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Deciphering the Right of Freedom of Speech and Expression of media

Authored by - Ms. Medha Tiwari

Abstract

Media, in all its prevalent forms have become an inevitable part of our lives and therefore omnipresent. In this fast-paced world, each one of us sits in front of an electronic gadget to pass time. The evolution of media and visual entertainment has witnessed a drastic change in the current decade due to the era of digitalization. The whole concept of visual entertainment started with few television channels and now it is easily available and accessible through the mobile phone, personal computers, and Smart TVs. This research paper is centred on decoding the Rights of Freedom of Speech and Expression of media in context of the Indian Constitution and international covenants.

Introduction

Freedom of the Media to which our Founding Fathers were greatly attached finds no mention in Part III of our Constitution which guarantees certain fundamental rights. There is no specific guarantee of Freedom of the Media as in the Constitutions of other countries. Speaking on behalf of the Committee, Dr. B.R. Ambedkar expressed that, “the media has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a Press or the Manager of a Press is all citizens and therefore, when they choose to write in newspapers, they are merely exercising their right of expression and in my judgment, therefore, no special mention is necessary of the freedom of the media at all.” The word “expression’ used in Art. 19 (1) (a) in addition to ‘speech’ is comprehensive enough to cover the press. The lack of specific mention of the media in the Constitution created no difficulty when the Supreme Court was called upon to protect the freedom of the media in several cases, which came before it, right from 1950. Even the modern science and technology have invented and are still inventing and bringing into use many forms of expression and facilitate communication of ideas. The fundamental right guaranteed thus includes collective right of the community, the right of citizens to read and to

be informed, to impart and receive information. In substance, it is the right of the people to know.

The literal meaning of 'Freedom' means absence of control or lack of interference from any authority; so also, it means no restrictions. Here freedom of press means the right or the liberty to print, publish, or print without any interference from the state or any other public authority. But according to the principles of Jurisprudence, no right or freedom or liberty can exist absolutely without restrictions; hence freedom of press is also demarcated by number of restrictions.³⁰ So here freedom of press means the liberty to print, publish, or print within the ambit of rational and reasonable restrictions. The whole game is that, what should be the sphere or area of freedom and what should be the demarcating lines of that freedom. When it is said that the freedom of press prevails, then it means that liberty of the press exists within the brackets of restrictions. The crucial aspect is where one should draw the demarcating lines of restrictions; and how much sphere should be allowed for the freedom of press

If the democracy has to be meaningful and function effectively, then a free press is a sine qua non. Which is why very often the freedom of press is described as the oxygen of democracy; and without which a democratic society cannot survive. It is visibly evident, especially since Independence, a free and vigilant Press has acted as a vital agency to curb corruption and injustice. In addition, another important role, the press plays are to formulate the public opinion which helps on one hand imparting the knowledge to the society and on the other hand restraining the tyrannical actions of the government. Right of freedom of speech and expression is incorporated in Article 19 of the Universal Declaration of the Human Rights, 1948. It states that everyone has a right to hold opinion without interference. This right of freedom of expression includes the right to hold opinions to receive and impart information either orally or in writing or in any other form through any of the agencies of the media. Article 19 of the International Covenants on Civil and Political Rights 1976 also incorporates the right of freedom of speech and expression. In India the right of freedom of speech and expression is incorporated in 19(1)(a) of the Indian Constitution. This right of freedom of speech and expression is a fundamental right in the Indian legal system. The right to free press does not exist independently and is incorporated in the right of freedom of speech and expression; and hence the right to free press is regarded as a fundamental right.

Gradual progression of the freedom of media:

However, the most significant day in the history of press Regulations was the 26th of January 1950 the day on which the Constitution was brought into force. The colonial experience of the Indians made them realise the crucial significance of the Freedom of Press. Such freedom was therefore incorporated in the Constitution; to empower the Press to disseminate knowledge to the masses and the Constituent Assembly thus, decided to safeguard this Freedom of Press as a fundamental right. Although, the Indian Constitution does not expressly mention the liberty of the press, it is evident that the liberty of the press is included in the freedom of speech and expression under Article 19(1) (a). It is however pertinent to mention that, such freedom is not absolute but is qualified by certain clearly defined limitations under Article 19(2) in the interests of the public. It is necessary to mention here that, this freedom under Article 19(1)(a) is not only cribbed, cabined, and confined to newspapers and periodicals but also includes pamphlets, leaflets, handbills, circulars, and every sort of publication which affords a vehicle of information and opinion.

