CHAPTER: IV

REASONABLENESS OF RESTRICTIONS

A) *Substantive Reasonableness*

B) *Procedural Reasonableness*

REASONABLENESS OF RESTRICTIONS

The First (Constitutional Amendment) Act, 1951 amended the Article 19(2). The amendment beside adding three new grounds namely. Public order, Friendly relations with foreign states and incitement to an offense, also added the word 'reasonable' before the restrictions envisaged under Article 19(2). Consequently to restrict the freedom of the press, it is not enough that the restriction was saved by Article 19(2), but it must also be reasonable. This was an attempt to strike a proper balance between the freedoms guaranteed under Article 19(1) (a) and the social control permitted by the other clauses of the Article. The word 'reasonable' precedes the word 'restriction' in the clause (2) to (6) has not only limited the scope of legislative abridgement but has also made the reasonableness a justiciable one.

It is beyond controversy that the term 'reasonable' was intended to give and is actually used by the courts to exercise the power to review the laws restricting the freedoms guaranteed under Article 19 of the constitutition itself, the courts have to decide the actual scope of such review, or in other words it may be said that the Constitution is silent on the issue of what is and what is not a reasonable restriction? Hence it has been left to the courts to determine the standard of reasonableness to be adopted while scrutinising the validity of any impunged law. It is not an easy task and the view expressed by Madras High Court in **V.G. Row V. Stae of Madras** was affirmed by the Supreme Court when the case went in appeal.[1] Patanjali Sastri.C.J;

1. A.I.R. 1952 S.C. 196

said that, *"It is not possible to think only in abstract. Several circumstances must be taken into consideration ie. (i) The purpose of the Act, (ii) The conditions prevailing in the country at that time, (iii) The duration of the restrictions. and (iv) its nature and the extent."*

The Supreme Court for the first time in Dr.N.B.Khare V. State of Delhi[2] considered the scope of the reasonableness of the restrictions. The petitioner had challneged the restrictions imposed upon his right under Article 19(1) (d) to move freely throughout the country by externment order passed against him under **East Punjab Public Safety Act, 1949**.

The grounds relied upon by the petitioners were mostly directed against the procedural aspect of impunged law. It was argued on behalf of the government that the Court could examine only the substantive law on the point and if the restrictions in their substance were found to be reasonable, the petition had to be rejected without going into the other aspects of the law. The Court categorically rejected this narrow interpretation sought to be put on the term 'reasonable' to restrict the Court's power to consider only the substantive law on the point. It was observed, by **Kania, C.J**. in majority opinion. *The law providing reasonable restrictions on the exercise of the right conferred by Article 19 may contain substantive as well as procedural provisions. While the reasonableness of restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the court the question of reasonableness of the procedural part of the law. It is obvious if a law prescribe five years externment or ten years externments, the question whether such period of externments is reasonable, being the substantive part, is necessarily for the consideration of*

2. 1950 S.C.J. 328

the Court under clause (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the same is also open for the consideration of the court. [3]

Mukherjee, J. who delivered a dissenting judgement was agree with the majority opinion on the point that, in determining the reasonableness of a law all the relevant circumstances have to be taken into consideration and one can not dissociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into practice. The question of reasonableness may arise as much from the substantive part of the law as from its procedural portion. [4]

It is, thus, noteworthy that both majority as well as minority view of the Court held that reasonableness of restrictions meant reasonableness of all the aspects of restrictions, and therefore, both the substantive and procedural aspects of the restrictions were justiciable.

This distinction between the substantive and procedural aspect can best be explained in the following words.

" We may view substantive due process as referring to the content or subject-matter of a law, an ordinance, whereas due process refers to the manner in which a law, an ordinance or an administrative practice, or a judicial task is carried out.[5]

The aforesaid distinction between substantive and the procedural aspects may also be traced in the judicial interpretation of the constitutional provision contained in Article 19 of the Constitution.

