

SHAPING A PEACEFUL DEMOCRACY-ROLE OF MEDIA TO BE REDEFINED

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Abstract

Since the 17th century, the role of the press as fourth estate and as a forum for public discussion and debate has been recognized since the 17th century. The influence, power and ability to generate mass opinion of the media are widely acknowledged. Unfortunately this acquired power has been often misused and manipulated by the media resulting in irreparable injury upon democracy by hiding truth. Media provide readers, listeners and viewers with information and that range of ideas and opinion which enables them to participate actively in a political democracy. Freedom of media should be protected in spite of the injury that may be arising out of its misuse. In India the freedom of media is construed by the courts from Article 19(1) (a) of the constitution which talks about freedom of speech and expression. It is now well settled that Article 19(1) (a) also assures the freedom of media, though it is not separately stated there, unlike some other constitutions like that of the U.S.A. Since the very objective of this freedom is the protection of the society and propagation of democratic values it is not absolute and cannot encroach upon the fundamental right of others. With this intention unbridled power was not conferred on media and at times of trespass, courts in India had tied knots upon it. Because the freedom of the press is not so much for the benefit of the press as for the benefit of the general community. Ultimately community has a right to be supplied with information and the government owes a duty to educate the people within the limits of its resources. The apex court also reaffirmed this reason of extending the freedom of speech and expression to media. This paper is an attempt to verify whether this role is performed by the media to deepen democracy and further to redefine it to lead to a peaceful democracy.

Keywords : Press, democracy, freedom, media, court.

“I would rather have a completely free Press, with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated press.”¹

Introduction

Democracy is one of the preconditions of Rule of law and the administration which, if becomes more transparent is the hall mark of good governance. It is the press and media that help the democratic process, protect the democratic rights and play a positive role in strengthening the democracy.² ‘The media’ is not a monolithic entity. It is a broad term encompassing a variety of content provided to the public over a range of

¹ J.R. Mudholkar, *Press Law*, Eastern Law House Calcutta (1975), p.1

² Justice Akshaya Kumar Rath in foreword in Dr. Sukanta K. Nanda, *Media And Law*, (1st Edn,- 2014), p. iv

platforms. Content provided by the media can be news, politics, business, current affairs, entertainment, motoring, gardening, religion, home decor, fashion, food, celebrity and lifestyle.

The word 'media' is derived from the word *medium*, signifying mode or carrier and it is intended to reach and address a large target group or audience. Traditionally, the word 'media' was thought for newspapers, magazines, radio and television. This is no longer the case. 'New media' encompasses a range of platforms, including web-based platforms, such as internet sites, mobile platforms such as mobile television or the ability to listen to news headlines on your mobile phone. New media is changing the way the citizens and the media relate. Social networking sites such as Twitter and Facebook, for example, have played a significant role as sources of news and information in repressive countries. The most significant example is the recent uprisings in the Arab world. Just as there is no monolithic 'media' entity, similarly there is no single role that it plays. It has a number of different roles in society, including being informative, educational or entertaining. It can either focus on a particular interest or area of specialization. It can also appeal to a mass audience either as a full service television station or as a daily newspaper covering a variety of news and current affairs, whether local, national or international.

It is common to confuse the terms 'the media' with 'the press.' The term 'the press' is a sub-set of the media. The press is clearly associated with the news media, whether provided in print or electronically. The term 'the presses' are of various kinds of press outlets like state media, public media, commercial media *etc.* It is important to bear these distinctions in mind when considering the role of the press in particular and of the media more generally. Since the 17th century, the role of the press as fourth estate and as a forum for public discussion and debate has been recognized. Even now, the media is considered as watchdog and guardian of the public interest. It has an outstanding role in creating and shaping of public opinion and strengthening of society.

Nature and scope of freedom

Media is the working link between the government and the governed. If the press enjoys the privilege of reporting matters of grave importance it leads to the smooth functioning of the process of administration. It stands as a permanent means of communication and control between the people and their elected

representatives in parliament and government.³ Since the very objective of this freedom is the protection of the society and propagation of democratic values, it is not absolute and cannot encroach upon the fundamental right of others. With this intention, unbridled power was not conferred on media and at times of trespass, courts in India had tied knots upon it. Because the freedom of the press is not so much for the benefit of the press as for the benefit of the general community. Since the community has a right to be supplied with information and the government owes a duty to educate the people within the limits of its resources,⁴ the interest of the public is to prevail. The apex court also reaffirmed this reason of extending the freedom of speech and expression to media saying⁵ that ‘the purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.’

