and so forth. The doctrine of police power of the state was introduced and has gained judicial recognition so as to safeguard public interests. Thus, the liberty and freedom of individuals has always been subject to law-making body of a State, primarily and if any vagueness is involved in such laws, Judiciary steps in as interpreter of the constitution and as an institution to safeguard individual rights.

- Meera Mathew*  

* Assistant Professor of Law, Symbiosis Law School, Noida. Email: meerathanks@gmail.com