---

3. Id at p. 330
4. Id at p. 335
5. Abraham, H. J: Freedom and the Court at p. 110

SUBSTANTIVE REASONABLENESS

In the performance of its duty as the guardian of the Constitution. the Supreme Court looks not only the form but also its real character and its reasonable and substantial affect on the rights which are alleged to be curtailed on account of the restriction.

In V.G. Row V. State of Madras.[6] Patanjali Sastri, C.J. observed that. *It is important to bear in mind the test of reasonableness, wherever prescribed, should be applied to each individual statute impunged, and no abstract standard, or general pattern of reasonableness as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of judges participating in the decision should play an important part and the limit to their interference with legislative judgement in such cases can only be dictated by their sense of responsibility and self restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of their elected representatives of the people have, in authorising the imposition of restrictions,*

---

6. Supra note 1

considered them to be reasonable [7]

In Ramji Lal Modi V State of U P [8], the Court held that the expression 'in the interest of' has extended the scope of 'public order' because a law may not have been designed to directly maintain public order and yet it may have enacted in the interest of public order. If, therefore, a law penalising such activities having tendency to cause public disorder as an offence can not but to be held a law imposing reasonable restrictions. The learned Chief Justice, Das, however, made it clear that the impunged section "only punishes aggravated forms of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings" of a class of citizens. The calculated tendency of the aggravated form of insult would clearly be to disrupt public order, and it has, therefore, been held that the section which penalises such activities is well within the protection of Article 19 (2), as being a law imposing reasonable restrictions on the exercise of the right of freedom of speech and expression guaranteed under Article 19 (1) (a).[9]

The Supreme Court in **Virendra V. State of Punjab** [10], struck down sec 3(1) of the **Punjab Special Powers (Press) Act, 1956**, on the ground that it was substantially objectionable because no limitation was imposed as to the duration of the ban on the importation of certain newspapers. The Court observed, "The surrounding circumstances in which the impunged law came to be enacted, the underlying purpose of the enactment and the extent and the urgency of the evil sought to be remedied

7. Id at p. 200
8. A. I. R. 1957 S.C. 620
9. Id at p. 623
10. A.I.R. 1957 S.C. 896

have already been adverted to". The Court further observed, "The powerful influence of the newspapers for good or evil, on the minds of the readers, the wide sweep of their reach, modern facilities for their swift circulation to territories, distant and near, must all enter into the judicial verdict, and the reasonableness of the restrictions imposed upon the press has to be tested against this background. It is certainly a serious encroachment on the valuable and cherished right of freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondants relating to or concerning what may be the burning topic of the day." [11]

The Supreme Court while applying the aforesaid test however, held sec 2 (1) (a) of the same Act valid as the conferment of wide powers upon executive with proper safeguards of time and opportunity of representation was nothing else but the imposition of permissible reasonable restriction on the exercise of the freedom, guaranteed under Article 19 (1) (a)[12] and which may extend to amount prohibition if required under the circumstances for certain period.

In Supt. Central Prison V. Dr. R. M. Lohia,[13] the Supreme Court however, did not follow the extending approach of restrictions where under the impunged section any instigation by words or visible representation not to pay or defer any payment of tax or even contractual dues to the government authority or land owners was made an offence

---

11. Id at p. 900
12. Id at p. 902
13. A.I.R. 1960 S.C. 633

and which also included even an innocuous utternace. Emphasising the need of proximate relation betwen the action and restriction it held that, *"The limitations imposed in the interest of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order but not one farfetched, hypothetical or problematical or too remote in the chain of its relations with public order."* Thus a restriction which has no proximate relation with public order is not a reasonable one and bound to be struck down by the Court.

