

Restraint on Media and Legal Consequences: A Critique

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Abstract

A vibrant and independent media encourages people to be actively involved in public affairs and ability to mobilize the thinking process of millions. It plays a vital role in political liberty and ensures social- political activities among the peoples. Thus it includes the expression of one's ideas through any communicable medium or visible representation, such as gesture, signs and exchange of ideas in any democratic country. Freedom of press is not confined to newspapers and periodicals; it includes also pamphlets and circulars. The social roles of the media is to enlightening the people, promoting the democratic process, safeguarding the liberties of the individual's, and should take precedence over its role of servicing the economic system. In *Bennett Coleman & Co. v Union of India* the Supreme Court describing this freedom as '**the Ark of the Covenant of Democracy**' under **Article 19(1)(a) of the Indian Constitution**. Freedom of the press has been included as part of freedom of speech and expression under the **Article 19 of the UDHR**. In a landmark judgment of *Maneka Gandhi v. Union of India*, the Supreme Court held that the freedom of speech and expression has no geographical limitation and it carries it with the right of a citizen to gather information and to exchange thoughts with others not only in India but abroad also. However this right is subject to restrictions under sub-clause (2) article 19. There are also exclusive laws like **India Press Act, 1973** to regulate the media and press. It imposes limitations and jurisdiction upon the freedom of press and expression.

There are certain episodes like Tehelka episode where the news portal was forced to shut down and punish journalist for sting operation against corrupt practices and threat to the TIME magazine which questioned Prime Minister Vajpayee's physical fitness to lead the country. The latest controversy which has brought problem for the protection of freedom of speech and press from arbitrary exercise of the power of punishing for contempt possessed by the legislature like Tamil Nadu legislative Assembly. To regulate the freedom of press, legislature must promote transparency, accountability and good governance; in the cases of commercial advertising, reasonable censorship be used. Media also followed certain standard during performance of their duties with proper accountability and take experience from the last episodes. The paper concludes that the structure of the press, its freedom, is always determined by the socio-political freedom, and that will be equally enjoyable by or beneficial to all members of the society.

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“Press is the watchdog to see that every trial is conducted fairly, openly and above board, but the watchdog may sometimes break loose and has to be punished for misbehavior.”

Lord Denning

Introduction:

In India, Freedom of media and press has been great debated issue from the British period and during the British period, Lord Litin has been passed Vernacular Press Act, 1878 by which curtailed the freedom of press and prohibited the circulation to control the exchange of ideas. Speech and expression means that the right to express or propagate one's own convictions and opinions freely by means of any communicable medium or visible representation i.e. mouth, writing, printing pictures or any other mode etc. Press freedom, the world over has become the litmus test for democracy and the tonic for self and national development in the way of socio-economic liberties. The Growth and development of representative democracy is so much intertwined with growth of press that the press has come to be recognized as an institutional limb of modern democracy. Blackston was expressed as early as in year 1769 about the concept of freedom of press as a basic issues which are the crux in all democratic system. He emphasized the importance of the freedom of press and formulated four basic feature of the press.¹ These are as follows:

1. Liberty and freedom of the press is essential for the state welfare,
2. No previous restraints or prior- censorship should be imposed on the publications, and
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 its.

Recently, some newspapers have started selling spicy news and bikini girls while 24 hour TV channels anything from mysterious ghosts. Scandals like Radia Tapes and paid news are alarming to the society. Songs like 'DK Bose' (Delhi Belly) and 'Jhak Maar Ke' (Desi Boyz) are indisputably obscene gestures under the purview of freedom of expression. One of the deplorable acts which media is, advertently or inadvertently doing relates to the unnecessary intervention in the private life of the individual. The misadventure on the part of this fourth state of democracy has compelled to hardships and challenges. But some famous cases like Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case, Bijal Joshi rape case, Ruchika Girhotra molestation case etc. would have gone unpunished without intervention of media. Media should perform their respective duties for the welfare of the society and for gaining commercial mileage does not cross their limitation.

