

Freedom Of Press: Still A Day Dream!

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ABSTRACT

Freedom of speech and expression is the most valuable fundamental right which has been provided by the framers which helps in the survival of democracy as everyone has the right to express his/her views and opinions freely, to criticize the autocratic policies of the government, to have healthy discussion on the judicial decisions but subjected to reasonable restriction. Press/Media directly has not been provided any such right under Indian Constitution but Article 19(1)(a) in its ambit covers freedom of press also which can further be curtailed on the pretext of reasonable restrictions. Press is presumed to be the IVth pillar of the democracy due to the active role played by it in the dissemination of the information from all corners of the world. Without press it is impossible to imagine the existence of democratic values as government will have no fear of exposure and criticism. As without press their autocratic policies will not come for debate in public which will also curtail the judicial scrutiny. Researcher in the present paper will try to elaborate the need that why media should be kept free from unnecessary regulations and how it can be controlled in better way as changing dynamics of technology has furthered the role of media now a days.

Keywords: Media, Free speech, regulations.

INTRODUCTION

According to Merriam Webster dictionary Freedom of Speech is defined as the “the right to express information, ideas, and opinions free of government restrictions based on content and subject only to reasonable limitations”. Freedom of Speech can unpretentiously define the right to articulate one’s views and opinions without any restriction, censorship or without the approbation of the society. Similarly, the act of receiving ideas and transmit these ideas without taking into consideration the medium through which they wish to propagate their thoughts.

The framers of the Constitution of India were inspired to add most of the Fundamental Rights from the International bodies like the United Nations. United Nations General Assembly’s “Universal Declaration of Human Rights (UDHR)” in 1948 paved way for International human rights. Article 19 of UDHR defines right to freedom of opinion and expression which expounds that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers¹.”

As mentioned above, status of Article 19 of the Constitution is that it is not an absolute right. The framers had an opinion that if these rights will be absolutely distributed to the citizens there could be social chaos. The law and order of the country will be compromised. In order to

maintain the decorum of the society and uphold the true meaning of the Constitution the framers have intelligently inserted Article 19(2) which puts a cap on the use of these rights. Article 19(2) states that “Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes *reasonable restrictions* on the exercise of the right conferred by the said sub-clause in the interest of the *sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.*”

A free and independent media not only provides to be a medium to transmit information or ideas but is a very powerful tool to make people aware of various local, national and international issues. It not only makes people aware but also inculcates people to create their own opinions and ideas on the issues as well. In fact, a free press inculcates free flow of information regarding the government which makes people to avail the information directly without any break in the flow. The essential part of press in the society is to make the people to critically think about the particular issue raised. The press is the only medium through which a mass coverage of people is obtained. The concept of free press brings about to provide information and opinions to the society at large which is of public importance.

DEFINITION OF MEDIA

Media can be defined as a form of communication through which information is stored and delivered to the people. When these information's are disseminated to the public at large then it is termed as Mass Media. The role of media in today's society is indispensable. They are considered as the fourth pillar which keeps an eye on the other three pillars of the Government. Because of this reason it is considered as the watchdog. It helps society to understand the various policies of the government that are implemented for their benefit. Media also plays a crucial role in making people in the society to know what is happening in other foreign nation with and without in context with the country they are living in.

DEFINITION OF JUDICIARY

Judiciary is the third pillar or organ of the Government. It is the most important and impartial branch of the government which has the highest authority to interpret the law of the land. Since, India is a democratic country the position of Judiciary is so reverent that it cannot function without Judiciary. The Judiciary acts as the Guardian of the Constitution of India.

India follows the English legal system. The hierarchy of courts is similar to a pyramid where the top court in India is the Supreme Court. The next level courts are the High Court which is the highest court of a state. The third category are the subordinate courts.

The Supreme Court has delivered numerous landmark judgments which paved way for the benefit of the society. Many famous judges have given their judgment on very sensitive cases that was considered to be a turning point in the history of judiciary.

FREEDOM OF PRESS AND CONSTITUTION OF INDIA

PRE-INDEPENDENCE

Since the British rule in India, the press has a prolonged background with the Britishers in India. In order to administer the activities of press in India various provisions were enacted such as “Indian Press Act (1910)” and “Indian Press (Emergency) Act (1930)”. During the World War II the Britishers took away the liberty of the press to publish the news and Indian Press was forced to be scrutinized and censored the contents of certain news. The Britishers always kept an eye on the Indian Press so that they could stop the Congress from promulgating the mass.

