

Freedom of press: Issues and challenges in light of media trial

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Abstract

Freedom of speech and of the press lay at the foundation of all democratic organisations. The press plays an important role in not only mobilizing public opinion but also bringing to light injustices which would have most likely gone unnoticed. The words "Speech and Expression" in Article 19 (1) (a) includes Freedom of Press. Indian judiciary has always added various wings to freedom to press. A survey of the pronouncements of the Supreme Court shows that the Court has turned every attempt of the state to abridge the scope of the guarantee into an opportunity to enlarge its sweep to make the press more potent and effective. Sometimes the media becomes so prejudiced and forgets its own limit and conduct its own trial of a case. The media should also draw a line to avoid tarnishing the reputation of the accused, who is still not proven convict by the court. There should be a balance between freedom of press and rule of law. This paper throws a light on freedom of expression and its various issues and challenges special focus on media trial and its pros and cons.

Keywords: press, media-trial, press commission, nirbhaya of 2012

Introduction

The existence of a free, independent and powerful press is the cornerstone of a democracy, especially in a Welfare State like India. It is not only a medium to express one's opinions and views, but also it is an effective instrument for building opinions and views on various regional, national and international issues. Thus, the crucial role of the press is its ability to mobilize the thinking process of millions. It is the means by which people receive free flow of information and ideas, which is essential to intelligent self-governance, that is, democracy^[1].

According to Justice Bhagwati also, democracy is based essentially on free debate and open discussion, for that is the only corrective of government 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 rights of making a choice, free and general discussion of public matters is absolutely essential^[2].

In *Romesh Thapar v. State of Madras*^[3], Patanjali Shastri, CJ has also observed that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion of public education, so essential for the proper functioning of the process of popular government, is possible. In *Indian Express v. Union of India*^[4], 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 action that abridge that freedom.

Besides, the press plays an important role in not only mobilizing public opinion but also bringing to light injustices which would have most likely gone unnoticed. A free press stands as one of the great interpreters between the government and the people. The strength and importance of press in a democracy is well recognized. The framers of the Constitution provided the press with broad freedom. This freedom was considered necessary to the establishment of a

strong, independent press sometimes referred to as the "Fourth Estate". An independent press can provide citizens with a variety of information and opinions on matters of public importance^[5].

The term 'Press' means clipped form of printing press; a printing or publishing establishment; the act, business or practice of printing newspaper, magazines, news services, etc. in general or the person who write them; journalism or journalists; and publicity, criticism, etc., in newspaper, magazines, etc^[6]. "Freedom means absence of control, interference or restrictions. Hence, the expression "Freedom of Press' means the right to print and publish without any interference from the state or any other public authority. In other words, freedom of the press or freedom of the media is the freedom of communication and expression through mediums including various electronic media and published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections. Freedom of press applies to all types of printed and broadcast material, including books, newspapers, magazines, pamphlets, films and radio and television programs^[7].

Historical Background

The Indian Press has a long history right from the times of British rule in the country. The British Government passed a number of legislations to regulate the activities of the press, like the Indian Press Act, 1910, then in 1931-32 the Indian Press (Emergency) Act etc. During the IInd World War (1939-45), the executive exercised exhaustive powers under the Defence of India Act and enforced censorship on press. At the same time the publication of all news relating to the government activities declared illegal."^[8] 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*^[9]. 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" ^[10].

After independence, there was a change in the outlook with the commencement of the Constitution in 1950. The makers of our Constitution believed that freedom of expression and the freedom of press are indispensable to the operation of a democratic system. In this connection Pandit Jawahar Lal Nehru said: "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press." Of course freedom of the press was one of the Constitutional guarantees persistently demanded by the leaders of the Indian national movement during British rule. Therefore, during the framing of India's Constitution after independence in the Constituent Assembly, the founding fathers gave emphasis on the Freedom of Press. But, surprisingly freedom of press was not specifically incorporated in the list of Fundamental Rights in the Constitution. The omission was noticed and criticized in the Constituent Assembly. Dr. B. R. Ambedkar, who is said to be the chief architect of the Indian Constitution, assured the members that freedom of the press was included in the guarantee of freedom of speech and expression and it was hardly necessary to provide for it specifically. This view has been justified by the Supreme Court of India. In a series of decisions from 1950 onwards the Supreme Court has ruled that Freedom of the Press is implicit in the guarantee of freedom of speech and expression guaranteed by Article 19 (1) (a) of the Constitution" ^[11]. Thus, freedom of the press by judicial interpretation has been accorded constitutional status even if there is no specific provision in the Constitution ensuring freedom of press as such. The 'Freedom of the Press' is regarded as a species of which Freedom of Expression is a genus ^[12].

In 1952, a Press Commission was appointed under the Chairmanship of Justice Rajadhyaksha. Commission submitted its report in 1954, recommended the establishment of a Press Council whose one of the objects was to safeguard the freedom of press and help the press to maintain its independence. In 1965, the Press Council was established by an Act of Parliament ^[13].

