

Fundamental Rights and Contempt Power of Courts and Legislature

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Abstract

The strength and importance of media within a democracy is well recognized. Article 19(1) (a) of the Indian Constitution, which provides freedom of speech and expression includes within its reach, freedom of press. The existence of a free, freelance and powerful media is that the cornerstone of a democracy, especially of a highly mixed society likes India. Media isn't solely a medium to precise once feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. The crucial role of the media is its ability to mobilize the thinking process of millions. The criminal justice system in the country has several lacunae that are used by the wealthy and powerful to travel scot-free. Figures represent themselves during this case as does the conviction rate in our country which is abysmally low at 4 percent. In such circumstances the media plays an important role in not only mobilizing public opinion but bringing to light injustices which most likely would have gone unnoticed otherwise. It cannot be denied that it is of practical importance that a precarious balance between the fundamental right to expression and the right to one's privacy be maintained. The second practice which has become a lot of a daily occurrence now is that of Media trials.

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Introduction

In words of the Father of the Nation Mahatma Gandhi, "*The role of journalism should be service. The Press is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy.*" There are three pillars of a democracy viz. the legislative, the executive & the judiciary. The press acts as the fourth pillar of a democracy. The press has played many significant roles in delivering justice, public welfare etc.² As conferred earlier, press is considered as one of the pillars of a democracy as it acts as a watchdog of the three organs of democracy. Though, freedom of speech & expression (including of press) is enjoyed by the citizens but there are many instances where the press has to face difficulties as well. The constitution of India does not specifically mention the freedom and liberty of press. Freedom of press is understood from the Article 19(1) (a) of the Constitution. Thus, the press is subject to the restrictions that are provided in the Article 19(2) of the Constitution.

Hypothesis

The National Commission to Review the Working of the Constitution (NCRWC) has in its final report submitted to Government recommended that the Article 19(1) (a) which deals with "freedom of speech & expression" must expressly comprise the freedom of the press and other media, the freedom to hold one's opinion and to get, receive and impart information, ideas and various concepts. Something that was began to show to the general public at large the reality regarding cases has now become a practice interfering hazardously with the justice delivery system. The following observations of the Supreme Court in *R. Rajagopal and Another v. State of Tamil Nadu and Others*³ are true reminiscence of the limits of freedom of press with respect to the right to privacy. Freedom of the press is the freedom of

²<http://www.legalservicesindia.com/article/217/Freedom-of-Press-In-India.html>, last accessed on 26th June'19

³(1994) 6 SCC 632

communication & expression through vehicles including various electronic media & published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other protection.⁴

Research Methodology

According to the American sociologist Earl Robert Babbie, “*Research is a systematic inquiry to describe, explain, predict and control the observed phenomenon. Research involves inductive and deductive methods.*”

For conducting this research, I have used the doctrinal method of research. This method involves research from books, case studies, Bare Acts and internet.

Fundamental Right of Speech and Expression

The Constitution of India gives the right of freedom, given in articles 67, 45, 87 and 92 with the view of guaranteeing individual rights that were considered crucial by the framers of the constitution. The right to freedom in Article 19 guarantees the liberty of speech and expression, as one of its six freedoms.

Freedom of speech and expression means the right to express one’s own convictions and opinions freely by means of mouth, writing, printing pictures or any other mode. It thus includes the expression of one’s ideas through any communicable medium or visible representation, such as gesture, signs and the like.⁵ The expression connotes also publications and thus the freedom of press is included in this category. Free propagation of concepts is that the necessary objective and this might be done on the platform or through

⁴http://en.wikipedia.org/wiki/Freedom_of_the_press #England accessed on 19th January 2010, last accessed on 26th June’19

⁵ Lowell v Griffin, (1939) 303 US 444

the press. The freedom of propagation of ideas is always secured by freedom of circulation. Liberty of circulation is important to the freedom as the liberty of publication. Indeed without circulation the publication would be of little value.⁶

Freedom of Press

Blackstonian concept of freedom of press, which was expressed as early as in 1769 contained four basic points⁷ which still forms the crux of the concept of press freedom. They are as follows:

1. Liberty of the press is essential to the state.
2. No previous restraints should be placed on the publications.
3. That does not mean there is press freedom for doing what is prohibited by law.
4. Every freeman has the undoubted right to lay what sentiment he places before the public, but if he publishes what is improper, mischievous or illegal he must take the consequence of his own temerity.