The issue of power exercised by the press is not only India's problem but a global issue. India being a diverse and plural democracy, such issues become even more sensitive and important in case of biased, unfair, and sensational reporting. The scandal of phone hacking by "News of the World" led the British government to set up a committee to enquire into the „Culture, Practice and Ethics' of media including media's relations with police and politicians under Justice Leveson. This Leveson Report has slammed media for reckless and sensational reporting and has recommended setting up of a strong and independent regulator. The Press Council of India entertains complaints by the press and against the press. The study of last 10 years annual reports of the Press Council maintains on the record that only 13% of the total number of the complaints were filed by the press regarding threat to freedom of press whereas 87% of complaints were filed against the press. The maximum number of complaints was filed against defamatory writings. Complaints against the press are filed under four categories: violation of principles and ethics; press and morality, defamation, communal, casteist, anti-national and anti-religious writings.

Press is the fourth pillar of Indian democracy. The foremost duty of this fourth pillar is to serve the nation at large. The contribution it makes to the society is enormous. Areas where even the slightest literate population resides, even in today's world where the entire nation is lost in the land of social media, a significant number of individuals in our country

still prefer electronic and print media to be their source of authentic information. It is the need of the hour that the media remains unapologetic in dispensing its duties towards nation building.

The decreasing liberty which the journalists are now left with is killing their freedom to report freely without prejudice in mind. They, now a days are burdened by pressures of all kind including those from the owner of their broadcasting channel and at times from the ruling governments to refrain from showing stories which may tarnish their image. These surmounting pressures are forcing the media personnel to work in a closed self-censored environment where a story which pleases all the masters is the real news story to be printed or broadcasted respectively.

Thus, the question which arises here is not the declining ranking of India in press freedom index, but the major question as of now is whether we as a democracy will be able to save the voices which awaken us every time we are surrounded by danger. The answer to this question lies with a lot of stakeholders like the legislators, press regulating bodies, civil societies and to a large extent to each journalist individually. It will be a result of the collective effort that the freedom of media will be saved from collapsing in India.

Underlying restrictions imposed on the freedom of media:

In the last few decades since the Constitution came into force a sufficient body of case law has grown up upon the subject. These cases show that how the state often tried to make the press less active by adopting various methods, i.e. legislative and administrative claiming that the grounds were saved by Article 19 (2) of the Constitution. In Romesh Thappar's case¹, Patanjali Sastri J. delivering the majority opinion observed: "The Constitution has placed in a distinct category these offences against public order which aim at undermining the security of state or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that it is to say, nothing less than endangering the foundations of the state or threatening its overthrow could justify curtailment of right to freedom of speech and expression"

The Supreme Court expressed the opinion that a statute seeking to restrict the freedom of speech and expression for maintaining the public order or ensuring public safety could not be considered valid in as much it purported to impose restrictions for a more comprehensive and

¹ Romesh Thapar vs. The State of Madras 1950 AIR 124

wider purpose than contemplated by the constitutional provisions which delimited the sphere of legislative abridgement by words, "undermines the security of or tends to overthrow the state". The Court, thus made it clear that only the serious and aggravated forms of public disorder calculated to endanger the security of state and not the relatively minor breach of peace of purely local significance upon which the freedom of speech and expression may be curtailed. While considering the laws dealing with the problem of public order the Supreme Court in earlier cases adopted a broader view.

Conclusion

Law and media have distinct roles to play and there need not be any overlapping of the responsibility. Although the media does a commendable job through reopening of the cases, it only goes to raise questions about the law enforcement in the country. Also, there must be due emphasis placed upon a fair trial and court procedures which the media regularly prejudices. The legal provisions relating to the right of freedom of speech and expression of media are ambiguous. The advancement in the field of science and technology, has led to the emergence of a new aspect of digital media, which to a large extent is still untamed and unregulated. The legislature is required to draft and formulate laws that check these lacunas which are prevalent in the media law realm of the framework of India.

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