

Role of Media in Right to freedom of speech and Expression

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Abstract

This study focuses on the right to freedom of speech and expression, and also to study the intention of the framers of the Indian Constitution to insert Art 19(1) (a). Speech is a very unique gift by the God to the human being, through which human being conveys his thoughts, sentiments and feeling to others. Freedom of speech and expression is a natural human right which is acquired by the human being from his birth. Such a divine right of freedom of speech and expression is guaranteed to the citizens by almost all the democratic civil societies. However, in the modern era throughout the world, right to freedom of speech and expression is not limited to one's views, thoughts through the words but also includes media or the press or through any other communicable channel. Judiciary plays a key role in expanding the domain of freedom of speech and expression to new facets like right to information, right to freedom of press, right to circulate, right to advertisement, right to keep silence etc.

Introduction

Media as an instrument for exercising of freedom of speech and expression gains importance for a democratic society. Main function of media is to cover the events, gather and spread information and finally to reflect the activities of State authorities. It is well said that the media is fourth estate after executive, legislature and judiciary. The society, in its turn, may exercise control over the authorities, only in case if the society is aware of its actions and if necessary can intervene, for instance through voting during the elections.

Media is the sword & arm of Nation. Media acts as watchdog to protect public interest against malpractice and create public awareness. Today when politicians are taking full advantage of their positions, an evil nexus of mafia and crime syndicate is making the life of the common man miserable, taxpayer's money is siphoned out for the personal gain of the influential while ordinary people are mere spectators. Media has a greater responsibility as the fourth pillar of democracy along with judiciary, executive and legislature. Media of today has an all embracing role to act against the injustice, oppression, misdeeds and partiality of our society. From the earliest days, media has remained an integral part of human civilization. From the days of Vedas and Upanishads to edicts of kings and emperors like Chandragupta, Asoka to the medieval Indian mass gatherings to the modern day's audio video and print media, media has always played a pivotal role in shaping the society.

During the days of freedom struggle, newspapers like Tilak's Maratha, Keshari, M.K. Gandhi's Young India, Harijan, etc. acted as a platform to place the demands of common Indian and to express solidarity with freedom fighters. Indian media in post-independence era

has grown up phenomenally and today comprises of more than 50,000 newspapers, hundreds of television and radio channels.

It has been noticed that in recent years the power of media is being misused. It is being employed for spreading misinformation and confusion. Even advertising is not that honest. Things of poor quality are being sold at a very high rate on the basis of attractive advertisements. The young ones having immature minds fall victim to such advertisements and begin to insist on buying or using a certain product of a particular brand only, because its interesting advertisements have impressed their minds. Not only the young ones but quite grown up people too get misguided by these advertisements, which turn them to a sort of listening people who do not apply their own brain but credulously accept whatever is claimed. Political misuse of media was made. During the emergency of 1976-78 in India political misuse of media was rampant in the country.

Objectives of the Study

1. To study origin, development and role of Media in society.
2. To study concept of right to freedom of speech and expression of media in India.
3. To study new dimensions of speech and expression.
4. To study issues relating to the freedom of press/Media.

Research Methodology

The present work is based upon descriptive Research Methodology. Being library based work; Literature for this study has been collected from various primary as well as secondary sources. Primary sources include Indian Statutes, Rules, Regulations, Constituent Assembly Debates, Reports of the Working Committees, Standing Committees and Cabinet Committees, judgments of the various High Courts and the Supreme Court, bare provisions of the Constitution and recommendations of the reports by interview schedule. Secondary sources include books of the eminent authors, national as well as international articles in research journals, magazines, articles or editorials in various news papers, notes and publications of internet and official websites etc. On the basis of the present study, suitable modifications, alterations have been suggested for proper and effective role of media in Indian democracy

Analysis and interpretation

The right to 'freedom of speech and expression' in Article 19(1)(a) has been held to include the right to acquire information and disseminate the same. The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression because without adequate information, a person cannot form an informed opinion."¹