POST-INDEPENDENCE

When India gained Independence from the foreign rule the need to draft a Constitution arose. The leaders and framers were of the opinion that a citizen’s freedom to express should also include freedom of the press. As leaders of the freedom movement demanded this continuously during the imperial rule. They also believed that the press always acts as an indirect check on the Government’s policies and plays a very crucial part in the democratic system. “Pandit Jawaharlal Nehru was of the view point that he would rather have a completely free press with all the dangers involved in the wrong use of the freedom than a suppressed and regulated press”ⁱⁱ. When the Constitution was framed under the chairmanship of Dr. B.R. Ambedkar no separate provision for the Press was included. Ambedkar enlightened the legislators when the problem was brought into the Parliament that Freedom of Speech and Expression as promised under Article 19(1)(a) also includes the Freedom of Press. He said that there was no need for a separate provision in Constitution for Freedom of Press alone.

Later on, Ambedkar’s view was accepted by the judiciary and has given numerous judgments on the same in favor of Ambedkar’s interpretation of Freedom of Speech and Expression. The judiciary interpreted that there is an obvious and implied relationship between Freedom of Speech and Freedom of Press. They are satisfied with the justification given by Ambedkar on the Freedom of Press and stated that Freedom of Press is the species and Freedom of Speech and Expression is the genus.

The very first instance of Indian media being restricted was during the reign of Mrs. Indira Gandhi. During the emergency the Indira Gandhi government threw many opposition leaders, journalists and activists into jail without any prior reasons. The journalists were told to follow certain guidelines laid down by the Indira Gandhi government. *“One of the rules were where news is plainly dangerous, newspapers will assist the Chief Press Adviser by suppressing it themselves. Where doubts exist, reference may and should be made to the nearest press adviser.”* The media was under attack for long period of 21 months. Each and every piece of news has to be approved by the Chief Press Adviser before publishing during the emergency. The country was in a position where news was censored. Many international news agency journalists were threatened and they all left the country. Many distinguished newspaper agencies in the country protested against the ill treatment of media were threatened and many put in jails. According to the reports released by the Home Ministry in 1976 more than 700 journalists were arrested during the emergency.ⁱⁱⁱ

After Indira Gandhi, Rajiv Gandhi also took several steps in curbing the media in the country. Due to the immense pressure and allegation on the Bofors case and other corrupt practices in the Government the Rajiv Gandhi government introduced a Defamation Bill, 1988 which intends to

create new offenses like criminal imputation and scurrilous writing. With the support of nationwide strike and protest by the newspaper industry against the bill Rajiv Gandhi had to withdraw the bill.^{iv}

AMERICAN CONSTITUTION ON FREEDOM OF PRESS

First Amendment in the US Constitution has guaranteed freedom of press. Since this government cannot interfere in matters relating to the Press. Even though the Freedom of Press is ensured to the citizens these are subject to certain restrictions like protection for whistleblowers and defamation laws.

HISTORY

Before the Declaration of Independence was signed in the thirteen colonies, the press was subjected to restrictions by the British colonial authorities. They not only tried to restrict the media against sedition but tried to restrict the whole media without publishing. Journalists had to face serious prosecutions for publishing against the Government or the public officials.

The motive of the United States to adopt Freedom of Press is because of the situations in the England. Prior to the innovation of the printing machine the churches and Government prohibited anything that is written which is against the both. After the invention of the printing machine the Government came up with a law which made it mandatory to get a license from the Government for publishing anything. Obtaining a license from the Government or church authorities was so cumbersome. These were extremely hard times for the people because any one carrying a book that criticizes or the content is against the Government were executed.

In order to control the press Queen Elizabeth of England came up with certain rules. Certain press was given printing authority and only there printing has to be done. Before getting the content printed the material should be submitted to the Archbishops for approval. If the content of the material criticizes the Government or is anti-national the author could be imprisoned or the printing equipment could be destroyed by the Government even though the facts written are true.

Printing was then introduced in America in the early 17th century. By the mid-18th century the colonies saw an expansion of press. But since these colonies were under the colonial rule of the Britain many regulations were placed to control press. Censorship and sedition laws were followed by many colonies. Any person dared to criticize the Government was punished under the sedition laws. Many journalists faced serious charges against them who pointed out the problems in the Government and its officials.

In 1791, the United States established the First Amendment with the view to remove the excessive control of the Government over the press and to prohibit them from interfere with the press matters. The First Amendment ensures that the Government cannot pass a law that makes the press to publish information which they don't want to, impose criminal offences for publishing actual information to the public, forcing journalists to reveal the identity of their sources, etc.

Numerous cases have been filed ever since the First Amendment took place. As mentioned earlier the First Amendment protects from disseminating true information that affects the public in large and from any kind of punishment from publishing the same. In what is known as the “Daily Mail Principle” the Supreme Court in 1979 decided in the ***Smith V. Daily Mail Publishing Co.***^v in the case the Daily Mail Publishing Company published the name of a juvenile offender against or in violation of the law of West Virginia which declared such publications are private information. The Supreme Court held that the protection that is offered under the Daily Mail Principle from any punishment is not absolute, but laws that are against the governmental regulations on the freedom of press are set to be extremely high. The above case depicts how media and press have been considered to be a priority over State laws.

