

Ambit of Freedom of speech in Indian media

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Abstract

Freedom of the press is the freedom of communication & expression through vehicles including various electronic media & published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other protection. The Indian Press has a long history right from the times of British rule in the country. The British Government enacted a number of legislations to control the press, like the Indian Press Act, 1910, then in 1931-32 the Indian Press (Emergency) Act etc. During the Second World War (1939-45), the executive exercised exhaustive powers under the Defence of India Act & enforced censorship on press. At the same time the publication of all news relating to the Congress activities declared illegal.

In the Post-Constitutional Era, there is a change in the outlook. The Constitution of India in Article 19(1) (a) lays down that "All citizens shall have the right, to freedom of speech & expression." Unlike, the U.S. Constitution, the Indian Constitution does not expressly provide freedom of press. However, it is now well settled that the words "speech & expression" in Article 19(1) (a) includes freedom of press also. The freedom of press means freedom from interference from authority which would have the effect of interference with the content & circulation of newspapers. The Article 19(1) (a) of the Constitution is subject to certain restrictions laid down in Article 19(2) of the Constitution.

Keywords: electronic media, Indian press, post-constitutional era, Indian constitution

1. Introduction

The Press or Media is the only Whistle-blower all across the globe where it intimidates the laymen upon all the happenings in the surrounding. The right to freedom in Article 19 of the Indian Constitution guarantees the Freedom of speech and expression, as one of its six freedoms. The law in the current form finds its root in the Hate Speech Law Section 295(A) enacted by the British Administration in India. This act was brought about in the backdrop of a series of murders of Arya Samaj leaders who stirred controversy against Islam.

This started in 1897 with the murder of Pandit Lekhram by a Muslim because he had written a book criticizing Islam. Koenraad Elst argues that "Section 295A was not instituted by Hindu society, but against it. It was imposed by the British on the Hindus in order to shield Islam from criticism". The murder series caught lime-light in December, 1926 after the murder of Swami Shraddhananda for the protection he gave to a family of converts from Islam to Hinduism in addition to writing Hindu Sanga than, Saviour of the Dying Race in 1926. Precedence to this law started even before this as in a case against Arya Samaj preacher Dharm Bir in 1915, ten Muslims were sentenced for rioting, but Dharm Bir was also charged under section 298 for "using offensive phrases and gestures with the deliberate intention of wounding the religious feelings" of another community; and under Section 153, for "wantonly provoking the riot which subsequently occurred" and "a judge was brought in who could assure conviction".

Objective

- i) To know the application of freedom of speech in Indian Media.
- ii) To study the ambit of freedom of speech in Indian Media.
- iii) To suggest remedy for any prevailing issues.

Hypothesis

In India, the press has not been able to practise its freedom to express the popular views and has been under the wrath of influential people for expressing its views as its freedom is curbed more than any reasonable restrictions imposed and this scenario needs to be changed.

Limitation

The researcher was unable to get primary source of data due to the time constraint, therefore references have been taken from secondary source of data.

2. Temporal Relation

With the enactment of law

The constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1) (a) of the Constitution. Thus the press is subject to the restrictions that are provided under the Article 19(2) of the Constitution. Before Independence, there was no constitutional or statutory provision to protect the freedom of press. As observed by the Privy Council in Channing Arnold

v. King Emperor: "The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject" [1].

The Preamble of the Indian Constitution ensures to all its citizens the liberty of expression. Freedom of the press has been included as part of freedom of speech and expression under the Article 19 of the UDHR. The heart of the Article 19 says: "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 frontiers."

In a landmark judgment of the case *Maneka Gandhi v. Union of India*, the Supreme Court held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also [2].

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In the Post-Constitutional Era, there is a change in the outlook. The Constitution of India in Article 19(1) (a) lays down that "All citizens shall have the right, to freedom of speech & expression." Unlike, the U.S. Constitution, the Indian Constitution does not expressly provide freedom of press. However, it is now well settled that the words "speech & expression" in Article 19(1) (a) includes freedom of press also. 2 The freedom of press means freedom from interference from authority which would have the effect of interference with the content & circulation of newspapers. The Article 19(1) (a) of the Constitution is subject to certain restrictions laid down in Article 19(2) of the Constitution [4].