Freedom to express as an inherent right of media- a legal analysis

The role of media through the freedom to express and circulate ideas among public is commendable. During freedom struggle the print media played a major role and got a morale booster.⁶ Pre-independence era was marked by the newspapers like Tilak's Maratha and Gandhi's young India which acted as a platform to place the demands of common Indians. It was a strong force that acted in leading them to the victorious seat of democracy. Gandhi realized this and opined that, ‘freedom of speech and pen is the foundation of *swaraj*’. If the foundation stone is in danger, you have to exert the whole of your might in order to defend that single stone.”⁷ Acting as the sword arm of democracy, it raises public interest against malpractice and creates public awareness. The influence, power and ability to generate mass opinion of the media are widely acknowledged. Unfortunately this acquired power has been often misused and manipulated by the fourth estate resulting in irreparable injury upon democratic values by hiding the truth by them. But freedom of media should be protected in spite of this injury that it may cause. Because it is to be reminded that history owes much to the hands of journalists who showed the courage to remove the black scars on the face of democracy.

³ Journal of the International Commission of Jurists, Vol. VIII, 132.

⁴ M.P. Jain, *Indian Constitutional Law* (5th Edn.-2004), p.991

⁵ *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, A.I.R. 1986 S.C. 515

⁶ Dr. Sukanta K. Nanda, *Media And Law*, (1st Edn.- 2014), p. 1

⁷ Dr. K. S. Pandey, *The Indian Press: Role And Responsibility*, (1994), p.50

Media provide readers, listeners and viewers.⁸ It supplies with information and that range of ideas and opinion which enables them to participate actively in a political democracy.⁹ In India the freedom of media is construed by the courts from Article 19(1) (a) of the Constitution which talks about freedom of speech and expression. It is now well settled that Article 19(1)(a) which guarantees the right to freedom of speech and expression, also assures the freedom of media, though it is not separately stated there, unlike some other constitutions like that of the U.S.A.¹⁰ It has been well recognized by the international legal documents too which is being discussed next.

Freedom of expression – importance as a foundational humanright in international instruments

It is useful to look at how the international human rights instruments define the scope of freedom of expression. Some of the relevant provisions of certain universally accepted human rights instruments set out the internationally agreed scope of the right to freedom of expression are quoted above. International instruments promote the concepts of the inherent dignity and equality of human beings for which freedom of expression is essential. Freedom of expression has achieved global recognition as being foundational to human rights because it is necessary to spread equality irrespective of age, gender, race, nationality, language, class, social origin, or religion. For example, the Universal Declaration of Human Rights in its first sentence of the preamble states this ideal.¹¹ Article 1 of the Universal Declaration of Human Rights also incorporates it.¹² The same principle is expressed in the first sentence of Article 2 which states that ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ The first sentence of Article 7 too incorporates the same.¹³ Article 19 of Universal Declaration of Human Rights, 1948 also protect freedom of media by declaring that ‘everyone has the right to freedom of opinion and expression; this right includes

⁸ Eric Barendt, *Freedom of Speech*, (2nd Edn,- (2007), p.417-18

⁹ *Id.*

¹⁰ Justice P.B. Sawant, *Mass Media In Contemporary Society* 68, (1998).

¹¹ Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’ The second sentence of the preamble states: ‘... the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.’

¹² ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’

¹³ All are equal before the law and are entitled without any distinction to equal protection of the law.’

freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’

Many elements of the right to freedom of expression are contained in these few lines. It is clear from the wordings that it is granted to ‘everyone’. The right is to ‘freedom of opinion and expression’ which shows that everyone can not only hold their own opinions on any issue but also entitled to express them. It is broader than speech as it encompasses nonverbal or non-written expression, such as dance, mime, art, photography and other non-verbal action. It includes the right to ‘seek, receive and impart information and ideas.’ So it is to be noted that it incorporates the idea that everyone has the right to obtain information. Then it follows that if the State denies media freedom it is actually the rights of their citizens to receive information freely is denied. In short it includes the right to seek information and ideas ‘through any media’ which is highly relevant for press and media because it can be extended that newspapers, radio, television *etc.*, are all encompassed within the right. The words ‘regardless of frontiers’ shows that this right is internationally recognized as a universal right independent of national borders.