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

Purpose of Protection:

Purposes for the protection of the Freedom of speech and expression have been immense importance to fulfill and preserve the democratic value. Freedom of press attained the ultimate goals for the enjoinder of Human Rights. Press plays a role as to check and balance between the interest of individual and action of the government. For this reasons its protection is mandatory to serve certain purposes. In an English case - **Attorney General Vs. Times Newspaper Limited [(1973) 3 ALL ER 54]**, it was held that freedom of expression, as guarantor of political liberty, has four broad social purposes to serve :-

1. It helps an individual to attain self-fulfillment and express their views in or on the system,
2. It helps and assists in the discovery of truth about the action the government or other organization,
3. It strengthens and promotes the capacity of an individual in participating in decision making,
4. It provides a mechanism by which it establishes a reasonable balance between stability and social change in the given society.

Judicial Approach:

The freedom of press is implied from the speech and expression guaranteed by Article 19(1)(a) of the Indian Constitution. The freedom of press is regarded as a “species of which freedom of expression is a genus.” The Supreme Court has laid emphasis in several cases, maintaining the freedom of press in democratic society and imposed the restriction under the provision of the Constitution. The American Press Commission has said, “freedom of the press is essential to political liberty. **The Universal Declaration of Human Rights** states that “Everyone has the right to freedom of opinion and expression. The right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.² The Indian Constitution guarantees this freedom as a right to freedom of speech and expression under **Article 19(1)(a)**. The economic and business aspects of the press are regulated under **Article 19(1)(g)** which provides for freedom of profession, occupation, trade or business and which is restricted by **Article 19(6)** which includes provisions for public interest, professional and technical qualifications. In 1950, the Supreme Court has ruled that freedom of press is implicated in the guarantee of freedom of speech and expression in **Article 19(1)(a)** of the constitution.

In **Romesh Thapar v. State of Madras**, AIR 1950 SC 124 Patanjali Shastri, CJ observed that “Freedom of speech and expression enshrined the freedom of the press lay at the foundation of

² Article 19

all democratic organizations, and it is essential for the proper functioning of the process of welfare government, without restraint by the government”. The press has no special rights which are not given or which are not to be exercised by the citizen in his individual capacity. In a landmark judgment of *Maneka Gandhi v. Union of India*, the Supreme Court held that the freedom of speech and expression has no geographical limitation and it carries it with the right of a citizen to gather information and to exchange thoughts with others not only in India but abroad also. However this right is subject to restrictions under sub-clause (2) article 19. In *Indian Express v. Union of India*, (1985) 1 SCC 641 it has been held by the Supreme Court that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are: 1. Freedom of access to all sources of information, 2. freedom of publication, and 3. Freedom of circulation. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws and administrative actions which interfere with it.

This right is available only to a citizen of India and not to foreign nationals. The Government to impose laws for reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence. In *Romesh Thapar v. State of Madras* (1950 SCR 594, 607; AIR 1950 SC 124), entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The court held that there can be, no doubt, that the freedom of speech and expression includes freedom of propagation of ideas, and that freedom can not be ensured as “without liberty of circulation, publication would be of little value”. In *Sakal Papers Ltd. v. Union of India*, AIR 1962 SC 305, the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in *Bennett Coleman and Co. v. Union of India*, AIR 1973 SC 106; (1972) 2 SCC 788, the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court struck down the plea of the Government that it would help small newspapers to grow. In *Prabha Dutt v. Union of India* ((1982) 1 SCC 1; AIR 1982 SC 6.), the Supreme Court directed the Superintendent of Tihar Jail to allow representatives of a few newspapers to interview Ranga and Billa, as they wanted to be interviewed and 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.

There are instances when the freedom of press has been suppressed by the legislature. The authority of the government, in such circumstances, has been under the scanner of judiciary. In the case of *Brij Bhushan v. State of Delhi* (AIR 1950 SC 129), the validity of censorship

previous to the publication of an English Weekly of Delhi, the Organiser was questioned. The court struck down the Section 7 of the East Punjab Safety Act, 1949, which directed the editor and publisher of a newspaper "to submit for scrutiny, in duplicate, before the publication, till the further orders, all communal matters all the matters and news and views about Pakistan, including photographs, and cartoons", on the ground that it was a restriction on the liberty of the press. Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression.