RESTRICTIONS ON FREEDOM OF PRESS IN INDIA

As India is having a diverse culture, languages and religion absolute freedom is a day dream, hence press freedoms also need to be controlled. As freedom of press falls in the umbrella of free speech and expression, which means similar restrictions are applicable of free press as given Under Article 19(2). Under Article 19(2) the State shall make laws under certain grounds and only within these circles of laws. In order to exercise the Freedom of Press the following grounds has to be followed:

“Sovereignty and Integrity of India, Security of the State, Friendly relations with the Foreign Relations, Public Order, Decency or Morality, Contempt of Court, Defamation, Incitement of an Offence”

The above-mentioned grounds can be further divided into two: **(a)** on the basis of national interest and, **(b)** on the basis of societal interest.

Sovereignty and integrity, security of the State, friendly relations with the foreign relations and public order are the grounds which depict national interest.

Interest of the society, decency or morality, contempt of the court, defamation and incitement of an offence are the grounds which depicts the interest of the society.

It is the duty of the judiciary to make sure that restrictions placed upon the freedoms are reasonable or not. It is because if the restriction placed upon the media and press in India is found to be not reasonable the question of reasonableness can be brought into the domain.

In ***Prabha Dutt V. Union of India***^{vi} a landmark judgment was given. In this petitioner is a reporter who has to interview two convicts who were awarded death sentence. The petitioner was trying to gather information through the medium of interview and not to express the view or opinion on it. According to the Jail Manual no convict sentenced under the death sentence shall be denied from communications with his/her friends, family, relative, reporters or media for interview unless there is a reasonable reason to do so. The court states that the press could retrieve information from any person with his/her consent without any external force or voluntarily.

In ***Romesh Thapar V. Union of India***^{vii} the Supreme Court presided by Patanjali Shastri, C.J., said that that the role of press in democratic country like India is indispensable. In present case

the petitioner established a publication firm which printed and published an English journal “Cross Road” which is printed and published in Mumbai. The case involves around the entry and circulation of this journal in the public which was banned in Mumbai. The petitioner contends that this is a clear-cut violation of his fundamental rights conferred under the Freedom of Speech.

In *Indian Express Newspapers Bombay Private Ltd. V. Union of India*^{viii} the petitioner contends that the Bombay state increased the levy on news print leading to the increase in the price of the newspapers. It forced the newspaper agency to suffer circulation declination. The newspaper agency pleaded that this is a violation of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. The Supreme Court allowed the petition and directed the state government to revise their taxation policy. The Supreme Court laid down certain essential elements that are guaranteed under the freedom of press namely freedom to access all source of information, access to publication and access and freedom to circulate.

RELATIONSHIP BETWEEN MEDIA AND JUDICIARY

Media is considered as one of the pillars of democracy. It plays an important role in the society as it shapes a person’s opinion or view on a particular issue. It has a very lasting effect on the society at large. Media is also regarded as the watchdog on the organs of the government. The relationship between the media and judiciary has given rise to a new and developed form of journalistic style known as the “Media Trial”.

In today’s scenario the media not only provides the society with current affairs but now has ousted the role of judiciary. Media today has come out of the traditional reporting of mere facts but has taken the responsibility by investigating the facts for themselves and serves the public with the truth. The impact of media on a person whether he is guilty or innocent even before the actual judgment is made has been described as ‘Media Trail’ or ‘Trial by Media’.

The trial by media has been considered extremely significant during the initial years. The murder of Priyadarshini Mattoo, a law student who was raped and murdered by Santhosh Kumar Singh, the son of an IPS officer, for declining his proposal. In this case the additional session’s court acquitted the accused on the grounds of lack of evidences allowing the accused the benefit of doubt. The victim’s father gave continuous media interviews and this has created a public uproar and the media has started to use the investigative journalism technique and showcased how justice has been denied. This forced the Central Bureau of Investigation (CBI) to reopen the case. The High Court finally charged the accused with rape and murder. The case of Priyadarshini Mattoo was considered as a milestone achievement for the media through media trial. Similarly, in 2001 where the news weekly magazine conducted a sting operation and exposed the corruption of various ministers involved in defense contracts^{ix}. The Jessica Lal murder case is also considered as a one of the cases where the influence of media on judiciary has played a crucial role. The witnesses praised the media for their continuous support even though the accused is from an influential background. The witnesses also state that they are not financially capable to fight for justice to Jessica Lal. The constant support of the media had helped them to face the court even though they were threatened to turn hostile in the case. Ranging from Nirbhaya gang rape to Kathua gang rape, or Arushi murder case media has been playing a massive role in justice delivery system.

