



DEMOCRACY SANS FREEDOM OF SPEECH AND EXPRESSION VIS Á VIS FREE PRESS: A STUDY OF INDIAN SCENARIO

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ABSTRACT-

Since the time immemorial the concept of democracy is not an alien concept to Indian soil, from the ancient scriptures like Rigveda and Atharvaveda itself we have found the mention of elected Kings, council of elders, assembly of people etc. so in that way we can say that the concept of democracy was in India much prior to Greece but it further developed during the nineteenth century when we got exposure to the western culture. The freedom of press has always been the most cherished right of all the democratic countries of the world. Press brings forth the action, misdeed, lapses, failings of the government or other governing body exercising power. Thus, it has been rightly described as the *Fourth Estate*. Indian judiciary too has not left any stone unturned in order to maintain the freedom of press in India. But a recent trend which we can observe that now days the persons who are critical of the government is now being harassed either by Government themselves by putting charges of sedition against them or the supporter of the government calling them antinationalist and giving threats over phone call or in social media outrage and character assassination. On World Press Freedom Index 2020, the position of India is 142nd among 180 countries, North Korea Being on 180th position¹. This article tries to evaluate the present state and problem faced by press

in disseminating the information and will also suggest the measure to ensure the freedom of press.

• INTRODUCTION-

Democracy is a kind of political arrangement where the “rule is of the people, by the people and for the people” said by Abraham Lincoln. The word “Democracy” has been derived from the Greek term “Demos” and “Kratos” in which Demos means “People” and Kratos means “Power”, so it is the “power of the people”. In democracy, it is the people with whom the ultimate power resides they either exercise it by themselves by forming a group among themselves and rule themselves by making laws, policies and by-laws. This kind of democracy is called direct democracy and this can be only practically exercisable in small fraction of people or in small countries. On the other hand, when the people do not rule themselves directly but they choose representative among themselves and then chosen representative rules the people by making laws, by-laws, policies etc. In India, we have this kind of democracy and this is called the Indirect Democracy. The development and welfare of all its people is the focal point of the democratic type of government unlike the authoritarian or autocratic government. Every action, policies, laws etc. are to be judged on the scale of welfare the people. India is the largest democracy in the world with the lengthiest written Constitution in the world which itself declares it to be a democratic nation. Sovereignty involves an important factor in determining the democratic form of government, which means that it have total control over itself and does not get affected by external forces.

¹ <https://rsf.org/en/ranking> (Last visited on 18-July-2020).



Press on the other hand is the fourth supporting external pillar of any democratic institution. Freedom of press ensures the functioning of the democracy smoothly. Through medium of press people of democratic state remains informative of the various policies, by-laws, laws etc. of the government.

The freedom of press as defined by Lord Mansfield, “consists in printing without any license subject to the consequences of law.” Thus, it means the freedom of publishing without previous permission anything which one pleases and it not only confined to the printing of newspapers of periodicals but also circulation of pamphlets or any sort of publication contain information or opinion.

• FREEDOM OF PRESS IN INDIA-

As discussed above the press is the fourth pillar of any democracy which ensures the smooth functioning of the government and also ensures peoples participation in the government.

In India, there is no separate provision which ensure the freedom of press in India but this freedom of press impliedly flows from the Article 19(1)(a) of the Constitution of India which ensures Freedom of Speech and Expression as a fundamental right. Article 19(1)(a) states as “All citizen shall have right to freedom of speech and expression”. As freedom of press emanates from the article 19(1)(a), this right is only available to citizens of India so any non-citizen cannot claim the guarantee of this constitutional provision. The freedom of press is regarded as a “species of which freedom of expression is a genus.”³

Freedom of press originates from the freedom of speech and expression thus, freedom of press stands on no higher footing than that of the freedom of speech and expression of a citizen, press has got not any other privilege distinct from the freedom of speech and expression of the citizen. The Indian Press Commission has expressed that “Democracy can thrive not only under the vigilant eye of its legislature, but also under care and guidance of public opinion and the press is par *excellence*, the vehicle through which opinion can become articulate.”⁴

In relation to the separate special provision regarding freedom of press the opinion has been expressed that “press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press.”⁵

Again, as pointed above this freedom of press has emanated from freedom of speech and expression, thus this freedom of press is also subject to the restrictions which governs the freedom of speech and expression which are given under Article 19(2) of the Constitution. The ground on which the restriction on freedom of speech and expression or on freedom of press can be imposed are-

- a. Security of the State.
- b. Friendly Relation with Foreign States.
- c. Public Order.
- d. Decency or Morality.
- e. Contempt of Court.
- f. Defamation.