A. Right to Information:

In Indian, the **Information Act 2002** was finally passed by both the Houses of the Parliament in December 2002. Under this Act, it is obligatory upon every public authority to provide information and maintain records, consistent with its operational needs. In a public interest litigation filed by **Association of Democratic Reforms [Union of India Vs. Association for Democratic Reforms & Ann, JT 2002 (4) SC 501]**, the Supreme Court directed the Election Commission to require the persons contesting elections to give such information specially relating about their criminal background, educational qualifications, their properties and assets.

This right shall include freedom to hold opinions to receive, impart information, ideas without interference by public authority and regardless of frontiers." In one of the early decisions in the case of **State of UP Vs. Raj Narain and Others [(1975) 4 SCC 428]**, the Supreme Court of India considered a question whether privilege can be claimed by Government of UP under section 123 of Evidence Act in respect of Blue Book summoned from the Government of UP and certain documents summoned from SP, Police, Raibareilly, UP. The Court observed that -

"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing."

In a recent case of **Secretary, Ministry of Information & Broadcasting, and Government of India vs. Cricket Association of Bengal [(1995) 2 SCC 161]**, the Supreme Court observed in para 82 as follows: -

"True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they" are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organizations. This is particularly so in a country

like ours where a majority of the population is illiterate and hardly 1½ per cent of the population has an access to the print media which is not subject to pre-censorship."

In another recent case of **Dinesh Trivedi, M.P. and Others V. Union of India and Others** [(1997) 4 SCC 306], the Court dealt with citizen's rights to freedom of information and observed as under: -

"In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare. Democracy expects openness and openness in a society and the sunlight is a best disinfectant."

B. Commercial Advertisement:

Advertisement is undoubtedly a form of speech, but every form of advertisement is not a form of speech and expression of ideas. When advertisement takes the form of commercial advertisement than it does not falls within the concept of the freedom of speech and expression. In the significant judgment in **Tata Press Vs. MTNL** (1995) 5 S.C.C. 139 three judge bench has held that commercial speech is a part of the freedom of speech and expression and it can only be restricted on the grounds specified in clause(2) of Article 19 in the interest of society, public order, decency, morality, contempt and defamation etc. referring the above judgment in **Hamdard Dawakhana`s case** the court held that the holding was limited one prohibiting an obnoxious advertisement and cannot be accepted in view of the wider importance of the advertisement.

C. Invasion on right to privacy:

On the issue of citizen`s rights to privacy, the court held that it is included in under Article 21 of the constitution and a citizen has a right to safeguard, the privacy of his own, his family, marriage, motherhood and education among other matters. In the historic judgment in **R. Rajagopal Vs. State of T.N.**, the Supreme Court held that the government has no authority in law to inpose a prior restraint upon the publication of defamatory materials against its officials except as it authorised by the constitution and bye- laws. In, **People`s Union for Civil Liberties Vs. Union of India** (1997) 1 S.C.C. 568, Supreme Court covers right to hold telephonic conversation in privacy of the individual and laid downs exhaustive guidelines to regulate the discretion vested in the state of the Indian Telegraph Act for the purpose of phone tapping and interception of the other messages so as to safeguard public interest against arbitrary and unlawful exercise of power by the government.

The Supreme Court observed in **Union of India v. Association for Democratic Reforms**, (2002) 5 SCC 294, "One sided information, disinformation, misinformation and non information, are all

equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions”.

D. Sting operations and Constitution:

Sting operation by the media and press is a new challenge against the freedom of press because it violates the liberty of the individual by the undue means. The individual's personality, reputation or career dashed on the ground after the media exposure. Recently, some sting operation (tehlka episode, filmy actors episode or personal comments and privilege matters etc.) want to impose liability against the individual but there is no truth in facts. In case of Aarushi's murder case in which media had declared the father of the Aarushi, Dr. Talwar as murderer of his daughter without any proof was an extraordinary news. He has a fundamental right to live with dignity and respect and a right to privacy guaranteed to him under Article 21 of the Constitution. The movement towards the recognition of right to privacy in India started with *Kharak Singh v. State of Uttar Pradesh and Others* AIR 1963 SC 1295, wherein the apex court observed that it is true that our constitution does not expressly declare a right to privacy as fundamental right, but the said right is an essential ingredient of personal liberty. After an elaborate appraisal of this right in *Gobind v. State of Madhya Pradesh and Another* AIR 1975 SC 1379, it has been fully incorporated under the umbrella of right to life and personal liberty by the humanistic expansion of the Article 21 of the Constitution.