Before Independence, there was no constitutional or statutory provision to guard the freedom of press. As ascertained by the Privy Council in *Channing Arnold v. King Emperor*⁸, "The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length; the subject in general may go, so also may the journalist, however except for statute his privilege is not any different and no higher. The variedness of his assertions, his criticisms or his comments is as wide as and no wider than that of any other subject". The Preamble of the Indian Constitution provides to all its citizens the freedom of expression. Freedom of the press has been included as a part of freedom of speech and expression underneath the Article 19 of the UDHR. The heart of the Article 19 says: "Everyone has right to freedom of opinion and

⁶Romesh Thappar v State of Madras, AIR 1950 SC 124

⁷ Press and the Law (1990) by Justice A.N.Grover; pg 7 para 2

⁸AIR 1914 PC 116, 117.

expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and views through any media and despite frontiers."

In *Romesh Thapar v. State of Madras*,⁹ Patanjali Shastri, Chief Justice observed: "*Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.*"

In *Prabhu Dutt v Union of India*¹⁰ 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 isn't absolute and restrictions may be imposed on it in the interest of the society and the individual from which the press obtains information. They can acquire information from a person when he voluntarily agrees to convey such information.

In its landmark judgment in the case of *Sakal Papers*¹¹ 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 can't be curtailed, like the freedom to carry on business, in the interest of the general public.

In another celebrated decision, *Bennett Coleman & Co. v Union of India*¹² the Supreme Court again came to save the press. It said that the freedom of press gives newspapers to achieve any volume of circulation and freedom lies both in its circulation and content. Freedom of press is heart of any social and political intercourse. It is the basic duty of courts to uphold the freedom of the press and invalidate the laws or administrative actions which interfere with it contrary to the constitutional mandate.¹³

⁹AIR 1950 SC 124

¹⁰ AIR 1982 SC 6

¹¹Sakal Papers(P) Ltd v Union of India AIR 1962 SC 305

¹² 1 AIR 1972 SC 106

¹³ 2 See also In Re Harijai Singh, AIR 1997 SC 73

In case of *Tata Press Ltd v Mahanagar Telephone Nigam Ltd*.¹⁴ main issue was that whether a commercial speech is guarded 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).

This notion has been floated only in recent years where the media having the freedom of speech and expression under Art 19(1) (a) uses power of their communication medium to reach out to the people at large and criticize and at times pre-judge a case under judicial consideration in the court of law which at times amounts to Defamation or Contempt of Court.

Contempt of Court

Contempt is another head of restriction on freedom of expression and freedom of the press. The Supreme Court has upheld the constitutionality of the Contempt of Court Act, 1952 on the grounds that the Act did not impose unreasonable restriction on the right to freedom of speech and is saved under Art 19(2)¹⁵. Courts have frowned upon various comments made in the press upon the remaining cases. The Punjab High Court ruled that 'liberty of the press is subordinate to the proper administration of justice'. The plain duty of a journalist is the reporting and not the adjudication of cases.¹⁶

Today the law of contempt is such that in India, the country which proclaims 'satyameva jayate', truth is no defence to an action of contempt.¹⁷

This is a serious anomaly. Art 361-A of the Constitution also states the contempt which was inserted after the Forty Fourth Amendment Act, 1978.

¹⁴ 3 (1995) 5 SCC 139 at 154

¹⁵ C.K. Daphtary v O.P Gupta, AIR 1971 SC 1132

¹⁶ Rao Harnarain v Gumori Ram, AIR 1958 Punj. 273

¹⁷ Bijoyananda v Bala Krishna AIR 1953 Ori 249

Current Scenario of Press & Its Achievements

In the recent past, in the *Tehelka* Case, the portal *Tehelka.com* was forced to shut down & its journalists were consistently harassed as the journalists revealed the 'scam' in defence ministry which involved Ex-Defence Personnel & Central Government Ministers. There are many cases and situations where journalists were threatened & even assaulted at times.

Despite the problems, the press has gained a lot of success in the recent past. In *Jessica Lal's* case, Manu Sharma, the son of Haryana minister, brutally killed Jessica on April 29, 1999, because she refused to serve him liquor in the restaurant where she worked. The case was closed and all the accused were freed due to lack of evidences, but finally, the case was reopened after media and public outcry, which led to Sharma's conviction. In *Priyadarshini Mattoo's* Case, Santosh Kumar, son of an IPS officer raped and killed his colleague, Priyadarshini Mattoo, a law student in 1996, after she refused his proposal. Ailing and old aged father of Priyadarshini got judgement in October 2006, after a long course trial. The Delhi High Court condemned lower courts and authority under investigation for acquittal of accused. The media played a significant role in this case also. Similarly, in *Nitish Katara's* case the media played an important role.

