

New Dimensions of Right to Freedom of Speech and Expression and Indian Media

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Abstract

This study focuses on the new dimension of freedom of speech and expression. In Indian democratic system, the Constitution of India is the fundamental law of our country, in such fundamental law, one of the fundamental rights Freedom of Speech and Expression is guaranteed under Art 19(1) (a) to the citizens. Indian Constitution does not expressly provide for the freedom of media (press). In present research the researcher has tried to find the use of right to speech and expression by the people of India by receiving Information from the media and its effect on society and legal system.

Introduction

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. In case *Romesh Thaper vs. union of India* justice Patanjali said that Right to Freedom of speech and expression is essence of the constitution.

In case *Menka Gandhi vs. Union of India* the judiciary has upheld the restrictions that can be imposed and the author describes them under several sub headings, but the courts have also held that the government interference in this right. Supreme court explained that government can not restrict the freedom of speech and expression under the any provision because it is an important part of right to freedom, which is a fundamental right under the constitution.

The freedom of speech and expression laid the foundation of all democratic organizations. Without free political discussion, no public education so essential for the proper functioning of the process of popular government is possible. Freedom of expression (which includes the freedom of press) helps the individual to attain self fulfillment and strengthens the capacity of individual in participating in decision making process. It assists in discovery of truth and provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

Objectives of the Study

1. To study new dimensions of speech and expression.
2. To study issues relating to the freedom of Indian Media.

Research Methodology

Research Type- Descriptive Research

Data Collection- 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.

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.

Origin of Freedom of Speech and Expression

The concept of freedom of speech originated long back. England's Bill of Rights 1689 adopted freedom of speech as a constitutional right and still in effect. The French Revolution in 1789 adopted the Declaration of Rights of Man and of Citizen. This further affirmed the Freedom of Speech as an undeniable right. The free communication of ideas and opinions is one of the most precious of the right of man. Every citizen may, accordingly, speak, write and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

Analysis and interpretation

Freedom to air one's view is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death knell to democracy and would help usher in autocracy or dictatorship. The modern communication mediums advance public interest by informing the public of the events and development that have taken place and thereby educating the voters, a role considered significant for the vivacious functioning of a democracy. Therefore, in any setup more so in a democratic setup like ours, broadcasting of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution.

The various communication channels are great spreaders of news and views and make considerable impact on the minds of readers and viewers and our known to mould public opinion on vital issues of national importance. The freedom of speech and expression includes freedom of circulation and propagation of ideas and therefore the right extends to the citizen to use the media to answer the criticism leveled against the views propagated by him. Every free citizen has undoubted right to lie what sentiments he pleases. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardize public interest.

In the case of **Brij Bhushan v. State of Delhi in pursuance of section 7(1)(c) of the East Punjab Public Safety Act, 1949**¹ as extended to the Province of Delhi, the chief Commissioner of Delhi issued an order against the petitioner, the printer, publisher and editor of an English weekly 'the Organiser' published from Delhi, directing them to submit, for scrutiny in duplicate before publication till further orders, all communal matters and news and views about Pakistan including photographs and cartoons other than

¹ AIR 1950 SC 129

those derived from official sources or supplied by the news agencies. “The Supreme Court in its majority decision struck down the said order as violative of Article 19(1)(a) of the Constitution.”

Again the Supreme Court in **Virendra v. State of Punjab**² held that banning of publication in the newspapers of its own views or the views of correspondents about the burning topic of the day. In this case, a petition with regard to the validity of the Punjab Special Powers (Press) Act, 1956, the Court said that:

“It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day. Our social interest ordinarily demands the free propagation and interchange of views but circumstances may require a reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. The Constitution recognizes this necessity and has attempted to strike a balance between the two social interests. It permits the imposition of reasonable restrictions on the freedom of carrying on trade or business in the interest of the general public.”

In series of cases, the Supreme Court struck down the pre-publication ban on newspapers etc. In **Reliance Petrochemical Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.**³. The Supreme Court ruled that the pre-publication ban even under a Court injunction could be justified in the interest of justice only when there was a clear and imminent danger to the administration of fair justice and not otherwise.

Thus, a “free press” which is neither directed by the executive nor subjected to censorship, is a vital element in a free State. The success of democracy depends upon free, fair, honest and independent press. In **R. Rajagopal v. State of Tamil Nadu**⁴ the petitioner who was the publisher of a Tamil weekly magazine approached the Supreme Court to restrain the Government from interfering with their right of publication of the autobiography of the condemned person Auto Sankar.

