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FREEDOM OF SPEECH AND ITS IMPACT ON

MEDIA LAW

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Introduction

Expression is a matter of liberty and right. The liberty of thought and right to know are the sources of expression. Free Speech is live wire of the democracy. Freedom of expression is integral to the expansion and fulfilment of individual personality. Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. Iver Jennings said, “Without freedom of speech, the appeal to reason which is the basis of democracy cannot be made.”¹ Milton in his *Aeropagitica* says that without this freedom there can be no health in the moral and intellectual life of either the individual or the nation.²

Exercise of freedom of expression is essential to communicate the thoughts, views, ideas, philosophy and activities. The communication keeps society together and cohabitate. For a healthy growth of civilized world, the free flow of information and ideas is essential. Every individual is a medium of expression. An individual interacts through the media to reach other individuals and institutions. The right to freedom of speech though belongs to every individual, institution and organisation it becomes imperatively necessary in the media world.³ Media world serves as the best communicator of information and the best instrument of expression. Exercise of right of freedom of expression is the professional duty and character work of media, whether it is print or electronic media.⁴ The media gets as a mass communicator. It has to enjoy this freedom for promoting public good and for informing the people in general as to the state of affairs in every sphere of life and activity. Every democratic set up in the present day social texture should have been implicated with

¹ Jennings, W.I., *Cabinet Government*, 13. [Cited in Dr. Madhabhusi Sridhar, *“The Law of Expression, An Analytical Commentary on Law for Media 18”* (Asia Law House, Hyderabad, 18, (2007)].

² Johan Milton, *Aeropagitica and Other Tracts*, 27 (1644).

³ Ernest William Hocking, *“Freedom of the Press: A Framework of Principle”* (A Report from the Commission on Freedom of the Press, 88-89, 1947). [Cited in Dr. Madhabhusi Sridhar, *The Law of Expression, An Analytical Commentary on Law for Media 19* (Asia Law House, Hyderabad (2007)].

⁴ Id.

a special inseparable part i.e. which now expanded to include electronic media also.

Constitutional Aspects Of Freedom Of Speech

The freedom of speech is regarded as the first condition of liberty. This freedom benefits more the hearer than the speaker and it is also essential for the pursuit of truth.⁵ The freedom of speech and expression is very important fundamental right. It is indispensable for the development of one's own individuality and for the success of parliament democracy.⁶ It is said that in a democracy the right to freedom of speech and expression is not only a right of an individual but rather a right of the community to hear and be informed. The Constitution of India guarantees various fundamental rights to its citizens. One such fundamental right is right to freedom under Article 19.⁷ This right is available only to the citizens of India and does not include foreign nationals. The freedom guaranteed under Art. 19(1) is not absolute and is subject to reasonable restrictions.⁸ The freedoms enumerated in Article 19 (1) are those great and basic rights which are recognized as natural rights inherent in the status of a citizen. But none of these freedoms is absolute or uncontrolled.⁹

The relevant portion of Article 19 reads, "All citizens shall have the right to: (a) Freedom of speech and expression.¹⁰ The freedom of speech and expression means "*the right to express one's conviction and opinion freely by the word of mouth, writing, printing pictures, electronic media or any other mode addressed to the eye or ear.*"¹¹ Freedom of speech is the bulwark of a democratic Government and it attaches great importance to this freedom, because without the freedom of speech appeal to reason, which is the basis of democracy, cannot be made. Freedom of speech opens up channel for free discussions of issues and plays a crucial role in public opinion on social, political and economic matters.¹²

Freedom of speech and expression should, therefore, receive generous support from all those who believe in the participation of people in the administration. The freedom of speech and expression

⁵ Patrick Henry, "Concept, Meaning and Scope of Freedom of Speech and Expression", <https://fddocuments.in/document/concept-meaning-and-scope-of-freedom-of-speech-and-expression.html>, (last visited Oct 22, 2020 at 02:41 pm)

⁶ Id.