In *Aarushi Talwar's murder* case, media played an important part by highlighting the loopholes in the case owing to which the police was forced to take some action. Aarushi's father was the prime suspect in the case. Recently, in *Ruchika's* Case, Ruchika Girhotra, a 14-year-old tennis player, was badly molested by the Haryana police IG S.P.S. Rathore in Panchkula in 1990. Three years later, Ruchika killed herself, which her friend and case witness Aradhana attributes to the harassment of Ruchika and her family by those in power. Nineteen years later, Rathore comes out of punishment period with six months of rigorous imprisonment and a 1000-rupee fine, reportedly due to his old age and the "prolonged trial". This led to mass outrage & media played a important role in it. Later on the Government of India asked

the Central Bureau of Investigation to re-investigate the case & the police medals awarded to S.P.S. Rathore was also stripped. A case of Abetment of Suicide under Section 306 of the Indian Penal Code was also filed against S.P.S.Rathore. In 2005 news channel Aaj-Tak carried out Operation Duryodhana which revealed 11 MP's of the Lok Sabha for demanding and accepting cash for asking question in the Lok Sabha. Later on an Investigation Committee was set up which was chaired by Senior Congress MP Pawan Kumar Bansal. All the 11 MP's were found at fault & were demolished from the Lok Sabha.

Press needs to be Responsible

Though, the press has played important roles for public welfare but at times it act very irresponsibly. For instance the electronic media hyped the Abhi-Ash wedding in such a way that other important news was neglected. In *Prof. Sabharwal's* case, when Prof. Sabharwal was murdered by ABVP activists, there were number of news channels & newspaper correspondent present & they had evidence and information of the murder but the media behaved irresponsibly & the police declared it an 'Open & Shut Case'. Recently, when Mumbai was under terror threat in 26/11 the media again acted irresponsibly by telecasting live the long sixty hour Operation Black Tornado by the security forces to encounter the attack at The TajMahal Palace Hotel & Nariman House. It comprised of live feed of air dropping NSG Commandoes on the rooftop of Nariman House. At times, news channel show news such as 'bollywood gossips' which has lead them to be a mere 'entertainment channel'. There are many significant issues which need to be covered by the media but unfortunately it does not. In April 2009, Union Home Minister P.Chidambaram was speaking to the media at a press conference where a journalist threw shoe at the minister on protest of acquittal of a Congress leader accused of leading Anti-Sikh riots in 1984. The journalist named Jarnal Singh was reporter of DainikJagran. Later on he apologized to the Union Home minister for the act he did. This was one of the most condemnable acts which described the ugly side of the press.

Conclusion

It has been 60 years since India became Republic & commencement of the Constitution, there has been a lot of ups & down in our democratic system & press also has come across age. As being known as the largest democracy of the world we should retain the words of our former Prime Minister Rajiv Gandhi, *“Freedom of Press is an Article of Faith with us, sanctified by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation.”*

Thus, we can say that now the time has come for the press of largest democratic system of the world to work with hand-in-hand with judiciary for the development of its subjects. The day is not far away when there will be no shadow of injustice & the sun of justice will shine brightly till eternity.

The ground realities are that a citizen is largely dependent on the press for the quality, proportion, and the extent of news. He can obtain for himself the information required for the intelligent discharge of his political duties and responsibilities. In spreading news, the press therefore acts as a representative or, more correctly, as the custodian of the public. It serves public interest in pluralistic democracy by permitting expression and opinions of all persons. Hence, freedom of the press has a scope and range that is vastly different from the ambit and content of other individual freedoms. Press freedom embodies the principle of answerability and thus permits press to be an instrument of democratic control. Protection and promotion of free press is substance sub serves and strengthens democracy, an important feature of the Constitution. Freedom of press is one of the basic freedoms in a democratic country based on the Rule of law. The public function which belongs to the press makes it an obligation of honour to exercise this function with the fullest sense of responsibility.

Joseph Pulitzer pointed out that ‘commercialism has a legitimate place in a newspaper’. According to him, ‘without high ethical ideals a newspaper is not only stripped of its splendid possibilities for public service, but may become a public danger to the community’.¹⁸

Press freedom will depend not only on the state of the laws or the provisions of the Constitution but on the integrity and independence of the press. ‘Over the years, Governments of the different parts of the world have used diverse methods to keep press under control. They have used carrot and stick methods’.¹⁹

In the ultimate analysis, the reality of press freedom will be realised by the will and determination of its champions and defenders to assert their rights and to defend their cherished freedom, remembering at all times the spirit of Benjamin Franklin’s word to his compatriots: “*They who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety*”.²⁰

¹⁸Gerald Gross (ed.), *the Responsibility of the Press*, Clarion Books, New York, 1966, pp.39-40

¹⁹ *Indian Express Newspapers v Union of India*, (1985) 1 SCC 641

²⁰ Referred to in Soli J. Sorabjee, *supra* n. 50 at p.25