² Lowell v Griffin, (1938) 303 US 444.

³ Sakal Papers v Union of India, AIR 1962 SC 305.

⁴ J.P. Rai, ‘Informed Citizenry and Contempt’, Supreme Court Journal, Vol. 5, 2009, p. 19.

⁵ Dr. Ambedkar’s Speech in Constituent Assembly Debates, VII. 980.



- g. Incitement of an Offence.
- h. Sovereignty and integrity of India.

• **JUDICIAL APPROACH IN MAINTAINING FREEDOM OF PRESS-**

In *Sakal Papers v Union of India*⁶, the Supreme Court held that “article 19(1)(a) guarantees not only what a person circulates but also the volume of circulation, the freedom of newspaper to publish any number of pages or to circulate it to any number of person is each an integral part of the freedom of speech and expression. A restraint placed upon either of them would be a direct infringement of the right of freedom of speech and expression. Being a restriction on Article 19(1)(a) and it was not related to any of the restriction mentioned in 19(2) thus it was invalid.”

In *Indian Express Newspapers v Union of India*⁷ observing the utility of freedom of press the Supreme Court has held that, “the expression freedom of press has not been used in Article 19 but it has been comprehended within Article 19(1)(a). The expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of press is to advance the public interest by publishing facts and opinion without which a democratic electorate cannot make responsible judgments. Freedom of press is the heart of social and political inter-course. 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.”⁸

Supreme Court in the case of *Express Newspapers v Union of India*⁹ held that a law which imposes a restriction of its circulation or imposes a pre-censorship or require the Government aid in order to survive or prevent the newspaper from being started is categorically violates Article 19(1)(a).

In *Romesh Thapar v State of Madras*¹⁰, Supreme Court held that a law which imposes a ban on entry and circulation of a journal in a state is violative of freedom of press. Court further observed that the freedom of expression includes freedom of propagation which essentially includes freedom of circulation. Without circulation, freedom of publication is of no value. Thus, restriction can only be imposed under Article 19(2).

In *Bennet Coleman and Co. v Union of India*¹¹, the validity of order which fixes the maximum number of papers to be printed in a newspaper was challenged. Supreme Court held that it is violative of the freedom of expression as the fixation of page limit will not only deprive the petitioners of their economic viability but also restrict the freedom of expression by compulsive reduction of page level entailing reduction of circulation and the area of coverage for news and views. If as a result of reduction in pages the newspaper will have to depend on advertisement as their main source of income they will be denied dissemination of news and views.

In *M.P. Lohia v State of West Bengal*¹², it was observed by the Supreme Court that putting a restriction on the freedom of press in case of interference in the administration of justice is

⁶ AIR 1962 SC 305.

⁷ (1985) 1 SCC 641.

⁸ In *Re Harijai Singh*, AIR 1997 SC 73.

⁹ AIR 1958 SC 578.

¹⁰ AIR 1950 SC 124.

¹¹ AIR 1973 SC 106.

¹² (2005) 2 SCC 686.



neither an unreasonable restriction nor it is a permissible freedom under Article 19(1)(a) of the Constitution.

Again, addressing the issue of media trial the Supreme Court in *Rajendra Sail v MP High Court Bar Association*¹³, observed that “right of freedom of media has to be exercised responsibly and internal mechanism should be devised to prevent publications that would bring judiciary into disrepute and interfere with the administration of justice, especially since judiciary has no way of replying thereto by the very nature of its office. Proclivity to sensationalism is to be curbed in every case. For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be therefore, protected.”

The question of freedom of press and right to fair trial arose in the case of *Sahara India Real Estate Corpn. Ltd. v Securities and Exchange Boards of India*¹⁴, and the Supreme Court held that in the interest of justice all the courts i.e. Supreme Court, High Courts and Civil Courts can issue prior prohibitory orders restraining the publication of court proceedings in the exceptional circumstances temporarily and such powers of the courts do not violate the Freedom of press under Article 19(1)(a).

