



## Media and Law

### KEYWORDS

media, human rights, rational, sovereignty, integrity, obligation.

### Shreemanshu Kumar Dash

Research Scholar, Department of Law, Sambalpur University, Sambalpur, Odisha, INDIA.

#### ABSTRACT

Today we live in a society in which spurious realities are manufactured by the media, by governments, by big corporations, by religious groups, political groups. The level of intelligence has been tremendously increased, because people are thinking and communicating in terms of screens, and not in lettered books. Much of the real action is taking place in what is called cyberspace. People have learned how to boot up, activate, and transmit their brains. Essentially, there's a universe inside the human brain. The number of connections possible inside the human brain is limitless. And as people have learned to have more managerial and direct creative access to their brains, they have also developed matrices or networks of people that communicate electronically. There are direct brain/computer link-ups. One can just jack himself in and pilot his brain around in cyberspace-electronic space. In the ongoing century, media has proved itself to be a most powerful wing ever before. Covering the most heinous Nirbhaya rape case of Delhi to the plight of Dana Majhi of Bhawanipatna has even sacked the Central and the concerned state government. Media has played a prominent role in exposing the human rights violation by police atrocity. Virtue and vice in the society are just like the two sides of the same coin. More focus on the positive sides may dispel negativity from the society. A responsible media in order to keep intact the glory of the 'Fourth Estate,' in stricto sensu, is always expected to act in honest reporting of the things in the social, national and global interest and refrain from doing its duty for the sake of doing it like the recent 'intolerant' issue to the travesty of freedom of speech and expression.

#### Introduction:

This idea that the whole world is wired together is mass death. Every biologist knows that small groups in isolation evolve fastest. You put a thousand birds on an ocean island and they'll evolve very fast. You put ten thousand on a big continent, and their evolution slows down. Now, for our own species, evolution occurs mostly through our behaviour. We innovate new behaviour to adapt. And everybody on earth knows that innovation only occurs in small groups. Put three people on a committee and they may get something done. Ten people, and it gets harder. Thirty people, and nothing happens. Thirty million, it becomes impossible. That's the effect of mass media - it keeps anything from happening. Mass media swamps diversity. It makes every place the same. Bangkok or Tokyo or London: there's a McDonald's on one corner, a Benetton on another, a Gap across the street. Regional differences vanish. All differences vanish. In a mass-media world, there's less of everything except the top ten books, records, movies, ideas. People worry about losing species diversity in the rain forest. But what about intellectual diversity-our most necessary resource? That's disappearing faster than trees. But we haven't figured that out, so now we're planning to put five billion people together in cyberspace. And it'll freeze the entire species. Everything will stop dead in its tracks. Everyone will think the same thing at the same time. Global uniformity"- Malcom. At this juncture it may be added by the words of Swami Sivananda that "A mountain is composed of tiny grains of earth. The ocean is made up of tiny drops of water. Even so, life is but an endless series of little details, actions, speeches and thoughts. And the consequences whether good or bad of even the least of them are far-reaching". The media is the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power because they control the minds of the masses.

The word 'media' is derived from the word medium, signifying mode or carrier. Media is intended to reach and address a large target group or audience. The word was first used in respect of books and newspapers i.e. print media and with the advent of technology, media now is a term inclusive of television, movies, radio and internet. Whatsapp and messenger applications do not come under mass media for their being personal in nature. Facebook is a new kind of platform. It's not a traditional technology or media company. It's a new sort of social media company. Instagram is an online mobile photo-sharing site that allows its users to share pictures and videos either publicly or privately on the app, as well as through a variety of other social networking platforms, such as Facebook, Twitter, Tumblr, and Flickr.

In the world today, media has become almost as necessary as other basic needs. Of course media, now, is playing an unprecedented role in strengthening the social fabric. Its duty has been to inform, educate and entertain people. It also brings home the current situations around the globe. The media has a strong social and cultural impact upon society. Owing to its inherent ability to reach large number of public, it is widely used to convey message to build public opinion and awareness as well.

#### Media under the Constitutional Provisions:

Administration of things in India begins with the Constitution and the Constitution begins with the preamble. The sequential enactments in the Constitution are but the embodiment of the spirit of the Constitution. In furtherance of the mandate of the preamble as "Liberty of thought, expression, belief, faith and worship..." the specific provision under Article 19 of the Constitution guarantees to the citizens of India the following six kinds of fundamental freedoms

- (a) Freedom of Speech and Expression.
- (b) Freedom of Assembly.
- (c) Freedom to form Associations.
- (d) Freedom of Movement.
- (e) Freedom to reside and to settle.
- (f) \*\*\*
- (g) Freedom of profession, occupation, trade or business.

