

IS PRESS REALLY PRESSING ON AUTHENTICITY

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ABSTRACT

As the government is for the people in our democracy so is the respected media. Therefore if government responsibility is to promote social welfare then media has the bigger responsibility of imparting social education. Today media has even wider reach than before, so its authenticity its accountability has become all the way very important. Freedom of press is one of the very shining star of our democracy but if the freedom is misused or irresponsibly handled for pity gains of TRP then that very shine starts to blind the larger public leading to erosion of very purpose for which media is kept free for political regulation . Wide media outreaches led the masses to be able to form social and political views, even a teenager today has views on the issues running in our country which is incredible and not to deny media has played a great role in this but what is more important is that views should be based on solid facts and not on mere compelling way the particular opinion expressed in the media.

As in many cases the accused of any offence is put under such public scrutiny by the media that even though the court acquits him, the eyes of public always sees him as a criminal and guilt lasts in the heart of the person till his death, so this very act of media proved to violate the right of the citizen denoted in article 21 of The Constitution of India i.e. Right to live with dignity which is the classic example of how media who being itself a torch-bearer of freedom infringes upon the freedom and rights of its very audience, which needs to be acknowledged or else media will go on behaving like a loose bull ready to attack the accused even before he is convicted by the court.

Political influence on media and trend of fake news has been seen in most south Asian countries like India, Pakistan, and Bangladesh. Media in these countries are more obedient to corporate and political forces rather than disseminating authentic information to public. The freedom of journalism is ceasing to exist and everyday journalists fight for their rights to speak out freely, protecting media pluralism and ills of monopolies. The surprising entry of media in the list of countries where bloggers and reporters killed wounded or sued for speaking the truth has shaken the whole structure of democracy.

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For making the fourth pillar strong enough the India's regulatory body, Telecom Regulatory Authority of India (TRAI) report recommended legislation to empower journalists for free and fair expression. As it is right said by Oswald Mosley "Newspaper are not made any longer by news and journalism. They are made by sheer weight of money expressed in free gift schemes. They serve not the interest of many, but the vested interest of the few."

Keywords: Free press, Democracy, Forth pillar, Politics, Fundamental right, Authenticity.

INTRODUCTION

Citizens in our country are provided with miscellaneous freedoms and rights such as right to elect their representatives through votes, freedom to hold opinions, express their views openly, criticizes the wrong doers in our government, freedom of equality, freedom to have constitutional remedies, freedom to propagate religion, and the most importantly freedom of press. Press or Media is considered as the source of knowledge and medium to provide information to the public as citizens has the right to receive information on various socio political, economical matters but this freedom of press in today's era is viciously used as the recent trend of paid news deceives its viewers and violates their right to have correct information and their ability to form opinions. Nowadays media has a place in our everyday routine. Media is regarded as instrument of expression. It has the ability to mould the opinions of the citizens as we are shown what they reflect. Media has the potential to diversify the views of society by misleading them as the motive of media has been shifted from providing information to earning profits³. Today media is politically biased as it is fully dominated by the government as its latest example we can see in Modi government the whole focus of media is upon the political issues and favors that political party who owns them. The newspaper circulated in Uttarakhand region such as Dainik jagran or Amar ujala are very much fond of Modi government and just focus on showing the good face of the government in power but the newspaper circulated in south region are congress supporter and true haters of Modi government and busy in showing the failures of Modi government. They must show the authentic and correct news and let the public to form their own opinion⁴.

Personal gains of media have become great barrage to the free flow of true information. Ethical supremacy as expected from the media in a democratic nation is like finding an oasis in a desert, which sadly is the most terrifying thing especially during the times when India is on path to emerge as a world superpower.