The Court interpreted the decision in Virendra's case differently. In the words of Subba Rao. J; **"The Court in that case was only making a distintion between an act which expressly and directly purported to maintain public order and one which did not expressly state the said purpose, but left it to be implied therefrom; and between an Act that directly maintains public order and one that indirectly brought about the same results.**[14]

Whether a law which prohibits an advertisement from being published is an unreasonable restriction or not, was taken into consideration in Hamdard Dawakhana V. Union of India,[15] where the law prohibited the advertisement relating to the sale of certain drugs and medicines as they might have led to injurious practice of self medication. Considering the object, the purpose, the intention, the mischief aimed at and the expert opinion in order to upheld the validity. Kapoor, J; observed, *"An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed.*

---

14. Id at p.p. 639 - 40

15. A.I.R. 1960 S.C. 554

..... it can not be said that every advertisement is a matter dealing with the freedom of speech nor it can be said that it is an expression of ideas. In every case one has to see what is the nature of the advertisement and what activity falling under Article 19 (1) (a) it seeks to further".

The Court further observed, **"when the proximate relations with the object of law had been established, it could not be said that the definition of the word `advertisement' was too wide. Had it not been so broad. it would have defeated the very purpose for which the Act was brought into the existence."** Consequently the Supreme Court did not find the restrictions arbitrary or imposing unreasonable restriction. Nevertheless it struck down Sec. 8 of the impunged Act [Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954] where no limitation was placed on the right to search and seizure of any document which in the opinion of authority contained any advertisement contravening the Act, as arbitrary, excessive and for beyond the purpose of the Act, and therefore, amounting to an unreasonable restriction.[16]

Another view for determining the reasonbaleness of a restriction seem to have been developed in Gopalan's case, where Kania, C.J., said that **"the true approach is only to consider the directness of the legislation and not what will be the result of the detention, otherwise valid, on the mode of detenues life.[17]**

---

16. Id at p. 568

17. A.K. Gopalan V. State of Madras A.I.R. 1950 S.C. p.235

The aforesaid view to adjudge the reasonableness of a restriction was further developed by Patanjali Sastri, in a case while upholding the preventive detention of the petitioner under the **Preventive Detention Act, 1950**, said that, *"The direct object of the order was the preventive detention and not the infringement of the right of freedom of speech and expression which was merely consequential."*[18] Therefore, the inevitable result of the decision is that the object and form of state action became the determining test to ascertain the violation of the right.

Relying on Ram Singh's Case Bhagavati, J, as he then was, formulated the **doctrine of inevitable effect test** in Indian Express Ltd. V. Union of India for adjudging the reasonableness of a particular law infringing the fundamental right. All the consequences resulted on account of the Working Journalists (Condition of Services) and Miscelleneous Act, 1955, said Bhagvati. J. would be remote unless they were the direct and inevitable consequence of the measure enacted in the impunged Act. The Court observed:

"All the consequences which have been visualised in this regard by the petitioners viz - the tendency to curtail circulation and thereby narrow the dissemination of information, fetters the petitioner's freedom to choose the means of exercising the right. Likelihood of the independence of the press being undermined by having to seek government's aid, the imposition of penalty on the petitioner's right to choose the instrument for exercising the freedom or compelling them to seek alternative media etc. would be remote and depend on various factors which may or may not come into play. Unless these were the direct and inevitable consequence of the measures enacted in the impunged Act, it would not be possible to strike the legislation as having effect and operation. A possible eventuality of this type would not necessarily

18. Ram Singh V. State of Delhi A.I.R. 1951 S.C. 270

be the consequence which could be in the contemplation of the legislature while enacting a measure of this type for the benefit of the workmen concerned.[19]

In Sakal Newspaper V. Union of India [20] where the upshot of all the restrictions in the order would have effected the circulation of newspaper and violate the constitutional guarantee of free speech, the Court took the view that there was a link between price, size, advertisements, price of advertisement and circulation. The Supreme Court, speaking through Mudhalkar, J., did not appreciate the Government policy and made a priori statement that the freedom of a newspaper to publish any number of pages was an integral part of the freedom of speech and expression. The freedom would be directly infringed when some integral aspect of it was sought to be curbed. The impunged Act and order were intended to affect the circulation of newspaper and hence, were void as being unconstitutional. The contention of the government that price - page ratio was adopted from the recommendations of the Press commission which in so far as took into account all the relevant factors acted fairly and reasonably was not considered by the Court as a sufficiently weighty or sufficiently clear purpose to justify such interference with the liberty of press.