In **State of Uttar Pradesh v. Raj Narain** the Supreme Court held that Article 19(1)(a) not only guarantees freedom of speech and expression, it also ensures and comprehends the right of the citizen to know, the right to receive information regarding

¹ M.P. Jain, "Indian Constitutional Law" Lexis Nexis Butterworths Wadhwa Nagpur, Gurgaon, 2012, p. 1081, 1083.

matters of public concern. The Government is not the owner, but timely trusted with rights of the real beneficiary on the estate of the State. Similar views were expressed, while upholding that “right to know is implicit in right of free speech and expression, and disclosure of information regarding functioning of the Government must be the rule.”²

The Hon’ble Supreme Court observed that:

*“We are in a democratic polity where dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the Government. It is equally the responsibility of society to adequately educate every component of it so that the social level is kept up.”*³

Further in *Secretary, Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal*⁴ the Supreme Court reiterated the proposition that the freedom of speech and expression includes the right to acquire information and to disseminate the same. In the *Tata Press Case the Supreme Court*⁵ concluded that the “commercial speech” cannot be denied the protection of Article 19(1)(a) merely because the same is issued by businessmen. “Commercial speech” is a part of freedom of speech guaranteed under the Article 19(1)(a). The public at large has a right to receive the “commercial speech” and the Article protects the right of an individual “to listen, read and receive” the “commercial speech”. The protection of the Article is available both to the speakers as well as the recipient of the speech.

It has been ruled that when a substantially significant population body is illiterate or does not have easy access to ideas or information, it is important that all available means of communication, particularly audio-visual communication, are utilised not just for entertainment but also for education, information, propagation of scientific ideas and the like.

REASONABLE RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION

“It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some curbs on this freedom for the maintenance of social order. No freedom can be absolute or completely unrestricted.”⁶ Article 19(2) specifies the grounds to which reasonable restrictions on the freedom of speech and expression can be imposed:

a) **Security of State:** Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of State. The term ‘security of state’ refers only to serious and aggravated forms of public disorder e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. While, speeches or expressions on the part of an individual, which incite to or encourage the commission of violent crimes, such as murder, are matters which would undermine the security of State.

² S.P.Gupta v. Union of India, (1981) Suppl. SCC 87.

³ M.C. Mehta v. Union of India, 1992 SCC 382.

⁴ AIR 1995 SC 1236.

⁵ AIR 1995 SC 2438: (1995) 5 SCC 139.

⁶ M.P. Jain, “Indian Constitutional Law” Lexis Nexis Butter worths Wadhwa Nagpur, Gurgaon, 2012, p. 1104.

The expression 'security of the state' in Article 19(2) does not merely mean as danger to the security of the entire country, but endangering the security of a part of the State would also involve a threat to the security of the State.

b) Friendly relations with Foreign States: This ground was added by the Constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardise the maintenance of good relations between India and that State. No similar provision is present in any other Constitution of the World. In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government.

It is to be noted that members of the Commonwealth including Pakistan is not a 'foreign state' for the purposes of this Constitution. The question arises before the Supreme Court whether a restriction can be imposed on the freedom of speech and expression on the ground of its prejudicial to a Commonwealth country. The Court stated that a country may not be regarded as a foreign State for the purpose of the Constitution, but may be regarded as a foreign power for other purposes. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.

c) Public Order: This ground was also added by the Constitution (First Amendment) Act, 1951. The concept of 'public order' is wider than 'security of state'. 'Public order' is an expression of wide connotation and signifies that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established. Public order is something more than ordinary maintenance of law and order. 'Public order' is synonymous with public peace, safety and tranquility. The test for determining whether an act affects law and order or public order is to see whether the act leads to the disturbances of the current of life of the community so as to amount to a disturbance of the public order or whether it affects merely an individual being the tranquility of the society undisturbed.

Anything that disturbs public tranquility or public peace disturbs public order. Thus, communal disturbances and strikes promoted with the sole object of causing unrest among workmen are offences against public order. Public order thus, implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life.

d) Decency or Morality: "These are terms of variable content having no fixed meaning for ideas about decency or morality; vary from society to society and time to time depending on the standards of morals prevailing in the contemporary society."⁷ Thus, words 'morality' or 'decency' are words of wide meaning. Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places.