Restrictions on Freedom of Press:

The freedom of press is an integral part of the freedom of speech and expression, but it does not confer an absolute right to express without any restriction. Under Article 19(2) of the Indian Constitution, there are several grounds upon which restraint or censorship can be imposed upon the circulation of the ideas or news articles. If censorship is imposed, its constitutionality has to be judged by the test of reasonableness, as given by Article 19(2) so censorship of the press is not prohibited by any provision of the constitution. The Bombay High Court in its landmark judgment in *Binod Rao v Masani* 1976 78 Bom. L.R. 125 declared that “Merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication”. Lord Denning, in his famous book **Road to Justice**, observed that press is the watchdog to see that every trial is conducted fairly, openly and above board, but the watchdog may sometimes break loose and has to be punished for misbehaviour. Reasonable restrictions on these grounds can be imposed only by a duly enacted law and not by executive action.

The provision of Clause (2) of Article 19 of the Indian Constitution enables the legislature to impose reasonable restrictions on free speech on several heads but decency, morality, contempt of the court and defamation are basic grounds upon which courts are very concentrate to restrict the freedom. This test of morality was upheld by the Supreme Court in **Ranjit D. Udeshi v.**

State of Maharashtra (AIR 1965 SC 881). In this case the Court upheld the conviction of a book seller who was prosecuted under Section 292 , I.P.C., for selling and keeping the book *The Lady Chatterley’s Lover*. The standard of morality varies from time to time and from place to place. With reference to the contempt of court, the Supreme Court of India followed the principle of American Supreme Court (Frankfurter, J.) in *Pennekamp v. Florida* (328 US 331 : 90 L Ed 1295 (1946), in *In re Arundhati Roy* ((2002) 3 SCC 343),). In which the United States Supreme Court observed that “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 *M.R. Parashar v. Farooq Abdullah* ((1984) 2 SCC 343; AIR 1984 SC 615.), contempt proceedings were initiated against the Chief Minister of Jammu and Kashmir. But the Court dismissed the petition for want of proof. Article 19(2) of Indian Constitution provides the restriction under following heads:

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|---------------------------------|---|
| ✚ security of the State, | friendly relations with foreign States, |
| ✚ public order, | decency and morality, |
| ✚ contempt of court, | defamation, |
| ✚ incitement to an offence, and | sovereignty and integrity of India. |

Conclusion:

Press acts as an interlocutor between government and its people. It is remember that fundamental right of free expression also includes fair comment and criticism as describe by Chief Justice P.B.Gajendragadkar that “the freedom of expression of opinion does not mean tolerance of the expression of opinions with which one agrees but tolerance of the expression of opinions which one positively dislikes or even abhors.” Scrutiny of government’s action by the fourth estate is a stipulation which cannot be done away by an order. Basic issues relating to Article 19 (1)(a) personal liberties and the principles of natural justice need to be settled by the legislature. There is aneed to codified the laws relating to privilege to avoid ambiguous and expansive in nature. Hence, the Government should regulate a noble standered about the limitation of thr freedom of press. The press council of India must ensure its relevancy before broadcasting any news or any matters because which affect our lives in many ways. In a democratic country, there is a right to know about the things, which affect us. If government provides the details and the expenditure of any project or work, the chances of corruption are minimized.

Press should participate in the delivery of justice and aware the individual about their rights by the way of Media Trial. It is essential duty of press to strike that proper balance between citizen's right to privacy and public's right to information and the press should show their functional accountability. The foundation for a free press and a free society is possible when the constitution of a country adequately protects it and the right laws are in place. For the press in any country to be free and thrive, the constitution and other laws in the country must not only guarantee but also protect the press in all ramifications and counter governmental, institutional, personal interference or anything that would amount to censorship.

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