⁷ Article 19, Constitution of India, 1950

⁸ Article 19(2), Constitution of India, 1950

⁹ *Narendra Kumar v. Union of India*, AIR 1960 SC 430: (1960) 2 SCR 37

¹⁰ Article 19(1)(a), Constitution of India, 1950

¹¹ *Lovell v. City of Griffin*, (1937) 303 US 444; Also quoted by Supreme Court in *Romesh Thapper v. State of Madras*, AIR 1950 SC 124

¹² *Supra* note 5

includes freedom of circulation and propagation of ideas¹³ and, therefore, the right extends to the citizen to use the media to answer the criticism levelled against the views propagated by him. The Constitution of India does not provide for media separately but there is indirect provision for media freedom. It is derived from art. 19(1)(a). It was held in a case that “it is not a correct view that the right which is not specifically mentioned by name can never be a fundamental right within the meaning of Art 19(1) (a). The test is whether the right claimed is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right.”¹⁴

While discussing the scope of freedom of speech and expression the Supreme Court at many times has said that the words freedom of speech and expression must be broadly constructed to include the freedom to circulate one’s views by words of mouth or in writing or through audio-visual instrumentalities. It therefore, includes the right to propagate one’s views through the print media or through any other communication channel e.g. the radio and the television.¹⁵ The Court held that these rights are great and basic rights which are recognised and guaranteed as the natural rights and inherent in the status of a citizen in a free country.¹⁶

Media As An Instrument Of Speech & Expression

Exercise of freedom of speech & expression is essential to communicate the thoughts, views, ideas, philosophy and activities. Every individual is a medium of speech and expression. An individual interacts through the media to reach other individuals and institutions. In India, before independence there was no constitutional guarantee of individual or media freedom. The leaders of the independence movement attached great significance to this freedom of speech and expression for both the individual and media.¹⁷ The right to freedom of speech though belongs to every individual, institution and organisation it becomes imperatively necessary in the media world. Media world serves as the best communicator of information and the best instrument of

¹³ Romesh Thapar v. State of Madras, AIR 1950 SC 594

¹⁴ Maneka Gandhi v. Union of India A.I.R. 1978 SWC 597

¹⁵ Arashdeep Kaur , “Article 19 Protection of Certain Rights regarding Freedom of Speech etc”, <http://www.scribd.com/doc/51091293/Constitution-ARTICLE-19#>, (last visited, Oct 22, 2020 at 03:10pm)

¹⁶ State of West Bengal v. Subodh Gopal Bose & Ors, AIR 1954 SC 92

¹⁷ Supra note 5, at 7

expression.¹⁸ Media freedom is fundamental to the life of an individual in a democratic polity. The media is one of the vital pillars of a free society and is an instrument of social and political change. The term “media” comes from “masses.” It is plural form of medium by which “something is delivered.”

The right to freedom of speech and expression extends to communication media other than the press i.e. cinema and theatre. Exercise of right of freedom of expression is the professional duty and character work of media, whether it is print or electronic media. The media gets as a mass communicator. It has to enjoy this freedom for promoting public good and for informing the people in general as to the state of affairs in every sphere of life and activity.¹⁹ Therefore media is important pillar to lend its valuable support to the system and hence is regarded as “Fourth Estate”. The “Fourth Estate” performs its multi-Pronged functions in linking the three main systems and correlating them with the social needs to bridge the gulf between the governors and the governed.²⁰

The press performs some socially purposeful role. It is inherent in human nature to have desire to communicate, to exchange ideas, to learn about changes in the environment and finally to seek the truth without such mutual interaction society cannot function in order. The press enlightens the public by reporting and interpreting what is happening in the world around them since the newspaper is an eye for a citizen in the democracy.²¹

Impact Of Freedom Of Speech On Media Law

After the independence of India when the constitution was being drafted, the question aroused before the constitutional makers of India that whether or not to have a separate provision for press like in Constitution of America, or to include the freedom of press in right to speech and expression

¹⁸ Peace and Democratic Society, “The Role of The Media and Communication”, available at <https://www.openbookpublishers.com/htmlreader/PDS/chap06.html>, (November 01, 2020 at 08:52pm)

¹⁹ Lanre O. Amodu, “The Media as the Fourth Estate of Realm”, available at https://www.researchgate.net/publication/308120682_The_Media_as_Fourth_Estate_of_the_Realm, (November 01, 2020 at 09:01pm)

²⁰ Id.