The Apex Court ruled that the words 'decency and morality' is not confined to sexual morality alone. "The ordinary meaning of the 'decency' indicates that the action must be in

⁷ M.P. Jain "Indian Constitutional Law" Lexis Nexis Butterworths Wadhwa Nagpur, Gurgaon, 2012, p. 1109.

conformity with the current standards of behaviour or propriety. The Court has cited with approval the following observations from an English case”⁸

e) Contempt of Court: Restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. It cannot be held as law that in view of the constitutional protection of freedom of speech and expression, no one can be proceeded with for the contempt of court on the allegation of scandalising or intending to scandalise the authority of any Court.

Section 2(a) of the Contempt of Courts Act, 1971, provides that ‘contempt of court’ may be either ‘civil contempt’ or ‘criminal contempt’.

f) Defamation: A statement, which injures a man’s reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. According to Winfield, defamation is the publication of a statement which reflects on a person’s reputation and tends to lower him in estimation of right thinking members of society generally or tends to make them shun or avoid him.

The civil law relating to defamation is still uncodified in India and subject to certain exceptions. Section 499 of the Indian Penal Code, 1860, defines the offence of defamation. It recognises both slander and libel.

g) Incitement to an offence: This ground was also added by the Constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offences. The word ‘offence’ is defined as any act or omission made punishable by law for the time being in force. The incitement to an offence does not refer to incitement to break a law. Thus, an incitement to a breach of every civil law is not necessarily contemplated by Article 19(2).

h) Sovereignty and Integrity of India: This ground was also added to Article 19(2) by the Constitution (Sixteenth Amendment) Act, 1963. The main purpose is to guard the freedom of speech and expression from being used to assail the sovereignty and territorial integrity of the Country.

Freedom of speech and expression and Media: An Analysis

This study discussed role of media mostly debated issues of censorship like hate speech, privacy rights, reputation, contempt of Court, media trial, taxation, broadcasting, freedom of press and right to information. The various cases that were acted upon, by the various authorities, in the past year and seek to raise that same issue have been highlighted below:

1. The defamation Case against AIB for making a harmless meme of Hon’ble PM Mr. Narendra Modi

Earlier this year, the much known organization, AIB was slapped with a defamation case for sharing a meme about our Hon’ble Prime Minister, Mr. Narendra Modi, when the pictures of his lookalike surfaced on various social networking site.

The meme was allegedly reported to the authorities after it showed the Hon’ble PM’s face with the much famous dog filter from Snap Chat. It was observed that while another such, more important issue was ongoing, the authorities readily responded to this case.

⁸ Knüller (Publishing, Printing and Promotions) Ltd. v. Director of Public Prosecutions, (1972) 2 All ER 898. Also referred in Director General of Doordarshan v. Anand Patwardhan, AIR 2006 SC 3346.

The registration of the case was criticized on various levels. Mr. Shashi Tharoor, an honored politician from Congress, as a rebuke to this incident, used his own face for the filter and uploaded the same.

2. **Defamation case registred against RJ Malishka for uploading a song video describing the plight of people due to the Inactions of BMC.**

Still a hyped issue, the case was started when the RJ uploaded a comical song describing the state of the roads of Mumbai City. While she was right in her words, with the amount of potholes on the roadways being more than the area square of roads, her fault was that she went against the Bombay Municipal Corporation, who in turn, registered a Rs. 10.000/- defamation suit and also slapped a fine under her name, for letting a breed pool outside her house. The BMC, who are not only criticized by the citizens but also by various stars, was swift enough to raid her house, without prior notice and book her for various issued a notice for defaults on her part.

3. **Devu Chodankar arrested for criticizing Hon'ble PM on Facebook.**

Mr. Devu Chodnakar, 31 year old man from Goa, was recently arrested for posting certain comments against the Hon'ble Prime Minister and raised some concerns about the Cristian Community, under his term. The reasons cited by the Goa Cyber Crime Department were that custodial interrogation of the accused is very much essential to find out any motive of a larger game plan to promote communal and social disharmony in the state.