The Supreme Court observed in *Union of India v. Assn. for Democratic Reforms*: "One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions". In *Indian Express v. Union of India*, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential

elements. They are: 1. Freedom of access to all sources of information, 2. freedom of publication, and 3. freedom of circulation.

There are instances when the freedom of press has been suppressed by the legislature. The authority of the government, in such circumstances, has been under the scanner of judiciary. In the case of *Brij Bhushan v. State of Delhi* (AIR 1950 SC 129), the validity of censorship previous to the publication of an *English Weekly of Delhi*, the Organiser was questioned. The court struck down the Section 7 of the *East Punjab Safety Act, 1949*, which directed the editor and publisher of a newspaper "to submit for scrutiny, in duplicate, before the publication, till the further orders, all communal matters all the matters and news and views about Pakistan, including photographs, and cartoons", on the ground that it was a restriction on the liberty of the press. Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression.

3. Global comparison and restrictions imposed in the country

Some global comparison of the freedom of speech given to the media/press is as follows:

U.S.A

Freedom of Press is also recognized by the American Constitution. Initially, the freedom of press was not expressly provided in the American Constitution. The freedom of press was inserted only after the First Amendment of the American Constitution. The Amendment prohibited the U.S. Congress from making laws which infringes the freedom of press. The First Amendment of the U.S. Constitution was influenced by the *Virginian Declaration of Rights*.

U.K

The Parliament is sovereign in the United Kingdom. Unlike, the U.S., India & other states the subjects of U.K. does not possess any guaranteed rights. The freedom of press is also well recognized in the U.K. The citizens have full liberty to do anything up to the extent that it does not violate the rule of common law or statute law [5].

Status of Freedom of Press in India

The freedom of press comes within the ambit of freedom of speech & expression. In a democracy, freedom of press is highly essential as it (the press) acts as a watchdog on the three organs of a democracy viz. the legislature, the executive & the judiciary. But, the freedom of press is not absolute in nature. It is subject to certain restrictions which are mentioned in Article 19(2) of the Constitution. The following are the grounds of restrictions laid down in Article 19(2):-

- 1) Sovereignty & Integrity of India
- 2) Security of the State

¹ AIR 1914 PC 116, 117

² AIR 1978 SC 597

³ Pandey, J. N., *Constitutional Law of India*, 42nd ed. (2005), Central Law Agency, Allahabad

⁴ IBID

⁵ Basu, Dr Durga Das, *Case Book on Indian Constitutional Law*, 2nd ed. (2007), Kamal Law House, Kolkata

- 3) Friendly relations with Foreign States
- 4) Public Order
- 5) Decency or Morality
- 6) Contempt of Court

The grounds of 'Public Order' & 'Friendly relations with Foreign States' was added by the Constitution (First Amendment) Act, 1951. While the ground of 'Sovereignty & Integrity of India' was added by the Constitution (Sixteenth Amendment) Act, 1963. In *Romesh Thapar v/s State of Madras*, Patanjali Shastri, CJ, observed that "Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible." In this case, entry and circulation of the English journal "Cross Road", printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as "without liberty of circulation, publication would be of little value". The Hon'ble Supreme Court observed in *Union of India v/s Association for Democratic Reforms*, "One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions". In *Indian Express Newspapers v/s Union of India* [6], it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements.

They are:

1. Freedom of access to all sources of information,
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4. Current Scenario

Press/media is considered to be one of the pillars of a democracy as it acts as a watchdog of the three organs of democracy. Though, freedom of speech & expression (including of press) is enjoyed by the citizens but there are many instances where the press has to face difficulties as well. In the recent past, in the *Tehelka Case*, the portal *Tehelka.com* was forced to shut down completely & its journalists were continuously harassed as the journalists exposed the 'scam' in the defence ministry involving Ex-Defence Personnel & Central Government Ministers. There are many instances where journalists were threatened & even assaulted at times [7]. Despite of these difficulties the press has achieved a lot of success in the recent past. In *Jessica Lal's case*, Manu Sharma, son of a Haryana minister, killed Jessica on April 29, 1999, because she refused to serve him liquor in the restaurant where she was working. The case was closed and all the accused were freed due to lack of evidences, but finally, the case was reopened after media and public outcry, which led to Sharma's conviction.