The similar question, once again was raised before the Supreme Court in Bennett Coleman V. Union of India [21], where newsprint control order, 1962 made in the exercise of the powers conferred under the **Essential Commodi-**

---

19. A.I.R. 1958 S.C. 578 at p. 620

20. A.I.R. 1962 S.C. 305

21. A.I.R. 1973 S.C. 106

ties Act, 1955 was imposed which consequently was affecting the circulation of the newspaper.

The Court asserted that freedom of press was **both qualitative and quantitative**. In other words it comprised of free, unhindered circulation and free unspecified volume of news and views. The Court was of the opinion that it was not for the government to say which newspaper should grow in page and circulation and which were not to grow in a specified direction. The Court further explained that once the quota of newsprint fixed for a newspaper, it should have been left to the concerned newspaper as to how it should be used. The newspaper might have consumed it within months or utilise it for the whole year. Consequently the majority did not approve the aim of impunged policy as reasonable in trying to reduce the advertisement revenue of bigger dailies because it operated like a double edged weapon.[22]

Mathew. J; in his dissenting opinion follwed the observations made by Bhagvati. J. in Indian Expressand expressed the view that measures which are directed at other forms of activities but which have secondary, indirect or incidental effect upon expression do not generally abridge the freedom unless the content of speech itself is regulated and therefore *"if the scheme of distribution brings the smaller newspapers at equal footing with the newspapers enjoying greater circulation that would not, in any way, be made a ground as violation of Article 19 (1)(a)."* He further observed that *"It is because newsprint is scare that it is being rationed Ex - hypothesi, newsprint can not be distributed according to the needs of every consumer".*

---

22. Id at p. p. 128 - 130

The freedom of speech does not mean a right to obtain or use unlimited quantity of newsprint. Article 19 (1) (a) is not a 'guardian of unlimited talkativeness' [23]. In his opinion, therefore, a restriction would not be unreasonable if it attempts to help the smaller newspapers to stand before the big newspapers.

The test of direct and inevitable effect however, was not applied with the same vigour in Express Newspapers Pvt. Ltd. V. Union of India. Sen J. though admitted that the freedom of speech was not absolute and unlimited at all times and under all circumstances but is subject to the restriction contained under Article 19(2) of the Constitution. He referred to cases already been decided by the Court and relied upon the principles as laid down in Bank Nationalisation Case to determine the effect of impunged notice. He observed that **"we have only to substitute the word 'executive' for the word 'law' and the result is obvious. The impunged notices of re-entry upon forfeiture of lease and of the threatened demolition of Express Building are intended and meant to silence the voice of the Indian Express. It must logically follow that the impunged notices constitute a direct and immediate threat to the freedom of the press.**[24] Consequently the action of the government was held an unreasonable restriction upon the press.

Venkataramiah & Misra J.J., however emphasised the point of arbitrariness which may be tested under Article 14 also and non application of mind rather than the effect of the impunged notices.[25]

The shift towards concentrating upon the arbitrary action was once agian reiterated to ascertain the reasonableness of a restriction in **Life Insurance**

23. Id at p. 134
24. A.I.R. 1986 S.C. 872 at p. 910
25. Id at p. 953

Corporation V. Manubhai D Shah.[26] **Ahmedi. J**. (As he then was) in the course of his judgement observed that, *"The attitude on the part of L.I.C can be described as both unfair and unreasonable."* Explaining the reason the Court said, "unfair because fairness demanded that both view points were placed before the readers, however limited be their number, to enable them to draw their own conclusions and unreasonable because there was no logic or proper justification for refusing publication". The Court further said that. "A monopolistic state instrumentality which survives on public funds can not act in an **arbitrary manner** on the specious plea that the magazine is an in house one and it is a matter of its exclusive privilege to print or refuse to print the rejoinder.....The respondent's fundamental right of speech and expression clearly entitled him to insist that his views on the subject should reach those who read the magazine so that they have a complete picture before them and not a one sided or distorted one.[27]

