



FREEDOM OF PRESS A MYTH OR REALITY?

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INTRODUCTION

Freedom of expression has always been considered as an essential basis of a democratic society. There are a number of reasons for this: firstly, the right of a person to self fulfillment that requires the communication of thought; secondly, the growing importance of attempting to know the truth where the attempt could be frustrated if the information is suppressed or the way to attain the information is blocked; thirdly, the inherent right of an individual belonging to a democratic society to participate in decision making that implies within it the freedom to obtain and communicate the information; and lastly, the increasing necessity of maintaining the precarious balance between healthy cleavage and necessary consensus. A further dimension to the freedom of expression has been added by the introduction of mass society, where the communication among the citizens is made possible through Press and broadcasting. In a democratic society, it is important that the citizens should have the right to know what is happening in different regions and sectors of the respective society, and to have knowledge about different and alternative approaches so that they can effectively participate in the process of self governance. However, it is not possible for all such citizens to personally gather such news and information. Therefore, the media acts as an agency of the people and provide them the access to such information that may be vital for them. And it is for this

reason that the freedom of press has grown so relevant in nearly all the democratic countries, while not permitted in feudal or totalitarian regions. In countries such as India, where the State monopoly prevails over broadcasting in both technical and financial context, the importance of Press has grown to be even more crucial.

The emergence of Press in India and its contribution during the British period and after Independence makes it clear that a free and vigilant Press is vital to restrain corruption and injustice and to arouse public opinion through press investigations and comments. There have been a number of incidents of injustice and wrong doing that have been uncovered by the Press, like the various incidents of bonded labor in the different parts of the country, the misuse of power by A.R Antulay, and the existence of smuggling rackets in the West coast . The media has always acted as a powerful tool to make people aware of the various social, political and economic evils existing in the society and their responsibility to eradicate them. During the period of British colonization, the Press was used as a chief instrument to carry out the tasks of arousing, training, mobilizing and consolidating public opinion. Powerful newspapers like the Hindu, Kesari, Mahratta under B.G. Tilak, and Bengalee under Surendranath Banerjea emerged during this period. These newspapers were used as a medium to arouse the feelings of nationalism and patriotism amongst Indians so that all of them can come up together to revolt against the Britishers.

Thus the growing importance of media in the administration of society and the fundamental principle of the people's right



to know elevated the freedom of press to a fundamental right that found its significance in the Constitution of India. The freedom of press is considered to be implicit in the right to freedom of speech and expression provided under Article 19(1)(a)¹. As observed by J. Patanjali Sastri in **Romesh Thapper vs. State of Madras**² “The Freedom of speech and expression and the Freedom of Press lays at the foundation of all democratic organization, as without free political discussion no public education that is so vital for the proper functioning of the process of popular government is possible.” In **Brij Bhushan & another vs. the State of Delhi**,³ AIR 1950 SC 129, it was held that freedom of press is a part of the right to freedom of speech and expression.

The American Press Commission expressed that ‘freedom of the press is essential to political liberty. However, if a man is not able to convey his thoughts freely, the freedom is not secured, and where freedom of expression exists the beginning of a free society along with the retention of liberty is present.’ The Indian Press Commission reiterated this and said, “Democracy thrives not only under the vigilant eye of the Legislature but also through the care and guidance of public opinion, where the press is the vehicle through which the opinion becomes articulated.” The importance of the freedom of press is realized by the fact that for most of the individuals the prospects of

personal familiarities with newsworthy events is unrealistic. It is through the media only that the people are able to receive the free flow of information and ideas and form strong opinions in this behalf.

However, like all other freedoms and rights guaranteed by the Constitution, the freedom of press too is not an absolute freedom and the State is empowered under Article 19(2) to impose reasonable restriction on it. Thus, the freedom of press could be curtailed in the interest of sovereignty and integrity of India, the security of the State, public order, decency or morality or in cases of contempt of court or defamation or incitement of an offence. In **Sakal Papers Ltd vs. Union of India**, the Daily Newspaper Order, 1960 that fixed the minimum price and the number of pages of a newspaper, was challenged as being unconstitutional as it infringes the freedom of press. The Supreme Court held that the freedom of speech and expression cannot be taken away by placing unreasonable restriction on the business activity of a citizen and can only be restricted on the grounds that are mentioned in Article 19(2) of the Constitution of India. The freedom of press has always been considered to be an integral part of the right to freedom of speech and expression which has been so depicted by a plethora of judgments by the Supreme Court. In **Papnasam Labor Union vs. Madura Coats Ltd**, the Hon’ble Supreme Court laid down the guidelines that should be considered while challenging the constitutionality of the statutory provisions restricting the fundamental rights guaranteed under Article 19(1)(a)-(g). Similarly in

¹ Provides that every citizen shall have the right to freedom of speech and expression, but this is subject to limitations provided under Article 19(2) that empowers the State to put reasonable restrictions on the freedom.

