



Right to speech and Freedom of Media- A Critical Analysis.

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ABSTRACT

India represents world's largest democracy. In a democracy freedoms and civil liberty constitute important part. Freedom of speech and expression is an important armoury to repel any invasion of civil liberty. Art 19(1)(a) of Indian Constitution provides right to freedom of speech and expression. This right includes freedom of expression through media and press. It is not an absolute right. The state can impose reasonable restriction. The apex court of India has provided parameters of such freedom. In this article various dimension of freedom of media is analysed.

KEYWORDS

Democratic Society, Media Freedom, Media Trial, Judicial Process

Introduction

The right to speech and expression has wider meaning. It includes the right to express opinions, circulate information and publication of facts by divergent form. It is a dynamic concept that evolved with time and technology. It is broadly contains the idea to ventilate views by words, by writing and publishing through audio visual media. It encompasses all available means to receive information. Telecasting views in electronic media is important facets of speech and expression. It includes wide range of right to disseminate ideas to a wide range of the population as far as possible. The access of such right will provide the right to be enjoyed maximum possible extent without jeopardizing the interest of democratic living. The press and media serve as medium for disseminating information and opinions. In this article an attempt is made to analyse the ambit of freedom of Media.

Right to speech and International Parameters:

Right to speech and expression is an integral part of life. This is well recognized under different conventions and treaties. All civilized nations grant such right to citizens and extend protection. Article 13 of UDHR 1948 provides that "Everyone shall have the right to freedom of thought and expression. "This right shall include freedom to seek, receive and impart information's and ideas of all kinds, regardless of frontiers. Either orally, in writing, in print, in the form of art or through any other medium of one's choice." The exercise of such right shall not be subject to prior censorship but shall be subject to subsequent imposition of liability expressly established by law. It is to ensure the rights or reputation of others or the protection of national security, public order, public health or morals. The right of expression may not be restricted by any means to impede the communication and circulation of ideas and opinions.¹ The national Government shall take suitable measures to meet the just requirements of morality, public order and the general welfare in the democratic society. In no case these rights and freedoms are restricted contrary to the purposes and principles of the United Nations convention.² International Covenant on Civil and Political Rights-1966 (ICCPR) envisages that, "Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers"

The American Convention of Human Rights (ACHR) 1969 set forth positive protection of right to freedom of speech and expression with permissible restriction. It is explicitly prohibits pre-censorship and imposed liability. It prohibits

indirect methods of restricting expression i.e. unfair allocation of newsprint and broadcasting frequencies. It imposes a positive obligation on governments to restrain private action that might impair the free exercise of rights to seek, receive and impart information and ideas. It allows prior censorship of 'public entertainments' for the purpose of protecting the moral and health of children and youth. It restricts the advocacy which may create racial or religious hatred and enmity. It prohibits war propaganda and 'inaccurate and offensive statements by the mass media.'³ Similarly African charter on Human and people's Rights (ACHPR) 1981 was adopted by Organisation of African Unity, protects the freedom of speech and expression, which include right to receive ideas and impart information. It obliges the state parties to promote various rights through 'education and publication'. The Conference on the Human Dimension (CHD) held at Copenhagen in June 1990, is a conference of high significance in the matter of right to speech and expression consistent with international standard. They intensified their effort to combat 'totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discriminatory practices.'

Freedom of speech on constitutional perspective:-

The constitution of India guarantees freedom of speech and expression. Article 19(1)(a) of Indian constitution provides that all citizen have the right to freedom of speech and expression. Right to freedom of speech and expression is also attributed to media on the following objectives – i.e.:

- i. It helps to form opinion and develop political discourse
- ii. It helps an individual to have complete information
- iii. It helps to build capacity for decision-making
- iv. It develops democratic attitude and values
- v. It helps an individual to lead a meaningful life.

The freedom of speech and expression is not an absolute right. Article 19(2) of the constitution imposes restrictions. The restriction can be imposed on the following grounds i.e. (a) Security of state, (b) Friendly relation with foreign state, (c) Public order, (d) Decency and Morality (e) Contempt of Court, (f) Defamation, (g) Incitement of Offence (h) Sovereignty and Integrity of India.