In respect of literature the Supreme Court is of the view that while restriction on a book which if taken as a whole may deprave and corrupt the minds of young persons into whose hands it may fall amounts a reasonable restriction. But the same restriction upon a book using vulgar language to create an exact impact on the readers while exposing evil providing the society, could not be approved. The Court observed that the portrayal of characters by the author is not just figments of the author's imagination. Such characters are often to be seen in real life in society. The author has used his skill in focussing the attention of the readers on such characters in the society and to describe the situation more eloquently has used

---

26. (1992) 3 S.C.C. 637

27. Id at p. 655

unconventional and slang words so that in the light of author's understanding, the appropriate emphasis is there on problems.....and we do not think that any reader on reading this book would become depraved debased and encouraged to lasciviousness. [27-A]

The judiciary has a pious duty to impart justice and , therefore, any restraint which aims to protect its impartiality and credit in the minds of ordinary prudent man is nothing else but a reasonable restriction. It is also to be kept in mind that when people attack judges they can not defend themselves and the law of contempt of court is meant to provide such defence. The persons who attack a judge .....must remember that they are attacking an institution which is indispensable for the survival of rule of law. However, the courts do not like to assume the posture that they are above criticism and that their functioning needs no improvement, and therefore, bonafide criticism of any institution including courts to induce the administrators of the institution to look inwards and improve its image is left unimpared in the interest of public institutions themselves.

This concept of reasonableness is not static and vary according to the needs of an institution. In Express Newspaper Pvt. Ltd. V. Union of India, the Court while holding that press is not immune from the laws of taxation emphasised the fact that what can be a reasonable tax for other industries may not be reasonable for newspaper industry due to the special interest the society has therein. Venkataramiah J; expressed the view that *it should be realised that imposition of a tax like newsprint is an imposition on knowledge*

27 -A AIR 1986 S.C. 967 at p. 983

and would virtually amount to a burden imposed on a man for being literate and for being conscious of his duty as a citizen to inform himself about the world around him. [28]

Explaining the point the Court said, *"since the newsprint is closely linked with the freedom of press, the test for determining the vires of a statute taxing newsprint have, therefore, to be different from the test usually adopted for testing the vires of other statute."* The Court further said that, **"An ordinary taxing statute may be questioned only on the ground being confiscatory in nature or for using colourable device but an statute, taxing newsprint may be challenged simply on the ground being burdensome**.

The view expressed in the aforesaid case was in verbatim repeated in Printers (Mysore) Ltd. V. Asstt Commercial Tax Officer where the apex court laid down that no sale tax can be levied on the sale of newspapers in India while emphasising that press is not immune from the application of the taxing statute, at the same time it should not be to an extent which throttle the voice of the press.[29] Therefore, in view of the apex court a tax on newspaper which is burdensome amount an unreasonable restriction on the freedom of press. Recently the Supreme Court made another dig on the subject in **R. Rajgopal V. State of Tamil Nadu** when Justice Jeevan Reddy held that the press can not be restrained by state or its officials by an order having no force of law. Even while admitting that restrictions may be placed on the press on the ground of defamation contained under Article 19 (2), it curtailed the scope of the restriction. In view of Supreme Court judgement, therefore, a restriction would not be

---

28. AIR 1986 S.C. 515 at p.p. 539 - 40

29. (1994) 2 S.C.C. 434 at p. 442

treated as reasonable on the ground of defamation if the writing or the statement is based upon the public record including the court record unless it is totally devoid of the truth and published without reasonable verification of facts.