² AIR 1950 SCR 594

³ AIR 1950 SCR 605



Virender vs. State of Punjab⁴, it was held that although the freedom of press is not specifically mentioned in the Constitution anywhere, but the same is included within the freedom of speech and expression. And in the case of **Hamdard Dawakhana vs. Union of India**,⁵ the Supreme Court reiterated that the freedom of speech and expression includes the right to acquire and import the ideas about the matters of common interest. And this freedom also includes the right of publication of advertisements and commercial speech as held in the case of **TATA Press vs. MTNL**⁶.

WHY IS THE FREEDOM OF PRESS IN THREAT?

In India, it is often argued that the freedom provided to the press is diminishing and is in danger because of various reasons, the most important being the predominance of some newspapers groups. There is no complete freedom to the editors and journalists for collecting and dissenting facts as they are under the continuous pressure of capitalist owners. Following are some of the reasons that highlight the current scenario posing a threat on the freedom of Press.

LEGISLATIVE LIMITATION

A number of legislations have been introduced from time to time that pose a serious limitation on the exercise of the freedom of press guaranteed to it by the Constitution. These legislations are as follows:

The Press (Objectionable Matters) Act, 1951- The enactment provides that no newspaper should be permitted to be

published or printed if any of its content is found to be inciting any crime or any other objectionable matter. It also empowers the Central Government to make regulations regarding the price, number of pages and size of the newspaper and also regulations relating to the allocation of space for advertisements in the newspaper.

Defense of India Act, 1962- This Act was enacted during the period of Emergency in 1962. This Act considerably restricted the Freedom of the Press to a large extent in lieu of the unrest prevailing in the country due to the war with China. This Act also empowered the Central Government to make rules regarding the publication and enlist the matters that are prohibited to be published as is considered to be prejudicial to the civil defense or military operations.

Civil Defense Act, 1968- According to this Act the Central Government is empowered to make regulations regarding the prohibition on printing and publication of any book, newspaper, article or any other document which according to it is prejudicial to the civil defense.

MEDIA REGULATORS WITHOUT POWER

The Press Council of India, a statutory body was established in the year 1966 and was conferred quasi judicial powers to regulate Press Media. However, the body lacked punitive power meaning it cannot levy fines or make any order relating to withdrawal of advertisements by government agencies or others. In India, the media regulation revolves mainly around the idea of self regulation. However, recently, there has been a rapid growth in the number of media

⁴ AIR 1958 SC 986

⁵ AIR 1960 SCR 671

⁶ AIR 1995 SCC 139



organizations both in print and online sectors along with the tremendous commercial pressure, by which the objectivity in reporting has suffered significantly. In context of television media, News Broadcasting Standard Authority (NSBA) is the regulating body that is responsible to look into the violation of the code of ethics so laid down by the News Broadcasters Association (NBA). The biggest problem faced by this body is that it has the provision of voluntary membership and not compulsory membership. And therefore, out of the 135 news channels of the country only 28 news broadcasters that own 57 news channels are the member of this self-regulatory body and a large number of news channels are beyond the ambit of any kind of regulation as NSBA is the sole regulating body in this field. And hence both these self-regulating bodies continue to act as toothless tigers.

NO STRINGENT LAWS RELATING TO PROTECTION OF MEDIA PERSONS

As per the HOOT's compilation, 54 incidents of attacks on the journalists of India and 25 cases of threatening have been reported in the past 16 months, where the actual figures could even be higher. The death of six journalists in the year 2016 itself highlights the urgency to formulate stringent laws in order to protect them. The evidences reveal that the efforts to censor and silence these journalists are relentless taking on absurd dimensions. Free speech has been in threat from three sources; firstly, the government that either ban or censor the media report on account of public interest, the social groups that proclaim to be the protectors of group interest and the thugs

who could even go to the extent of killing with whom they disagree with. The attack on journalists has become a daily phenomenon and has been increasing both in frequency and brutality as they continue to be the targets of those who have vested interests in the issues they highlight. In 2014, murder of a journalist who worked with Kanak TV in Odisha was reported where the investigation revealed that the owner of a local cashew nut factory was supposedly behind the murder as the journalist was about to expose the practice of child labor in that factory. Similarly, the recent murder of the journalist Gauri Lankesh has raised a voice of concern regarding the low level of protection that is provided to the journalists.