While explaining the quintessence of the fundamental right of freedom, Patanjali Shastri, J. in A.K. Gopalan's case observed, "man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals". The restrictions on these freedoms which are provided in clause 2 to 6 of Article 19 of the Constitution, amongst other things, are also applicable in matter of media.

#### Freedom of Press and Reasonable Restrictions

No civilized nation would ever guarantee absolute freedom in any matter whatsoever. It is therefore necessary to place some restrictions on this freedom for the maintenance of social order, because no freedom can be absolute or completely unrestricted. Accordingly, under Article 19(2) of the Constitution of India, the State may make a law imposing reasonable restrictions on the exercise of the right to freedom of press in the interest of the public on the following grounds:

1. Sovereignty & Integrity of India
2. Security of the State
3. Friendly relations with Foreign States
4. Public Order
5. Decency or Morality
6. Contempt of Court
7. Defamation
8. Incitement to an Offence

The grounds mentioned above reveal that they are all concerned with either the national interest or in the interest of the society. The first set of grounds, namely, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest. Whereas the second set of grounds, namely, decency or morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society. However it is the constitutional obligation of the judiciary to ensure that the restrictions imposed by a law on the media are reasonable and relate to the purposes specified in Article 19(2). Because reasonable restrictions contemplated under the Indian Constitution brings the matter in the domain of the court as the question of reasonableness is a question primarily for the Court to decide. It is so for the reason that as to whether a fact is or is not reasonable, is a question of fact to be determined by the court.

#### Supreme Court on Freedom of Speech and Expression:

There are so many cases where the right of freedom of speech and expression was questioned on various grounds. In *Prabhu Dutt vs. Union of India* the Supreme Court has held that the right to know news and information regarding administration of the Government is included in the freedom of press. But this right is not absolute and restrictions can be imposed on it in the interest of the society and the individual from which the press obtains information. They can obtain information from an individual when he voluntarily agrees to give such information. In *Papnasam Labour Union vs. Madura Coats Ltd.* the Hon'ble Supreme Court has laid down some principles and guidelines to be kept in account while considering the constitutionality of a statutory provision imposing restriction on fundamental rights guaranteed by Articles 19(1) (a) to (g) when challenged on the grounds of unreasonableness of the restriction imposed by it. In *re Arundhati Roy*, the Supreme Court of India followed the view taken in the American Supreme Court (Frankfurter, J.) in *Pennekamp vs. Florida* in which the Supreme Court of United States observed: "If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise". In *Rajendra Sail vs. M.P. High Court Bar Assn.* the editor, printer and publisher and a reporter of a newspaper, along with the petitioner who was a labour-union activist, were summarily punished and sent to suffer a six months imprisonment by the High Court. Their fault was that on the basis of a report filed by a trainee correspondent, they published disparaging remarks against the judges of a High Court made by a union activist at a rally of workers. The remarks were to the effect that the decision given by the High Court was rubbish and fit to be thrown into a dustbin. In appeal the Supreme Court upheld the contempt against them, but modified and reduced the sentence. In *D.C. Saxena (Dr.) vs. Chief Justice of India* the Apex Court has held that no one else has the power to accuse a judge of his misbehavior, partiality or incapacity. The purpose of such a protection is to ensure independence of judiciary so that the judges could decide cases without fear or favour as the courts are created constitutionally for the dispensation of justice.

In a landmark judgment in the case of *Sakal Papers*, the Supreme

Court ruled that Art 19(2) of our Constitution permits imposition of reasonable restrictions under the heads specified in Art 19(2) and on no other grounds. Freedom of the press cannot be curtailed, like the freedom to carry on business, in the interest of the general public.

In another important decision, *Bennett Coleman & Co. v Union of India*, the Supreme Court again came to the rescue of the press. It held that freedom of press entitles newspapers to achieve any volume of circulation and freedom lies both in its circulation and content. Freedom of press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.

In the case of *Tata Press Ltd v Mahanagar Telephone Nigam Ltd.*<sup>23</sup> The issue was that whether a commercial speech is protected under Art 19(1)(a). the court after an extensive review of the judgments of the US Supreme Court and previous Supreme Court held that Commercial advertisements are entitled to the protection of Article 19(1)(a).