²¹ “Freedom of Speech and Expression under Indian Constitution with special reference to Electronic Media”, available at https://shodhganga.inflibnet.ac.in/bitstream/10603/36776/11/11_chapter%202.pdf, (November 01, 2020 at 09:15pm)

as in constitution of England.²² In this context, Dr. B.R. Ambedkar the Chairman of Drafting committee powerfully argued that, “*The press is simply another way of describing a citizen or an individual. The media has no superior privileges which are not to be given or which are not to be exercised by the voter in his separate capacity. The executive of press or the editor are all citizens and therefore when they select to write in a newspaper they are just exercising their right of freedom of speech and expression and in my decision then no special mention is necessary of the freedom of press at all.*”²³ Hence in Indian constitution the right to press was inserted in freedom of speech and expression i.e., Article 19(1)(a). Free press is the need of democracy and is more important for the huge democratic country like India. In India in the absence of any exact article in the constitution for free press, it was the judiciary who promoted and safeguarded the independence of press.

In India the judiciary protected the rights of press as well as constrained it in the interest of justice. The court in *Bihar v. Shailabala Devi*²⁴ case said that, speech and expression on the part of an individual which inflame or boost to of ferocious crimes such as murder, etc. will undermine the security of the state. The court in the case of *Dr. D.C. Saxena v. Chief Justice of India*²⁵ alleged if preservation of democracy is the foundation for free speech, society equally is authorized to regulate freedom of speech or expression through democratic action. The cause is evident, e.g., that society accepts free speech and expression and also puts restrictions on the right of the majority.²⁶ Media is considered the backbone of democracy, it playing very significant role in Indian democracy which is as following²⁷:

1. The media works as a watchdog of the government and carry every report of the action of administration thereby keeping the people informed about the day to day happenings taking place around them.
2. The media is considered as fourth pillar of democracy. It makes us aware of various activities like politics, sports, economic social and cultural activities etc. It is also like a mirror which shows the bare truth and sometimes it may be harsh.

²² Mohd. Ayur Mir, “The Role of Media in Indian Democracy”, IJRAR March 2019, Vol 6, Issue 1, available at <http://www.ijrar.org/papers/IJRAR1AEP100.pdf>, (November 03, 2020 at 06:30pm)

²³ Constituent Assembly Debates, Vol. VII p 780 (2nd December 1948).

²⁴ *State of Bihar v. Shailabala Devi*, AIR 1952 SC 329.

²⁵ *Dr. D.C. Saxena v. CJL*, [(1996) 5 SCC 216]

²⁶ [(1996) 5 SCC 216]

²⁷ Ajun Kumar, “Role of Media in Democracy”, available at <https://www.google.com/amp/s/legadesire.com> accessed on 20-January-2019, (November 03, 2020 at 06:46pm)

3. The media also exposes loopholes in the democratic society, which ultimately helps government in filling the vacuums of loopholes and making a system more accountable, responsive and democratic friendly. Thus the democracy without media is like a vehicle without wheels.
4. Media acts as a bridge between the people and the government and also a very powerful tool with the ability to make and break the opinion of the people. It has the capacity to swing perceptions or evoke emotions. This is why it has gained faith of the public. Media, through its various means of newspapers, television and cinema is what rules the heart and mind of people.
5. The media has helped to shape the democratic society by giving emphasis to issues that are at one point in time, would have been considered strictly private such as child birth, child care, domestic violence, and sexual harassment.
6. Media in exercise of freedom of expression is essential to communicate the thoughts, views, ideas, philosophy, ideals and activities. Communication keeps society together and cohabitate. For healthy growth of civilization world, the free flow of information and ideas is essential.
7. Modern Methods of interpersonal Media communication include seminars dramas, public meeting and workshops etc. these are effective media methods to address small and medium gatherings, which can be used as grounds for advocating the Human Rights and building public opinion.²⁸

Judicial Pronouncements

The preamble to the Constitution of Indian resolves to secure for the citizens of India, liberty of thought, expression and belief. Article 19(1)(a) of the constitution is also applicable to media along with citizens. The media derives the rights from the right to freedom of speech and expression available to the citizens. Thus, the media have the same right no more and no less than any individual to write, publish, circulate or broadcast. In a case that arose in Pre-Independent India, the Privy council held that *“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, apart from the statute law, his privilege is no other and no higher... No privilege attaches to his position.”*²⁹

²⁸ Id.

²⁹ Channing Arnold v. Emperor, AIR 1914 PC 116.