But not only the media helped in solving many cases but also had a great set back. When a famous criminal case is to be tried in the court the media utilizes the opportunity to take advantage of the situation. Obviously, there would be public instability or upsurge in the community. The media usually takes advantage upon these circumstances and tries to increase their circulation or TRP rating. Nowadays media has become a mere money-making business rather than providing the society with the truthful facts. The judiciary also made it clear that by quoting Viscount Dilhorne that *"It is sometimes asserted that no judge will be influenced in his judgment by anything said by the media and consequently that the need to prevent the publication of matter prejudicial to the hearing of a case only exists where the decision rests with laymen. This claim to judicial superiority over human frailty is one that I find some difficulty in accepting. Every holder of a judicial office does his utmost not to let his mind be affected by what he has seen or heard or read outside the court and he will not knowingly let himself be influenced in any way by the media, nor in my view will any layman experienced in the discharge of judicial duties. Nevertheless, it should, I think, be recognized that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. As Lord Denning M.R. said the stream of justice must be kept clean and pure. It is the law, and it remains the law until it is changed by Parliament that the publication of matter likely to prejudice the hearing of a case before a court of law will constitute a contempt of court punishable by fine or imprisonment or both."*^x

INDIAN MEDIA TODAY

In a recent event the newly appointed Chief Justice of India before being elevated has made a statement that "independent judges and noisy journalists are democracy's first line of defense".^{xi} Today's media journalists are being attacked and threatened for revealing the truth of certain people in the society. Certain members of the society were tried as they got exposed by brave journalists but were killed. In the Maoist prone areas like Chhattisgarh and Orissa a newspaper reporter was killed. In Orissa many attacks and intimidation has occurred upon the journalists. In the conflict zone of Jammu and Kashmir the freedom of press is there only for a namesake. Journalists also face threats in exposing the corruption of private companies also^{xii}.

India has over 400 news channels in various languages and another 150 channels are awaiting clearance. The South Asian country also has tens of thousands of newspapers and magazines. But the quality of Indian journalism is poor, as evidenced by the fact India ranks 136 among 180 countries in the index compiled by Reporters Without Borders, an NGO making it one of the poorest qualities in the field of media.^{xiii}

Big media houses have also become corrupt by not transmitting the truthful information to the public. They conceal the fact and blames another for one's crime. The media should not become a mere business organization that runs behind high TRP ratings and circulations.

CONCLUSION & SUGGESTIONS

From what has been researched till now it is clear that the relationship between the media and the society is indispensable. Only when the public is served with the accurate information about the Government only then the public could effectively participate in his/her decision making. Media inculcates the public with what is going on in the society and has an advantage to cover the

whole masses. The effect of media on people are thus very crucial for a democratic country like India. Only when the press is given responsibility they could function appropriately without any disruptions.

Certain suggestion that the researcher would like to make are:

- There is an immense need to confer the press with certain powers by the State in order to provide information that is not biased and inaccurate.
- Insertion of Freedom of Press is one of the key suggestions. A separate provision for the Freedom of Press would strengthen the country's media and press.
- Protection of Journalists from any kind of exploitation should be avoided.
- No person shall be deprived from exposing the truth to the public.

ⁱUniversal Declaration of Human Rights, *available at*: <https://www.un.org/en/universal-declaration-human-rights/> last seen at December 4, 2019

ⁱⁱNehru's speech at Conference of Indian Editors

ⁱⁱⁱEmergency in India: How the Press was affected in 1975-77, Times Now News, *available at* :<https://www.timesnownews.com/india/article/emergency-in-india-how-the-press-was-affected-in-1975-77/246017>, last seen at December 4, 2019

^{iv}Sumera B. Reshi, Restrictions on the Indian Press and the Freedom of Expression, Kashmir Watch, *available at* : <http://kashmirwatch.com/restrictions-on-the-indian-press-and-the-freedom-of-expression/>, last seen at: December 4, 2019

^v443 US 97 (1979) (Supreme Court of Appeals, West Virginia)

^{vi} AIR 1982 SC 6

^{vii} AIR 1950 SC 124

^{viii} (1985) 2 S.C.R. 287

^{ix} *Supra* note 4

^xReliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay (P.) Ltd., 1988(4) SCC 592

^{xi}Full Text: Justice Ranjan Gogoi delivers the third Ramnath Goenka Memorial Lecture- The Vision of Justice, *available at* <https://indianexpress.com/article/india/justice-ranjan-gogoi-at-rng-lecture-independent-judges-and-noisy-journalists-are-democracys-first-line-of-defence-5257119/>, last seen at December 4, 2019

^{xii} *Supra* note 9

^{xiii}Indian Media Facing Crisis in Credibility, *available at* <https://www.dw.com/en/indian-media-facing-a-crisis-of-credibility/a-39120228>, last seen at December 4, 2019