⁶ IBID

⁷ Dr. Mahendra, *Freedom of press in India: Constitutional Perspectives*, (2006)

In *Priyadarshini Mattoo's Case*, Santosh Kumar, son of an IPS officer raped and killed his colleague, Priyadarshini Mattoo, a law student in 1996, after she refused his proposal. Ailing and aged father of Priyadarshini got judgment in October 2006, after a long run trial. The Delhi High Court rebuked lower courts and authority under investigation for acquittal of accused. The media played a significant role in this case as well. Similarly, in *Nitish Katara's case* the media played an important role.

In *Aarushi Talwar's murder case*, media played an important part by highlighting the loopholes in the case owing to which the police was forced to take some action. Aarushi's father is the prime suspect in this case. Recently, in *Ruchika's Case*, Ruchika Girhotra, a 14-year-old tennis player, was molested by then Haryana police IG S.P.S. Rathore in Panchkula in 1990. Three years later, Ruchika killed herself, which her friend and case witness Aradhana attributes to the harassment of Ruchika and her family by those in power. Nineteen years later, Rathore walks away with six months of rigorous imprisonment and a 1000-rupee fine, reportedly due to his old age and the "prolonged trial".

This led to public outrage & media played a significant role in it. Later on the Government of India asked the Central Bureau of Investigation to re-investigate the case & the police medals awarded to S.P.S. Rathore was also stripped. A case of Abetment of Suicide under Section 306 of the IPC was also filed against S.P.S. Rathore.

In 2005 news channel Aaj-Tak carried out a sting Operation *Duryodhana* which revealed 11 MP's of the Lok Sabha accepting cash for asking question in the Lok Sabha. Later on an Investigation Committee was set up headed by Senior Congress MP Pawan Kumar Bansal. All the 11 MP's were found guilty & were sacked from the Lok Sabha [8].

Responsibility of Media/Press

Though, the press has played significant roles for public welfare but at times it act irresponsibly. For instance the electronic media hyped the Prince Charles and Kate Middleton's wedding in such a way that other important news was neglected. In *Prof. Sabharwal's case*, when Prof. Sabharwal was killed by ABVP activists, there were a number of news channels & newspaper correspondent were present & they had evidence of the murder but the media acted irresponsibly & the police called it an 'Open & Shut Case'. Recently, when Mumbai was under terror threat in 26/11 the media.

Acted irresponsibly by telecasting live the long sixty hour Operation *Black Tornado* by the security forces to combat the attack at The Taj Mahal Palace Hotel & Nariman House. It included live feed of air dropping NSG Commandoes on the rooftop of Nariman House. At times news channel covers news such as 'Bollywood Gossips' & 'Page 3' etc which has reduced them to a mere 'Entertainment Channel'. There are many important issues which should be covered by the media but unfortunately it does not. In April 2009, Union Home Minister P. Chidambaram was addressing the media at a press

⁸ IBID

conference a journalist threw shoe at the minister on protest of acquittal of a Congress leader accused of leading Anti-Sikh riots in 1984. The journalist named Jarnal Singh was a reporter of Dainik Jagran, a local newspaper. Later on he apologized to the Union Home minister for his act. This was one of the most condemnable act which showed the ugly side of the press.

5. Conclusion

The Press is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy." There are three pillars of a democracy viz. the legislative, the executive & the judiciary. The press acts as the fourth pillar of a democracy. The press has played many significant roles in delivering justice, public welfare etc. The National Commission to Review the Working of the Constitution (NCRWC) has in its final report submitted to the Government recommended that Article 19(1)(a) which deals with "freedom of speech & expression" must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It has been sixty years since India became Republic & commencement of the Constitution there is been a lot of ups & down in our democracy & the press also has come across age. As being a subject of the largest democracy of the world we should remember the words of our former Prime Minister Rajiv Gandhi, "Freedom of Press is an Article of Faith with us, sanctified by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation."

Thus, we can conclude that the time has come for the press of largest democracy of the world to work with hand-in-hand with judiciary for the welfare of its subjects. The day is not far away when there will be no eclipse of injustice & the sun of justice will shine brightly forever.

6. References

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