The International Covenant on Civil and Political Rights is not an exception to this. The Preamble to the UN International Covenant on Civil and Political Rights states that ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’ and, consequently, that rights ‘derive from the inherent dignity of the human person’. Article 19 of the ICCPR elaborates on a number of the provisions of the Universal Declaration of Human Rights.

It provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities, but these shall only be such as are provided by law and are necessary: (a) for respect of the

rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals.

There are certain important differences between its provisions and those of article 19 of the Universal Declaration. It is noteworthy that article 19 of the ICCPR, unlike the Universal Declaration, contains, in paragraph 3, a clear statement on how the right to freedom of expression may be restricted by states. The provisions of paragraph 3 in article 19 of the ICCPR resolves the clashing of rights and recognize the right of states to pass laws to restrict freedom of expression in certain limited circumstances when necessary to protect the rights of others, to protect national security, public order, public health or morals. The word 'necessary' is noteworthy to make it clear that unless freedom of expression is restricted, the protection of reputations, national security and public health will be endangered. This is a high standard to meet. Regional Conventions like EU Convention for the Protection of Human Rights and Fundamental Freedoms¹⁴ and the African Charter on Human and Peoples¹⁵ also protects freedom of expression.

The important elements of the right to freedom of expression from the international instruments shows that the scope of the right to freedom of expression is generally accepted to be as follows:

1. The right is available to everyone.

¹⁴ Article 10 dealing with freedom of expression runs as follows: 1. everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Available at https://en.wikisource.org/wiki/European_Convention_for_the_Protection_of_Human_Rights_and_Fundamental_Freedoms (Last visited on December. 18, 2017, at 10 AM).

¹⁵ Article 9: Paragraph 1: Every individual shall have the right to receive information. Paragraph 2: Every individual shall have the right to express and disseminate his opinions within the law. <http://crm.misa.org/upload/web/African%20Human%20Rights%20System.pdf> (Last visited on December. 18, 2017, at 12 PM).

2. The right to freedom of expression is broader than freedom of speech and includes non-verbal or non-written forms of expression.
3. The right contains the right to receive as well as to impart information and ideas.
4. The right includes the freedom of means of communication.
5. Broadcasting licensing requirements do not constitute undue infringements on the right to freedom of expression.
6. The right to freedom of expression is not absolute and states are entitled to limit it.

International recognition of the basic dignity and autonomy of all people has impacted strongly upon the formulation of fundamental rights, particularly with regard to freedom of expression. Freedom of expression is seen as a foundational human right and is internationally protected precisely because the notions of equality, dignity and individual development or fulfillment require that when human beings talk or otherwise express themselves, what they are expressing or communicating is a reflection of who they are, and therefore worthy of respect and protection.¹⁶ Thus rationale for importance attached to freedom of expression is that it is a means to an end as it is necessary for achieving important societal goals without which democracy will not survive. Through open expression of different ideas only, we are able to test the 'truth' of any single idea to develop opinions or reject it. Free expression alone can ensure that there will be competing ideas or views which human beings can adopt or reject for themselves.

The relationship between freedom of expression and freedom of the media

It is clear from the international human rights instruments that the right to freedom of expression requires not only that everyone is free to express themselves, but also that they are free to do so over a range of different types of media, including the print or broadcast media, subject to licensing requirements in respect of the

¹⁶ Media Law Handbook For Southern Africa – Volume 1 available at <http://www.kas.de/wf/doc/4212-1442-2-30.pdf> (Last visited on November. 30, 2016, at 10 PM).

broadcast media. It is also clear from the international human rights instruments that freedom of expression includes the right to receive information and ideas. This is a critical component of the right. The effect of this is that when a State acts to silence or curtail the operations of the media it is not violating the expressive rights of the media and of the journalists, editors and publishers alone but also violating the rights of its citizens to receive information and ideas freely. Consequently, the internationally recognized basic contours of the right to freedom of expression clearly and inherently protect the right to freedom of expression of the media, too. The expressive and information rights of individuals and the media are thus inextricably intertwined.¹⁷ There is no doubt that in order to be politically active, citizens require means to communicate with one another.