Telecasting or Broadcasting Rights

The Supreme Court in **Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal (CAB)** has expanded the right to freedom of speech and expression by saying that the right to freedom of speech and expression includes the right to receive and impart information. For ensuring the right of free speech of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an aware citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. All these developments of law giving meaning to freedom of speech and expression or personal

² AIR 1986 SC 515:(1985) 2 SCR 287:(1985) 1 SCC 641

³ AIR 1989 SC 190

⁴ AIR 1995 SC 264

liberty are not required to be reconsidered nor there could be legislation so as to nullify such interpretation except as provided under the exceptions to fundamental rights. In this case, six nations cricket match was held in 1993. Cricket Association of Bengal

Commercial Advertisements

Advertisement is included in Article 19(1)(a) of the Constitution of India. In **Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.**⁵ is an authority for proposition that right to issue advertisement even if of commercial nature is covered by Article 19(1)(a). It can be restricted only on any ground given in Article 19(2). The telephone authorities permitted 'Tata Press Yellow Pages' containing advertisements of commercial nature in telephone directory. A civil suit for injunction was filed by Nigam and also Union of India claiming monopoly in publication of directory under Indian Telegraph Act. In an appeal by Tata against injunction issued by Trial Court and confirmed by the High Court. The appeal was allowed by the Supreme Court and High Court's order was set aside on the ground that advertisement is a kind of commercial speech and is covered by Article 19(1)(a). Commercial speech is no doubt a commercial transaction, nevertheless, it is dissemination of information regarding product for the benefit of public at large. In democratic setup, flow of commercial information is indispensable.

In **Hamdard Dawakhana v. Union of India**⁶ the Supreme Court had held earlier that an advertisement of commercial nature was not protected by Article 19(1)(a) of the Constitution. "After Tata Press case this view is overruled. As such Hamdard Dawakhana view is now limited to protection of obnoxious advertisements of commercial nature"⁷. Tata Press case view applies to all advertisements except that are obnoxious. The Court, however, made it clear that the Government could regulate the commercial advertisements, which are deceptive, unfair, misleading and untruthful.

Right to Exhibition of Films

In a democracy it is not necessary that every one should sing the same song. The freedom of expression is the rule and it is generally taken for granted. Every one has a fundamental right to form his opinion on any issue of general concern. He can form and inform by any legitimate means. The democracy is Government by the people via open discussion. The Court has accepted that movies, films etc doubt less covered under the ambit of freedom of speech and expression under Article 19(1)(a) of the constitution. But at the same time "the fundamental freedoms under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicks and of convenience or expediency."⁸

One's ideas, views etc., can be expressed and conveyed by many other modes apart from the press, for instance, radio, movies, television and cinematograph which includes videograph. The films are more popular in our country and especially with the rural masses, if the freedom of speech and expression includes freedom of press the same

⁵ AIR 1995 SC 2438

⁶ AIR 1960 SC 554.

⁷ AIR 1995 SC 2438.

⁸ S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.

can be extended to expression through radios, movies, films, television and video graphs. It is needless to say that freedom of speech and expression includes freedom of propagation.

In **K.A. Abbas v. Union of India**⁹ the constitutionality of exhibition of films, as a media of expression, and its pre-censorship came up before the Supreme Court. Under the Cinematograph Act, 1952, films are categorised as 'U' films and 'A' films. 'U' films are meant for unrestricted exhibitions, whereas 'A' films can be shown to adults only. The petitioner, unable to get 'U' certificate for his motion film named "Tale of Four Cities", questioned the validity of the Cinematograph Act, 1952 along with the rules made there under. The Supreme Court upheld the validity of the Cinematograph Act, 1952, and said that pre-censorship of films was justified under Article 19(2) as imposing a reasonable restriction. The Court observed that films have to be treated separately from other forms of art and expression, because, a motion picture was able to stir up emotions more deeply than any other product of art. Thus, the classification of films into two categories, i.e. 'U' & 'A' films, was, therefore, held to be valid and a film can be censored on the grounds mentioned under Article 19(2) of the Constitution.

Various Cases related to Freedom of speech

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.

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 registered 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.

⁹ AIR 1971 SC 481

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.

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. The freedom of speech and expression is not only guaranteed by the Constitution or statutes of various states but also by various international conventions like Universal Declaration of Human Rights, European Convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights etc. These declarations expressly talks about freedom of speech and expression.

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. Indiandemocracy is now a day more matured because of the role of media being played in the present scenario. Impact of all these thing, today Indian democracy became more matured as compare to the earlier times.

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