Supreme Court in an obiter of a case in *Mohammad Ajmal Mohammad Amir Kasab alias ABU Mujahid v State of Maharashtra*¹⁵, on the act of Indian news channel reporting each and every minute detail of the operation of armed forces against the terrorist on the national television, while terrorists were hidden from security forces and having no means to know the exact plan of action of Indian armed forces and their arms and ammunition but channel showing them on

minute to minute basis which in a way was helping their collaborators sitting across the border communicating the terrorist every details of action, came out to be very serious threat to the security of the nation. This act does not only make armed forces task difficult but extremely risky and dangerous. On this act of media court observed that freedom of media can be put to restriction on the violation of another person’s right to life and personal liberty given under Article 21 or putting the national security into peril can never be justified by taking the plea of freedom of speech and expression. Further observed by the court that these shots or visuals can be shown to the public after all the terrorists were neutralized or armed forces operations were over.

• CURRENT STATE OF FREEDOM OF PRESS-

The press acts as a mode of communication between the people and its Government. Press acts an additional pillar of democracy which acts outside the Government independently of any external pressure. Freedom of press is so necessary that there has been many attempt to control it from the British regime itself but even though it worked vigorously without any fear. To curb the freedom of press Britishers brought Indian Press Act 1910 and Indian Press (Emergency) Act (1931-1932). Even during the emergency period which often called as the black spot on the Indian democracy, the freedom of press was drastically curtailed. There was significant reduction in the number of information which could be disseminated, Doordarshan and All India Radio was already under the direct control of the then Government.

¹³ (2005) 6 SCC 109.

¹⁴ AIR 2012 SC 3829.

¹⁵ AIR 2012 SC 3565.



The importance of press can be seen on the point that it is the easiest medium through which the common people of the country can be informed about the government and through this medium only they can share their opinion, facts, problem or views on any matter.

Today after 70 years of independence and around after 45 years of emergency proclamation we cannot say that our press is free from any external or any Governmental interference. India though being the world's largest democracy, we have seen ample examples where we can say that holding the Government responsible is not the duty of the press. Indian media seen flattering many a times the government for every action they took whether it is for the people or against the public policy. Recent time has seen many of the journalist who have been the critical of the government being attacked by the government or the government patronized groups. Often, journalists were arrested under Sedition laws for putting any question about the capabilities of the government even though the Supreme Court has given the detailed guidelines about the use of sedition law but again it is of no use. Those journalists who have courage to speak against the government often being complained of getting threat calls, trolling on the social media and the character assassination by the media itself and in the worst scenario they were being killed.

In a recent report titled "Getting Away with Murder" on the recent attacks on reporters have got some findings which could worry an individual. In the last 2014 to 2019, in the span of five years at least 198 serious attacks on the journalist have been reported out of which 36 happened alone in 2019 and among

them six were happened in the recent protest against Anti Citizenship Amendment Act¹⁶. In the famous case of killing of Gauri Lankesh in 2017 a staunch critique of right wing who was killed outside her house by a gang apparently after being inspired by a book brought forth by a right-wing institution called 'Sanatan Sanstha' in which the Gauri Lankesh was identified as a 'Durjan' (evil person). A charge sheet of 9325 pages have been submitted in 2018 naming 18 accused but even after 2-year time gap trial has not started yet.

• CONCLUSION-

Since the last seventy years of Indian independence, Indian democracy has seen many ups and downs but the role of media has been remarkable even much prior to the independence i.e. during the British regime. It can be very well said that Democracy and Freedom of press go hand in hand, if freedom of press dies then the democracy will automatically die. Freedom of press and democracy have direct nexus and it can be seen that the country with higher freedom of press have greater participation of people in its government and less corruption. Since 2003 there has been alarming reduction in ranking of India in World Press Freedom Index. People need to keep in mind that in order to have a stronger democracy there has to be a free press to great extent otherwise it will soon become an autocratic nation. The suggestive measure which can be taken into consideration for ensuring freedom of press are as follows-

1. A separate statute should be made for addressing the problem of journalist regarding threat, attack or otherwise and

¹⁶ <https://cpj.org/reports/2019/10/getting-away-with-murder-killed-justice/> (Last visited on 17-July-2020).



stringent laws with speedy trial should there for offences under it.

2. A separate quasi-judiciary body should be established consisting of senior journalists, bureaucrats and retired judges who keeps check on the freedom of press.
3. A journalism promotion fund should be made to encourage new journalist.
4. The Government should adhere to a self-imposed restriction upon themselves on affecting the working of free press.
5. Government should encourage the free and fair reporting.