4. **The BSF Jawan, who was involuntarily retired after Raising Concerns about the quality of food served to the military.**

Mr. Tej Bahadur Yadav, a BSF Jawan, had uploaded a video expressing his issues with regards to the degraded quality of food that is provided to the military personnel. Even though, the way to do the same, was not entirely appropriate, however, compelling him to seek retirement and his dismissal were some steps, which were to harsh for a person who has been serving for the Nation.

5. **Rajeesh Kumar, arrested for allegedly sharing abusive content on Facebook**

The fault of the man was that during the election campaigning, he had shared a picture of the Hon'ble Prime Minister with a shoe print on his face. Even though, the picture may be considered as derogatory, however, an arrest considering that the man was just being a part of the aggressive debates taking place on the social media.

6. **A Class XI Student arrested for criticizing Mr. Azam Khan**

When in school, every child has the tendency to develop some strong opinions, which he/she likes to share with his friends on the social media platform. These pinions, however strong are a way of the development of the child's transformation into a citizen of the Nation. In the present case, the student was jailed for a period of 11 days for sharing and allegedly 'obnoxious' post about the Minister for Urban Development. At such a tender age, an action such as an arrest, not only curbs the freedom of a child but also sets an example where all the students become scared enough till the extent of never using their Freedom of Speech and Expression.

7. **Shahin and Renu's Mistake of rightfully questioning the Shut Down of an entire city.**

The two girls from Maharashtra were kept in a 14 day Judicial Custody, merely for asking a question about the shutting down of the entire Mumbai city on the sad demise of Mr Bal

Thackeray. More bizarre was the fact that while Shahin was the one, who uploaded the post, Renu was arrested merely for liking the post. Maybe the freedom should only be kept to oneself, if this is what happens when you try to ask questions.

8. **Ambikesh Mahapatra's fault of sharing a satirical depiction of a politician**

Mr. Mahapatra, a chemistry professor of the Jadavpur University of Kolkata, was allegedly arrested for sharing a cartoon depiction of Chief Minister Ms. Mamta Banerjee, in 2012. Later on, he was also attacked by the members of the party. Merely because of forwarding a simple cartoon, he was given a time, which would develop a fer into the mind of anyone for speaking against the government, which has been elected to 'represent' the people.

9. **Ravi arrested for sharing a tweet questioning the assets of Mr Chidambaram**

A small plastic packaging businessman, belonging to the state of Tamil Nadu, was arrested for sharing a tweet which questioned the assets and the net worth of Mr. Karti Chidambaram. Even though it is a law that every politician should be transparent with regards to his assets, this man was arrested for practicing his Right to Know. This action, criticized as much as can be, only highlights the sensitivity that the Government has with regards to its establishment that it has to arrest the aware citizens of the Country to emphasize on its presence.

The Halsbury's Laws of India has stated that "Criticism of public measures or comments on government action, however strongly worded, fall within reasonable limits and are consistent with the fundamental right of freedom of speech and expression."

This statement can be held to be true in a State, where democracy has been established in it's true faith and sense. However, a country, where a man is arrested or detained merely for wording his opinion, cannot be held to be democratic or people specific in any way whatsoever. Maybe, it is high time, when we, the people, the government and the authorities, take a stringent step to become liberal and to give way to our opinions rather than curbing them.

Freedom of Silence- National Anthem Case

Freedom of speech also includes the right to silence. In a case, three children belonging to Jehovah's witnesses were expelled from the school for refusing to sing the national anthem, although they stood respectfully when the same was being sung. They challenged the validity of their expulsion before the Kerala High Court which upheld the expulsion as valid and on the ground that it was their fundamental duty to sing the national anthem. On appeal, the Supreme Court held that the students did not commit any offence under the Prevention of Insults to National Honour Act, 1971. Also, there was no law under which their fundamental right under Article 19(1) (a) could be curtailed. Accordingly, it was held that the children's expulsion from the school was a violation of their fundamental right under Article 19(1) (a), which also includes the freedom of silence.