The framework for analysing media rights remains much the same in Post-Independence India. In *M.S.M. Sharma v. Krishna Sinha*³⁰ the Supreme Court observed:

“A non-citizen running a newspaper is not entitled to the fundamental right to freedom of speech and expression, and therefore cannot claim, as his fundamental right, the benefit of the liberty of the press. Further being only a right flowing from the freedom of speech and expression, the liberty of the press in India stands on no higher footing than the freedom of speech and expression of the citizen and that no privilege attaches to the press as such, that is to say, as distinct from the freedom of the citizen.”

In other words, the media enjoy no special immunity or elevated status compared to the citizens and are subject to the general laws of the land. Although no special provision was made to safeguard the rights of the press, courts have time and again confirmed that the rights of the press are implicit in the guarantee of freedom of speech and expression under Article 19(1)(a) of the constitution.³¹

Based on various judicial decisions and precedent from American and English Constitutional interpretations, the following contents of the freedom of the Press have emerged:

- (a) Right to print and publish news i.e. actual facts of contemporary history and views.³²
- (b) Such views or opinions may be those of the editor or author but also those other people printed under his direction.³³
- (c) To distribute or circulate such printed matter to any other party.³⁴
- (d) The freedom extends to the discussion and publication of views relating to all issues about which information is needed to enable the members of society to cope with the exigencies of the period and is not necessarily confined to political or public affairs.³⁵

³⁰ *M.S.M. Sharma v. Krishna Sinha*, AIR 1959 SC 395.

³¹ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129; *Express Newspapers Ltd. v. Union of India*, AIR 1958 SC 578; *Sakal Papers v. Union of India*, AIR 1962 SC 305; *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

³² *Sakal Paper (Pvt.) Limited v. Union of India*, AIR 1962 SC 305.

³³ *Express Newspapers v. Union of India*, 1958 SC 578; *Sharma v. Sri Krishna*, AIR 1959 SC 395.

³⁴ *Pandit M. S. M. Sharma v. Shri Sri Krishna Sinha and Others*, AIR 1950 SCR 594.

³⁵ *Thornhill v. Alabama*, 1950 310 US 88 (102).

(e) A corresponding right to collect the information relating to public affairs or the right of access to the sources of such information.³⁶ This does not mean, however, that the press has a constitutional right of special access to information which is not available to the public generally, nor has the Government any affirmative duty to make available to journalists sources of information not

available to the public generally.³⁷ A corollary of the right to publish must be the right to gather news. News must not be unnecessarily cut off at its source, for without freedom to acquire information the right to publish would be impermissibly compromised.

(f) The right of the press to collect information from diverse and antagonistic sources, on a competitive basis, free from any monopolistic control from the Government.



³⁶ New York Times v. U.S., 1971 403 US 713.

³⁷ Pell v. Proconier, 1974 SC 2800.

Conclusion

After an elaborate study of the research project entitled, a critical study on “Freedom of Speech and its Impact on Media Law”, to the light of various judicial pronouncements and enactments at national and international level, various suggestions are proposed in this concluding chapter. The present study is not merely an overview of democratic system, freedom of speech and expression, and media; rather it has covered a spectrum of subjects ranging from the Constitutional mandate of freedom of speech and expression and freedom of press.

Due to role of media, involvement of people increasing day by day in making of public policy which is ultimately resulting for the establishment of a real and workable democracy in India. Indian democracy is now a day more matured because of the role of media being played in the present scenario. Therefore cumulative conclusion is media playing a very important role in democratic system like India by giving information to its citizens. Due to such information through media, citizen control the State activities and involvement of people in making public policies, which resulted in establishment of real and workable democracy in India. Impact of all these things, today Indian democracy became more matured as compare to the earlier times.

Media today touches almost every aspect of our public life. Media plays a very important and crucial role in enlisting and educating the people. The media can aid public involvement through advocating issues and transferring knowledge, skill and technologies to the people. Awareness about various rural development programs, propagation of family planning could be spread by using the media. It made farmers aware of the new and improvement methods of agriculture and protection of the crops. Media plays very emphatic role in awakening people against many evils prevailed in the society like child marriage, killing of female unborn child, the evil practice of child labour etc. though educational programs, it can cover many student in a single platform. The university Grant Commission telecast educational programs for the benefit of the school and

college students all over India. Media can ignite scientific temper among the students for development of science. The government can use the media more effectively to make it an instrument of social change. Media has exposed a number of corrupt practices, hidden deals, thus putting a check on the cancer in the form of corruption in the society.