Freedom of Press is Lifeline of Democracy

The constitution of India does not specifically mention about freedom of press. Yet freedom of speech and expression is attributed to the press. It lay foundation and lifeline of democratic institution. The Supreme Court held that, it is our duty to uphold the freedom of press and invalidate laws and an administrative actions that abridges or

stifles the freedom press.⁵ However, the journalists are not allowed to hold media proceedings that may lead to unnecessary sensation and interfere with the administration of Justice.⁶ It may amount to travesty of Justice. Open justice is important facet of expression. It permits fair and accurate report of proceedings of court need be published for transparency.⁷

Pre-censorship of Press not Justified:-

Freedom of press means the right to print, publish, and disseminate information. Thus pre-censorship of publication is violative of freedom of speech and expression. The supreme court of India held that. there is no provision in the Indian constitution prescribing pre-censorship of press like Japanese constitution (Art.21) and the constitution of Germany (Art 5).⁸ Patanjali Sastri J. said that freedom of press lay the foundation of our democracy without free discussion and debate a popular government can't be imagined. "The risk of abuse of such freedom of speech can't be discounted and it is better to leave a few of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigor of those yielding the proper fruits."⁹ It may impair the principle of vibrant democracy. Justice Mathew held that, freedom of speech and of press are not for the benefit of press so much as for the benefit of all the people.¹⁰ Press is having a democratic role by discussing public issues and educating people by disseminating information. Justice Venkataramaiah remarked – "The press has now assumed the role of the public educator, making formal education possible in large scale, particularly in the developing world..... The purpose of press is to advance the public interest by publishing facts and opinions without which a democratic electorate can't make responsible Judgements."¹¹

The press council Act- 1978 provides that, no journalist shall be compelled to disclose the source of news published in the journal or news paper. The court held that, freedom of press not absolute or unfettered. There is no law that permits a journalist to withhold relevant information.¹² Journalists have greater responsibility towards people and society.

Judicial Trend and Freedom of Speech:-

In the democratic society freedom of press and media is a necessity. A determined effort was made to stop hostile attitude of the government and people. Any attempt made to foil such valuable right is protected by the Supreme Court of India as a harbinger of citizenry right. The court held that, 'Freedom of press has always been a cherished right in all democratic countries. The newspapers not only convey news but also ideas, opinion and ideologies besides much else. They are supposed to guard public interest by bringing out misdeeds, failings and lapses of the Government and other bodies exercising Government power. Rightly, therefore it has been described as the Fourth Estate. The democratic credentials of a state is judged today by the extent of freedom the press enjoys in the state.'¹³

In Bennett Coleman & co Vs Union of India¹⁴ the Court held the press has the right of free propagation and free circulation without any prior restraint. If the law restrict the circulation compel the press to seek government aid, penalize its freedom of choice as to selection of news, it would violate Article 19(1)(a) and fall outside the exceptions of Art.19(2). In another case¹⁵ Supreme Court Observed that, Public discussion through media on social issues create awareness. It is required for the effective working of the democracy. The Media played significant role in finding out the prime accused Manu Sharma in Jassica Lal murder case. In recent years many high profile cases came to lime light i.e. Asharam Babu case, Shivani Bhatnagar murder case etc. Tehelka Dot Com has exposed the serious lapses of top officials, politicians and Arm dealers. These are glaring examples of vigilant and investigative journalism. At the same time there are some ugly remarks of yellow journalism.

The Supreme court in Anukul Chandra Pradhan Vs Union Of India¹⁶ held that publicity by Media should not affect the essentials of a fair trial including the presumption of innocence. The Supreme Court in Sidharth Vashist Vs State (NCT of Delhi)¹⁷ held that trial by media should be avoided. If it publishes photographs of the suspects before identification parades and publishes statements by making the accused guilty before an order has been passed by the court there is serious risk of prejudice. Such unrestricted and unregulated freedom is certainly interfering with the administration of justice. The Editor of The Hindu opined that, paid news is the biggest profit for the media. It is a difficult task to police the Media.¹⁸

Conclusion

Media has vital role in a democratic state. It has role to create awareness. Without freedom of media a democracy cannot function effectively. The prime function of media is to disseminate information to the people and stakeholders of democracy. Any information which violates public interest need be restricted. The media has positive responsibility as fourth pillars of democratic state. If it goes beyond the prescribed norms, reasonable restrictions may be imposed. The media should evolve self regulatory measures and monitoring agency to stop breach of code conduct. The media must discharge its high social responsibility, so that people can rely on the information it is disseminating.

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