Freedom of Speech and Sedition

The offence of sedition, in India, is defined under Section 124-A of the Indian Penal Code as, "whoever by words either spoken or written, or by signs, or by visible representation or otherwise brings into hatred or contempt or excite or attempts to excite disaffection towards the government established by law in India shall be punished".

In the recent case of *Kanhaiya Kumar v. State of Nct of Delhi*⁹, students of Jawaharlal Nehru University organized an event on the Parliament attack convict Afzal Guru, who was hanged in 2013. The event was a protest through poetry, art, and music against the judicial killing of Afzal Guru. Allegations were made that the students in the protest were heard shouting anti-Indian slogans. A case therefore filed against several students on charges of offence under Sections [124-A, 120-B, and 34]¹⁰. The University's Students Union president Kanhaiya Kumar was arrested after allegations of 'anti-national' sloganeering were made against him. Kanhaiya Kumar was released on bail by the Delhi High Court as the police investigation was still at nascent stage, and Kumar's exact role in the protest was not clear.

Case studies

2. People's Union for Civil Liberties(PUCL) v. Union of India¹¹

In this case, public interest litigation (PIL)¹¹ was filed under Article 32¹² of the Indian Constitution by PUCL, against the frequent cases of telephone tapping. The validity of Section 5(2)¹³ of The Indian Telegraph Act, 1885 was challenged. It was observed that "occurrence of public emergency" and "in the interest of public safety" is the *sine qua non*¹⁴ for the application of the provisions of Section 5(2). If any of these two conditions are not present, the government has no right to exercise its power under the said section.

3. Indian Express Newspapers v. Union of India¹²

The Court, in this case, observed that, Article 19 of the Indian Constitution does not use the phrase "freedom of press"¹⁶ in its language, but it is contained within Article 19(1) (a). There cannot be any interference with the freedom of press in the name of public interest. The purpose of the press is to enhance public interest by publishing facts and opinions, without which a democratic electorate cannot take responsible decisions.

Similarly, imposition of pre-censorship of a journal¹⁸, or prohibiting a newspaper from publishing its own views about any burning issue¹⁹ is a restriction on the liberty of the press.

5. Bennet Coleman and Co. v. Union of India¹³

In this case, the validity of the Newsprint Control Order was challenged. The Order fixed the maximum number of pages which a newspaper could publish, and this was said to be violative of Article 19(1) (a) of the Indian Constitution. The government raised the contention that fixing the newsprint would help in the growth of small newspapers as well as prevent monopoly in the trade. It also justified its order of reduction of page level on the ground that big dailies devote a very high percentage of space to advertisements, and therefore, the cut in pages will not affect them. The Court held the newsprint policy to be an unreasonable restriction, and observed that the policy abridged the petitioner's right of freedom of speech and expression. The Court also held that the fixation of page limit will have a twofold effect—first, it will deprive the petitioners of their economic viability, and second, it will restrict the

⁹ P. (CRL)558/2016

¹⁰ Bijoe Emmanuel v. State of Kerala 1986 3 SC 615

¹¹ AIR 1997 SC 568

¹² 1985 2 SCC 434

¹³ AIR 1973 SC 106

freedom of expression as compulsorily reducing the page limit will lead to reduction of circulation and area of coverage for news and views.

Conclusion

In this study we define the freedom of speech and role of media. It can be easily concluded that right to freedom of speech and expression is one of the most important fundamental rights. It includes circulating one's views by words or in writing or through audio-visual instrumentality, advertisements or through any other communication channel. It also comprises of right to information, freedom of press etc. Thus, this fundamental right has a vast scope. From the above case law analysis, it is evident that the Court has always placed a broad interpretation on the value and contents of Article 19(1)(a), making it subjective only to the restrictions permissible under Article 19(2). Efforts by intolerant authorities to curb or choke this freedom have always been firmly repelled, more so when public authorities have betrayed tyrannical. An attempt is made to proving the significant role played by media in Indian democratic system as well as the hardships the media faced from the government in different times. 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 plying 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 thing, today Indian democracy became more matured as compare to the earlier times.

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