Role of media

The judiciary, executive and legislature play a pivotal role in shaping our society. If this is not done properly and forgotten it will weaken the roots of democracy. As the fourth pillar of democracy along with judiciary, executive and legislature, media also does a legendary role to act against the injustice and oppression, fights against corruption and nepotism. This is more relevant in the globalized era of life wherein the world itself is brought by the media seated along with us in our drawing room. It is a very potential tool in informing the current news to the society, entertaining the people and shaping up of public opinion. Modern forms of media like blogs, website posts, face book and twitter are very fast in spreading the news. Acting as a catalyst it compelled government to take actions in scams and shaped the public opinion against crimes. It helps to provide wide publicity for government schemes to reach the targeted audience. Thus their role in deepening the democracy through investigative reporting will result in the fall of corrupt governments and turns democratically elected governments more accountable. Democracy breath well through the active participation of citizens. It is the media that keep citizens engaged in the business of governance by informing and educating them. But a positive role in democracy can be ensured only if there is an enabling environment. The media shall ensure mechanisms to fulfill the accountability to the public by keeping ethical and professional standards. The media independence like freedom from intervention of media owners shall be kept and the State too can promise a competitive and healthy environment.

Role vs. Performance- a critical analysis

Whether the above described freedom is used by the media for betterment of democracy is doubtful. The close alliance between media, influential people and crime syndicate is making the common men a mere spectator. Reasons may be stringent laws, monopolistic ownership and sometimes, the threat of force. State controls are not the only constraints. A competitive media market necessitates shallow and sensational reporting in preference to serious reporting. Unnecessary involvement in politics is also hampering the integrity of the media and instead promotes divisiveness in the place of consensus. Thus it breeds hate speech instead of sober debate, and suspicion rather than social trust causing democratic decay.

The role of the media in society- towards a refined one

It was the French political philosopher Montesquieu who prescribed publicity as the cure for the abuse of power. Today too recognizing the importance of the press in making officials aware of the public's discontents and allowing governments to rectify their errors will be agreed upon by the philosophers of the time.¹⁸ The real force of democracy is the active participation of citizens. For achieving this, media should keep citizens engaged in the business of governance by informing, educating and mobilizing the public.¹⁹ From radio to the internet such a role is played. The progress and needs of the society is continually to be assessed, challenged and refined. And this cannot happen fully without free expression. Freedom of expression is critical to democracy. It is based on the notion that democracy recognizes people's right to have the right to elect a government of their own choice which cannot exist in any meaningful way without the right to freedom of expression. The fundamental concept is that in order for democracy to be effective, people must be informed and must have the right to participate freely in public discourse. If people are not free to share information and express a range of ideas and political views or are not free to receive information, the result is that they will not

¹⁸ Stephen Holmes, *Liberal constraints on private power?* in Democracy And The Mass Media 21-65, Judith Lichtenberg (1991).

¹⁹ Sheila S. Coronel, *The Role of the Media in Deepening Democracy*, unpan1.un.org/intradoc/groups/public/documents/un/unpan010194.pdf (Last visited on December 19, 2016, at 10 PM).

be sufficiently well informed to make appropriate and meaningful decisions in ballot box or in their interactions with government more generally.

Conclusion

The media is 'a separate player on behalf of the public against the agencies of power'. The importance of the press has increased nowadays as it has shouldered the responsibility of keeping the citizens enlightened with the day today developments. The media has become a medium through which thoughts and ideas could be distributed to a sizable section of the population.²⁰ We, the people of India have many expectations from the media and we depend heavily on what they present before us. But it is alleged that some of the media houses have been taken over by the corporate houses and persons in the power.²¹ It is true that the media shape public opinion by promoting democracy by among other things, educating voters about human rights, promoting tolerance among various social groups, and ensuring that governments are transparent and accountable. But they are in turn influenced and manipulated by different interest groups in society. Thus media, however, can play antidemocratic roles as well. They can sow fear, division and violence. Instead of promoting democracy, they can contribute to democratic decay. The media in most new democracies have succumbed to the global trend of 'dumbing down' the news.²² This should be strictly monitored. The media being a broad segment of society, involving and resolving social inequities and improving the quality of public life, should be given freedom of representation and voice to participate more meaningfully.

²⁰ Justice Akshaya Kumar, *Supra* note 2, at iii.

²¹ Dr. Sukanta K. Nanda, *Supra* note 6 at preface .

²² Sheila S. Coronel, *Supra* note 19.