NO LAWS FOR THE PROTECTION OF SOURCES

In India there is no statutory provision that accords protection to the sources from which the media personnel unearth the truth. A journalist has no right to protect the identity of its sources from getting revealed. Moreover, he may be punished of contempt of court if he refuses to disclose such sources. Thus, though freedom of press is a fundamental right that can be curtailed only to the extent that is provided under Article 19(2), it is no more a reality as no proper laws are framed to afford protection to the journalists and the information that they procure by their own efforts.

THE STATE AS THE MAIN THREAT

Since Independence, it is realized that the State acts as a source of the most potential threat to the Press freedom. This could be understood by the fact that after the Constitution coming into force, those in



power continued to bring more and more grounds under Article 19(2) in order to curb Press freedom and reasoned it as necessary for the security of the State. A persistent attempt to curb the freedom of Press was made in 1969 by the Indira Gandhi's Government. Propaganda was mounted against the Press as well as judiciary, both of which appeared to be not easily amendable to the wishes of the government. However, the antipathy of the Press grew and became further intensified as most of the newspapers expressed their dissatisfaction towards the ruling government and even advised to resign. But this antipathy was short lived and was culminated as a result of the pre-censorship imposed in the country during the internal Emergency in 1977. The pre-censorship so imposed saw a considerable misuse of power by the fact that a large number of media reports including criminal conviction of an actress and a businessman, was black out as they were envisaged as unpleasant by those in power. Even today, the situation has not improved and has been worsen, where instances of threats to free functioning of the Press have become common. In Bangalore, a kind of a gherao was witnessed in order to prevent the publication of a newspaper which had a report that was disliked by the then Chief Minister. The Tamil Nadu Government has from time and again, put special curbs on contacts between the Government official and the Press, and has introduced provisions that make scurrilous writings a nonbailable offence that also includes the imprisonment on conviction as an obligatory step.

CONCLUSION

In a democratic country like India, a proper functioning of the Government is only

possible when the people are well informed and are free to participate in public matters by having the widest choice of alternative solutions of the different kinds of problems that arise. And in order to sustain the democratic status it must be understood that freedom of press and information are fundamental for a speedy growth of the nation and it co-exists with the freedom of speech and expression in such a way that these two cannot be separated. The articles and reports published in the newspaper depict the harsh reality and the true picture of the Indian society. India as a country is at a developing stage in terms of social, political and economic aspects and the newspaper plays a key role in highlighting the serious issues existing in the society and encourages the citizens to fight against them. It has become increasingly important that the people have a modern approach by removing the backward ideas and become the part of enlightened India. It has to be realized that the seeking of information cannot be limited to the state borders anymore and therefore efforts must be done to have a conducive environment for the free flow of information. This would in return prepare the nation to face any challenge that is thrown at it in the world of technology and freedoms.

The daily newspapers have become an indispensable part of an individual's life and are practically the only material which most people read to gather information. And only when the newspapers and electronic media are freely allowed to represent different point of views, the people would be able to exercise their right to freedom of speech and expression. Through this paper, the author would like to put up certain recommendation



through which the freedom of press could become a reality and not merely a myth. Following are the suggestion:

- Freedom of press should be introduced as a separate fundamental right in the Constitution of India.
- Parameters of freedom of press and the restrictions that could be imposed on it should be clarified by the Legislature.
- Information should be available at an affordable rate and the unnecessary barriers hindering such information to be made to the public should be removed.
- There should be a proper mechanism that should make a check on the fake news and reports.
- And the freedom of press should be restricted to be exercised for influencing the Judiciary.
- There should be a uniform law to clearly demarcate the various rights, privileges and restrictions to be imposed on the media and its various sources.
- Legislations should be introduced in order to afford protection to the media persons and a fast track court should be formed for the speedy delivery of justice in cases of harassment, threats, physical assault, kidnapping and murders of media personnel and journalists.
- The press must be law enforcing and preventive of crime.