³Available at <https://www.lawctopus.com/academike/media-trials-india/>

⁴Available at "MEDIA LAW AND ETHICS"2009 -M. NEELAMALAR"

CONSTITUTIONAL VALIDITY OF FREEDOM OF PRESS

The democracy of India guarantees its citizen various fundamental rights for their expansion and evolvement. Freedom of speech and expression under article 19(1)(a) is the mainstay of Indian democracy and inherited several other rights such as right to receive information, right to have secrecy, right to communicate, right to dissent from policies of government and many more. Communication is most pertinent and most vital freedom of citizens. One can express when there is unrestricted communication. Freedom of speech and expression is provided to citizens only and as the press is constituted of citizens so it takes the advantage of this freedom⁵. Article 19 of universal declaration of human rights (UDHR), 1948 and article 19 of the International covenants on civil and political rights (ICCPR), 1976 also incorporates right to freedom of speech and expression. The UDHR states that “everyone shall have the right to freedom of expression” which includes right to hold opinion without interference. According to ICCPR these rights must be subject to reasonable restrictions whenever necessary. The Preamble of Indian constitution states that the citizens have the liberty of thought, expression, belief, faith and worship. Right of free press is impliedly given under liberty of thought and expression.

Freedom of press is not expressly given under The Constitution of India. It comes under the scope of freedom of speech and expression given under article 19 (1)(a) of part 3. According to Dr. Babasaheb Ambedkar, the chairman of drafting committee is that there is no need to make a separate article for the right to freedom of press as the Indian constitution is influenced by the U.S. Constitution and First amendment of U.S. Constitution provides “freedom of speech and of press”. Article 19(1)(a) enshrines the freedom of press also. The freedom of press is regarded as a “species of which freedom of expression is a genus”⁶.

The primary function of free press is creating the 4th institution outside the government official branches i.e. the executive, legislature and judiciary and its purpose to keep on check on the above three.

Article 19 does not only provides rights to citizen and press but it also provides right to state under clause 2 of article 19 to put reasonable restrictions upon the freedom of citizens for securing, sovereignty and integrity of India, security of state, friendly relations with foreign state, public order, decency or morality, contempt of court and incitement to an offence.⁷The freedom guarantee to press is not absolute and subject to limitation imposed by the state like any other freedom guaranteed in the Constitution.

The Supreme Court in **Papnasan Labour Union v. Madura Coats Ltd AIR 1995 SC 2200** has laid down following principles to check the reasonability of restrictions

⁵Available at <https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>

⁶ Available at <https://www.forwardpress.in/2015/12/ambekar-the-media-to-empower-not-to-hero-worship/>

⁷Available at <http://www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html>

- (i) The restrictions must not be arbitrary and should not be excessive.
- (ii) There must be a proximate nexus between the restrictions imposed and object sought to be achieved.
- (iii) The court must take liberal interpretation in imposing restrictions.
- (iv) The restrictions imposed under this article must be in conformity with the article 14 i.e. freedom of equality. It means the restrictions should not be discriminatory.
- (v) Before imposing the restrictions court must examined the intention of the statute and issues of society.
- (vi) The court while imposing restrictions should consider the Directive principles of state policy.

Important judgments on freedom of press by supreme court:

In **Romesh Thapar v. State of Madras** the Supreme Court observed that, for the proper functioning of government it is essential to give freedom of speech and of press because it is the core of all democratic organization, moreover it stated that no public education is possible without free political discussion. In this case, "cross road" journal which is printed and published in Mumbai, was not allowed to be circulated and banned by government of madras. But this was considered to be grave violation of the freedom of speech and expression as "what use is publication if it does not have liberty of circulation".

In yet another case, Hon'ble Supreme Court observed in **Union of India v. Association for Democratic Reform** that uninformed citizenry which is created by disinformation, one-sided information, misinformation and non-information makes democracy a farce. Freedom to hold opinion and the right to impart and receive information forms the integral part of Freedom of speech and expression.

In case of **Indian Express Newspapers v. Union of India** Supreme Court stated that in democratic machinery press plays a great lubricant and the courts are required to support the freedom of press and make all laws and actions that violate this freedom to be null and void.

The three very essential elements of freedom of press are:

- (i) Freedom of access to all sources and authentic information.
- (ii) Freedom of publication, and
- (iii) Freedom of circulation.