#### Media Trial:

In matter of media trial, the newly appointed CJI has said very recently that the Supreme Court is interested in prevention rather than initiating contempt proceeding, the Supreme Court of late has indicated that it would lay down guidelines for the media on court reporting with a view to striking a balance between protecting press freedom and protecting the right to life. A five-judge Constitution Bench of Justice S.H.Kapadia and Justices D.K.Jain, S.S.Nijjar, Ranjana Desai and J.S.Khehar said that they have to balance Article 21 (right to life and liberty) with Article 19(1) (a) (the right to freedom of speech and expression, including the freedom of the press).

Justice Khehar said, "The media creates a mind set about what is right or wrong. When the judgment is not on those lines, the judge's image is tarnished and all sorts of motives are attributed to him and his judgment becomes suspect." Here, the Court was specifically concerned about cases in which an accused was arrested and the media goes to town projecting him as guilty.

#### Freedom Provisions in International Legal Realm:

1. Articles 13,20,23 and 29 Of the Universal Declaration of Human Rights,1948
2. Article 22 of the International Covenant of Civil and Political Rights,1966
3. Article 11 of the European Convention on Human Rights, 1950
4. Articles 6 and 12 of the International Covenant on Economic, Social and Cultural Rights,1966

Article 19 of the UDHR,1948 declares the freedom of press which corresponds with Article 19 of the International Covenant on Civil and Political Rights,1966.

Article 10 of the European Convention on Human Rights provides that

- 1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinion and to receive and impart information and ideas without interference by the public authority and regardless of the frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprise.
- 2) The exercise of these freedom, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by the law and are necessary in a democratic society, in the interest of the national security, territorial integrity or public safety, for the prevention of the disorder or crime, for the protection of health and morals, for the protection of reputation or rights of the others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

It evinces therefore that the necessity of freedom of speech and expression including that of press is a global phenomenon. Wherever there is a cry of human right violation, may it be in Baluchistan or Bangladesh, the resonance of the same could be heard worldwide and proper action for rescue of the concerned victim could be taken up by the appropriate authorities.

#### **Conclusion:**

India as a country is the happy abode of the richest of the rich as well as the poorest of the poor category of people. It made Justice Bhagabati once aptly say that "in today's free world, freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities". In fact, in order to make a democratic government meaningful, it is of high necessity that the media plays an important role to strengthen the societal fabric for its easy accessibility to every corner of the country sooner than any other machinery could do. No doubt, media, itself is not an appropriate authority to take action but it is certainly a tool strong enough to cause the appropriate authorities to take necessary actions wherever felt desirable because injustice anywhere is a threat to justice everywhere.

#### **Suggestions:**

1. The media persons must stick to the professional ethics and morality and act with respect to their limitation.
2. In order to be so, persons of high moral character should find place in the media profession and they should ensure that the highness of their moral character doesn't get diluted being in the noble profession.
3. Persons in media must not work as cage parrots of the political parties rather should work incessantly as eye opener of the government.
4. The sacrosanct image of media should not be tarnished by inclusion therein of people of anti social nature who may use it as a sword for gratification of their vindictive feelings.
5. Media should not only cover the dark side of the society because dissemination of positive things brings in turn far reaching positive atmosphere in the society.
6. Media should play an important role in bringing about communal harmony for there are so many people in the country who eulogize the same.
7. Media should not focus on the statements made by people against other religious community, for taking political mileage.

#### **References:**

1. The Constitution of India: P.M. Bakshi
2. Indian CONSTITUTIONAL Law: Dr. D.D. Basu
3. Indian Constitutional Law : M.P. Jain
4. Timothy Leary, Chaos & Cyber Culture.
5. Manoj Kumar Sadual: Freedom of Press in Indian Constitution: A Brief Analysis.
6. Prateek Shanker Srivastava: 'Fourth Estate' in the Constitutional Ambit- Analyzing Free Speech under Democracy.
7. Live Mint-27 January 2017 | E-Paper
8. The Times of India-Amit Anand Choudhury -Dec 6, 2016
9. Recommendations of the Law Commission of India, 200th Report, Trial by Media: Free Speech versus Fair Trial under Criminal Procedure (Amendments to the Contempt of Courts Act, 1973), August 2006.
10. [http://en.wikipedia.org/wiki/Freedom\\_of\\_the\\_press#India](http://en.wikipedia.org/wiki/Freedom_of_the_press#India)