The Supreme Court in **Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd,** [31] gave further boost when Kuldip Singh, J; said that freedom of speech and expression can be restricted under Article 19 (2) and not by creating a monopoly by state or any other authority. *Publication of advertisement* which is a *"commercial speech"* is an integral part of freedom of speech and expression which can only be restricted under Article 19 (2). The rule 458 made under Sec. 7 of Telegraph Act, 1885 simply prohibit the publication of "any list of telephone subscribers" and under no circumstances it can be equated with the "publication of advertisement". Hence rule 458 and 459 can not be interpreted so as to restrict the commercial speech.[32] and therefore, it did not declare the aforesaid rules unreasonable.

---

30. A.I.R. 1995 S.C. 264 at p. 277

31. A.I.R. 1995 S.C. 2438

32. Id at p. 2448

PROCEDURAL REASONABLENESS

Procedural reasonableness is concerned with the implementation of the restrictions contained under Article 19(2) of the constitution. A restriction though valid substantially, may fail to satisfy the requirements of procedural reasonableness. In such a case the restriction would be liable to be struck down. Therefore, in order to be a valid restriction, beside satisfying substantive test it must fulfill the procedural requirement also.

While examining the procedural reasonableness the Supreme Court laid emphasis that the procedure must be such as may yield an objective and fair decision by the authority administering the law and does not result into arbitrary curtailment of individual freedom. The principles of the administrative law particularly of natural justice have considerably influenced the judicial policy in this area.[33]

In democratic countries wide powers are conferred upon the executive which leaves an individual sometimes upon their mercy. Under such circumstances the only safeguard available is the good sense of the administration itself which is quite rare. In practice it is the executive which controls the

---

33. Misra, S.P: Fundamental Rights and the Supreme Court Reasonableness of Restrictions at p. 194

legislative bodies[34] and, therefore, it is once again the judiciary, required to take judicial review of administrative action in order to save the rights of an individual.

The Supreme Court in N.B. Khare V. State of Delhi [35] considered the reasonableness of a restriction based upon the subjective satisfaction of an authority. The Court held that *"the legislature can confer on an executive officer the authority to make an order externing a person from a particular area on his subjective satisfaction without prescribing a judicial scrutiny of this satisfaction. A law providing for externment is not bad because it leaves the desirability of making an order of externment to the subjective satisfaction of a particular officer as an element of emergency requires taking of prompt steps to prevent apprehended danger to public tranquility and so the authority has to be vested in executive officers to take appropriate action on their own responsiblity."* In arriving to this conclusion the Supreme Court took into consideration all the aspects of concerned law i.e.

(i) the law was of temporary nature. Its life was limited to two years so that no externment order could remain in force beyond that period,

(ii) It gave the externee a right to be informed of grounds of restrictions if it was for more than three months, and

(iii) an opportunity to externee was provided to make a representation to the Advisory Board. All these proper safeguards were taken into consideration by Supreme Court in order to determine the procedural reasonableness of the impunged law.

---

34. Though in a democratic system the executive is responsible to the legislature. But in practice it seems to be the executive who controls the legislature as they enjoy certain powers i.e. to recommend the dissolution of the House which most of the members do not want to happen as they fear that they would loose their privileges and other facilities once they cease to be a member of the House.

35. Supra note (2)

In Virendra's Case Supreme Court followed the same test while holding **Sec 2(1) (a) of Punjab Special Powers (Press) Act, 1956** as both substantially as well as procedurally reasonable because proper safeguards were provided in case if the rights of any person were to be curtailed and on the same reasoning, in the absence of proper safeguards, struck down Sec 3 of the said Act while observing that it placed the whole matter upon the subjective determination of State Government and there was no provision even for any representation by the affected party. It thus violate the natural justice.[36] In order to make a restriction procedurally reasonable, it is also necessry that the opportunity afforded to a person affected must be real and effective. It is, therefore, necessry that whenever a notification is made for the forfeiture of any book, newspaper or any other material which is prejudicial to the safety or security of India, it must state the representation from the book. newspaper, or other material which offeneds the law.[37]