There are many instances when freedom of press was suppressed by the different legislatures in **Sakal papers v. Union of India AIR 1962 SC 305** the daily newspaper (price and page) order, 1960 fixed the size and number of pages which a newspaper could publish does not upheld the freedom of press also does not qualify for reasonable restrictions under article 19(2) of The Constitution of India. In **Bennett Coleman and company v. Union of India AIR 1973 SC 106**

the court struck down the newsprint control order, which fixed the maximum number of pages. The court stating it against article 19(1) and not to be reasonable restriction under article 19(2). Even though the government pitched it as the ground for helping small newspaper to grow, the court was adamant in declaring it as null and void. In **Brij Bhushan v. State of Delhi AIR 1950 SC 129** the court struck down the pre censorship on an English weekly of Delhi, which compelled the editor and publisher, to submit all the matters and news and views about Pakistan, including photographs and cartoons, is for scrutiny, in duplicate before the publication, stating it as violative of liberty of press⁸.

THREATS TO JOURNALIST

The term 'free press' is becoming opaque by every passing day because of suppressing freedom of speech and expression by the government through unnecessary arrests by police, raids, murder, harassment journalists in the name defamation . Over the past five years the freedom of press has deteriorated and experienced harsh political influence. The book writer Rana Ayyub who criticizes the chief minister of Gujarat Narendra Modi at that time for Gujarat riots 2002 and anti Muslim violence facing harassment by Hindu nationalists. According to United Nations the life of Muslim journalist in particular is at serious threat⁹.

India marked as fifth on the list of countries that are unsafe for journalists after acknowledging various incidents such as in Uttar Pradesh the freelance journalist was arrested by police because of uploading the video of a woman claiming to be lover of Uttar Pradesh Chief Minister Yogi Adityanath. Later she was released by Supreme Court. Six journalists were killed across the country in 2018. One of those was Gauri Lankesh who was shot dead in her driveway in September 2017 because of supporting the left wing¹⁰. In Kashmir a leading newspaper journalist and editor was shot dead in 2018 who was a BBC contributor. Various broadcasting channels have now picked a 'side' and favor the political party through which they get funded. The most famous example we can see in 2020 is the anchor of Times Now 24 hours news channel Arnab Goswami who is a true supporter of BJP gets tremendous favoritism from the leading political party. On the other hand, the channel NDTV which relies a fact based reporting faces various police raids in 2017.

The threat to journalism and free press has been increased since the BJP came into power from 2014. The range of threats widened to murder, kidnapping, harassment, torture to make their voices oppressed. This hamper of freedom of free press would also hamper the fundamental rights of the citizens to receive information and form opinion to express as the free press is the best interpreter of the government representative's performances and their policies for the people of India.

⁸Available at "Constitutional law of India"- J.N. Pandey

⁹ Available at <https://www.aljazeera.com/indepth/features/perils-journalist-modis-india-180614103115577.html>

¹⁰ Available at <https://www.nytimes.com/2019/03/14/magazine/gauri-lankesh-murder-journalist.html>

TRIAL BY COURTS JUDGEMENT BY MEDIA

Due to increasing competitive market and commercial interest, media often spiced up news to make it more attractive to the viewers which would result in violation of right to have privacy of the person who are the subject of such coverage. Judiciary has accommodated with the authority and responsibility to provide justice and decide the case on merits. Interference of media in trial and prejudice the decision of the court is termed as media trial. Through media trial people led to make a preconceived notion for a person regardless of the verdict of the court. Media nowadays has a wide coverage across the country and has the potential to convince the public through various tactics and influence them to follow the opinion which media reflects.¹¹

In 20th century this issue is first raised by the celebrity Roscoe 'Fatty' Arbuckle who was acquitted by the court but lost his job and reputation because of widespread hatred among people due to media trial. After that there are many cases in which media act as a 'sole judge' to decide the innocence or guilt of the person. Every person has a right to have a fair trial which means unbiased and speedy trial by courts and courts decision must be based on true facts but this right is ruthlessly violated by the media and resulted in a tug of war between the verdict of court and judgment by media on the minds of the people.