Perspectives and Restrictions on Freedom of Press

In India, under Article 19(1) (a) of the Constitution of India "all citizens shall have the right to freedom of speech and expression". In the Preamble to the Constitution of India the people of India declared their solemn resolve to secure to all its citizens liberty of thought and 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 and 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 and circulation of newspapers. Under Indian law, the freedom of the press is not an absolute right. Clause (2) of Article 19 of the Indian Constitution enables the legislature to impose certain restrictions on free speech under six grounds like security of the State, Friendly Relations with Foreign States, Public Order, Decency and Morality, Contempt of Court, Defamation, Incitement to an Offence,

and Sovereignty and Integrity of India. Reasonable restrictions on these grounds can be imposed only by a duly enacted law and not by executive action ^[14]. The grounds of 'Public Order' and 'Friendly relations with Foreign States' was added by the Constitution (First Amendment) Act, 1951. While the ground of "Sovereignty and Integrity of India" was added by the Constitution (Sixteenth Amendment) Act, 1963. Beside these grounds, Section 124 A of Indian Penal Code also puts restriction on Freedom of Press. Section 124 A of the Indian Penal Code deals with the offence of Sedition. It lays down that, "Whoever by words, either spoken or written, or by signs, or by visible representation, or Otherwise, brings or attempts to bring into hatred or contempt, or excites attempts to excite disaffection towards, the Government established by India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine". But Explanation 3 says "Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section". In *Devi Saran v. States* ^[15] the Court has held that Section 124A imposes reasonable restriction on the interest of public order and therefore it is protected under Article 19 (2) of the Constitution. The Indian Penal Code has several other provisions like Section 153A, Section 292, Section 295A and Section 298 which make it contingent upon the person "expressing" himself or herself not to hurt sentiments or cause public discord, something that is open to interpretation. There are other laws including the Indecent Representation of Women (Prohibition) Act of 1986, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act enacted to protect specific sections from representations and speech which they find offensive or which mocks or insults them. Laws such as the Official Secrets Act and Prevention of Terrorism Act (POTA) have been used to limit press freedom. Under POTA, person could be detained for up to six months before the police were required to bring charges on allegations for terrorism-related offences. POTA was repealed in 2004, but was replaced by amendments to UAPA. The Official Secrets Act 1923 remains in effect. In addition, laws like Prasar Bharati act passed in recent years contribute significantly to reducing the control of the press by the government. Further, censorship is another restriction on the freedom of press. The Bombay High Court in its landmark judgment in *Binod Rao V. Masani* ^[16] declared that- "merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication Right to know, to information is other facet of freedom of speech. The Right to know, to receive and to impart information has been recognized within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. The Right to know has, however, no yet extended to the extent of invalidating Section 5 of the Official Secrets Act, 1923 which prohibits disclosure of certain official documents. Even, Right to Information Act, 2005, which specially talks about people right to ask information from Government official, prohibits disclosure of certain documents under Section 8 of the Act. These exceptions are generally the grounds of reasonable restriction over freedom of speech

and expression under Article 19 (1) of Constitution of India. One can conclude that 'right to information is nothing but one small limb of right of speech and expression.

Judicial Trends

The Hon'ble Supreme Court observed in *Union of India v. Association for Democratic Reforms* ^[17], "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". *Madhya Pradesh High Court Bar Association and Other* ^[18] provide the proper guideline: "For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected". There are many instances when the freedom of press has been suppressed by the authority of the government. In such a situation the act of the authority is subject to judicial scrutiny. In *Sakal Papers v. Union of India* ^[19] the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price, was held to be violative of freedom of press and not a reasonable restriction under the Article 19 (2). Similarly, in *Bennett Coleman and Co. v. Union of India* ^[20], the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19 (1) (a) and not to be reasonable restriction under Article 19 (2). The Court also rejected the plea of the Government that it would help small newspapers to grow. An analysis of the judicial decisions reveals that the Indian judiciary has always placed a broad and liberal interpretation on the value of freedom of press which is implied in Article 19 (1) (a), making it subjective only to the restrictions permissible under Article 19 (2). The courts have firmly repelled the efforts by intolerant authorities to curb or suffocate this freedom, more so when public authorities have betrayed autocratic tendencies. A survey of the pronouncements of the Supreme Court shows that the Court has turned every attempt of the state to abridge the scope of the guarantee into an opportunity to enlarge its sweep to make the press more potent and effective.

Media trial; Its pros and cons

Media trial in simple terms is the parallel investigations done by the media on the cases which are under trial in the courts. Media also declared the alleged person as a convict on huge media platforms who are still not proven guilty. Sometimes the media becomes so prejudiced and forgets the very infamous principle of United Nations Human Rights saying, "Innocent until proven guilty". But in the present scenario, the role of media is put under question and directly points out our ethos and value system ^[21]. The Supreme Court's repeated warnings and sermons appear to be just ink on paper! From Saibal's judgement in 1961 to Rajendra Gandhi in 1997 to Sail's judgement in 2005, the Supreme Court, it seems in retrospect, puts great weight on a legal principle which a large part of the fourth estate appears to have forgotten. In Gandhi, the Court said, "A trial by press, electronic media or public agitation is the very antithesis of rule of law. It can well lead to miscarriage of justice. A Judge has to guard himself against any such pressure and he is to be guided strictly by rules of law ^[22].

Media is truly considered the robust backbone of society. Media is known for its mankind service in the sensitive rape case of nirbhaya of 2012. But the media should also draw a line to avoid tarnishing the reputation of the accused, who is still not proven convict by the court. It helps in showing the truth and has become the voice of the people in the digital world. One thing that must be taken of care that to select excellence in the world of mediocrity news on the mainstream platform is an incredibly tough task. To ensure excellence there should be working of independent platforms. There should be a balance in reporting and credibility of accuracy in the news delivery. Rules must be there to regulate and cover sensational news items. Foremost to keep in mind is the sense and principle of justice should not fade away in the trials ^[23]. In short "there should be rule of law not the rule of noise"

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