Whenever the freedom of an individual is sought to be restricted it must communicate the grounds of restriction failing which the order is liable to be struck down. In state of Madras V.V.G. Row it was held that **adequate communication is an important element of procedural reasonableness**. The Court observed, *"No personal service on any office bearer or the member of the association concerned or service by affixture at the office, if any of such association is prescribed nor is any other mode of proclaimation of the notification at the place where such association carries on its activities provided for. Publication in any official gazette, whose publicity value is by no means great may not reach the members of the association declared unlaw-*

36. A.I.R. 1957 S.C. 896 at p. 902

37. Narayana V. State of M.P. (1972) 1 S.C.W.R. 984 at p.p. 990 - 92

ful and if the time fixed expired before they knew of such declaration, their right of making a representation which is the only opportunity of presenting their case would be lost. Yet the consequences to the members which the notification involves are most serious for their very membership thereafter is made an offence under Sec. 17". [38]

Again in Dwarka Prasad V. State of UP [39] it was held that a law which only required recording of reasons for the action taken by the authority but made no express provision for the communication if there is no higher authority to examine the propriety of those reasons and revise or review the decision,is not a good law. The reasons recorded in such case are only for the satisfaction of the authority making it.

The priciple of reasonableness is not applicable to the subordinate legislation. In **Express Newspapers Pvt Ltd. V. Union of Inida** giving its verdict in negative the Supreme Court observed, *"A subordinate legislation may be struck down as arbitrary or contrary to the statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute, or say the Consitution. This can however, be done only on the ground that it does not conform to the statutory or constitutional requirement that it offends Article 14 or 19 (1) (a) of the Constitution. It can not, no doubt be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."* [40]

---

38. Supra note (6) at p. 260

39. 1954 S.C.J. 238

40. Supra note (28) at p. 543

The Supreme Court in Life Insurance Corporation V. Munubhai D. Shah held the action of L.I.C, violative of prinicple of natural justice and consequently **unfair, unreasonable and arbitrary**. It was observed that , *"It is not the case of L.I.C. that the rejoinder contains any thing offensive in the sense that it would fall within any of the restrictive clauses of Article 19 (2) or that it is in any manner prejudicial to the members of the community, or that it is based on imaginary or concocted material. That being so on the fairness doctrine L.I.C. was under an obligation to . publish the rejoinder since it had published counter to the study paper."*[41]

Reliance Petro Chemical Ltd V. Indian Express Newspaper,[42] apex Court once again followed the principle of natural justice in the form of balancing of convenience and vacated the stay order on Express Newspapers to write anything about the debentures of petitioner company even before the expiry of the last date on the ground that the debentures had already been over - subscribed and there was no need to keep the stay order in force. The Court, therefore, expressed the view that once the purpose for which an injunction was granted, is fulfilled the continuance of the stay order would constitute an unreasonable restriction.

It is, therefore, clear that to curtail the freedom of press, it is not sufficient that restriction is based on any of the grounds enshrined under Article 19 (2) of the Constitution but it is also essential that the restriction must be reasonable. The Constitution nowhere lays down what is and what is not

---

41. Supra note 26 at p. 655

42. A.I.R. 1989. S.C. 190

reasonable restriction. Hence it has been left to the courts to determine the standard of reasonableness to be adopted in judging the validity of a particular legislative restriction. It is necessary that a restriction to be a reasonable one must fulfill substantive as well as procedural aspects of reasonableness. A restriction would be substantially reasonable if it put the curbs with the sole purpose of achieving the objects included under Article 19(2). Further to stand the test of reasonableness the law must define expressly or by necessary implication the powers of an authority. The proceedural reasonableness requires that any opportunity provided to the party concerned must be real and effective. The concept of **equality** and the principle of **natural justice** are the essential elements of proceedural reasonableness. It means that action of the authority must be based on equal treatment and equal opportunity to the parties unless there is a justification for denying the same.