In Arushi Talwar case the media became the judge and make the parents guilty without relying on true facts. Media jeopardize the functioning of judiciary as no matter what the decision of the court the people framed the picture of the accused. Though CBI later declared that the father was not the accused. In Sheena Bohra murder case the personal life of accused Indrani Mukherjee has been impaled by the excruciating eyes of media which has nothing to do with the trial. There are many high profile cases such as Priyadarshini Mattu case, Nitish katara murder case, Jessica Lal case and Bilal Joshi case in which media hampers the justice system¹².

Supreme court of India observed right to privacy as a fundamental right under article 21 in the case of justice K S Puttaswamy(retd) v. Union of India 2017 media with its excessive facts relieving news especially in case of rape victims tends to violate their right of privacy.

The chief justice of India Justice Khehar in 2017 expressed his concern related to impact of media trial over the personal life of the accused. He proposed various guidelines regarding the extent of information can policemen tell the media during trial. If in case accused faces excessive media trial he would be free to ask the trial court to delay the order. Whether the accused can be questioned before cameras and whether their identities can be disclosed or not. As person's reputation is very important to live with dignity and should not be the subject matter of media coverage.

¹¹Available at <https://blog.iplayers.in/constitutionality-media-trials/>

¹² Available at Trials of Truth: India's Landmark Criminal Cases- Pinky Anand

In **R. Rajagopal v. State of Tamil Nadu** the Supreme Court of India has held that press has all the right to debate on public figures but they does have the right to showcase their private life in public. They have to maintain the difference between the responsible reporting and indulging in defamation.

Therefore Supreme Court in various judgments clearly expressed that the freedom of press is like freedom of speech and expression to citizens and all the restriction would also be applicable to freedom of press. No special privileges will be granted to press neither more restrictions can be imposed on press which could not be imposed on citizens.

MEDIA: A SELF REGULATING BODY

In India there is no such regulatory body for press and media. It turned out to be a self regulatory body with their own rules and regulations without any absolute liabilities. The Press Council for India act 1978 is a statutory body for regulating press is more like of guidelines. It does not penalize for professional misconduct by an editor or journalist for violation of journalistic ethics and often tends to harm the privacy of citizens. Press Council of India has power to review the functioning of print media such as newspaper, magazines, journals, and other forms of print media. It does not have the power to regulate the electronic media like television, internet media, radio etc.¹³

According to the chairman of Press Council of India Markandey Katju who is a formal judge of Supreme Court has also argued that electronic media should also be included within the scope of Press Council of India as it has the ability to stir the emotions very fast and has the huge impact on the minds of the people. Strict legislation for regulating the conduct of media is the need of the hour¹⁴.

CONCLUSION

Future of the country depends upon the awareness and literacy level of its people. Without proper guidance and information the people cannot choose what is right and what is wrong most often end up falling prey to commercial media. As rights of media are important so is important the rights of every citizen residing in this country even that person is a criminal. The freedom of press does not give them the power to throw their own judgments on the accused, or exposing their personal lives and making that person a gossip for all nations, it is the clear destruction of rights of every citizen.

Therefore it is important that the main purpose of media be revived which is not entertainment, entertainment is best done by the professionals actors but to provide social, economic and political education to its audience. Media should respect the procedure of court trial and should

¹³ Available at http://www.ili.ac.in/pdf/p3_meera.pdf

¹⁴ Available at <https://www.thehindu.com/news/national/media-should-have-selfregulation/article2681987.ece>

not declare their views before courts verdict is out. Personal gains should not become supreme, let the true and authentic information be the only supreme priority of the press, only then we can say that the” 4th pillar is strong enough to balance the other three”.

Media activism should be questioned and effective act can be introduced to punish those who break their boundaries of limitation. As said in the article, political control is not the answer but some sort of effective control measures have to be taken to check the reckless and unprofessional reporting of the media.

As citizens have a relationship of trust with the government of the day, same is the trust with the media, and media has no right to breach that trust but the saddest part is that we can change the government but not our media, media remains. Media needs to acknowledge this fact and should start reaching its very foundation on which it was laid i.e. unbiased, authentic information to larger public goods. This is all important to act upon because as Malcom said: - “The media’s the most important entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that’s power. Because they control the minds of the masses.”