

HISTORICAL AND CONSTITUTIONAL DEVELOPMENT OF FREEDOM OF SPEECH AND EXPRESSION UNDER THE INDIAN CONSTITUTION

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ABSTRACT

Media plays very important role in the society. As the society changes with the passage of time the role of media has been changing with it. For the better understanding of the freedom, rights and role of media in the society we need to understand the historical background of role of a media. Hence, my second chapter consist of historical background of freedom of Media in India. Media has been bestowed with fundamental right of freedom of the press guaranteed under freedom of speech and expression³⁶ for effectively playing its role. Media role has been growing with changing time as it is a source of information of all aspects of the country social, political, economic, cultural aspects. India is a democratic country and hence, right of freedom of speech and expression is considered as one of the most important rights guaranteed under Indian Constitution. Freedom of the press also holds importance to ensure democratic characteristics of India as it by providing information to the masses helps in shaping their views and opinions and at the same time media also draws attention of public on various policies of government. The media also helps in restraining arbitrary actions of the government and bringing forward data useful to measure the performance of the government.

KEY WORDS : Preamble, Historical View Etc

INTRODUCTION

The right of freedom of speech and expression is enshrined under Article 19(1)(a) of part III of the Indian Constitution. Freedom of the press is not separately guaranteed under Indian Constitution and hence, it is included in right to freedom of speech and expression. Right to freedom of speech and expression finds place in Article 19 of the Universal Declaration of the Human Rights 1948. Right to freedom of speech and expression is a very wide right and consist other rights in it like, right to opinion and right of receiving and giving information through any medium oral or print by various forms of media. Article 19 of the International Covenants on Civil and Political Rights, 1976 also speaks about the right of freedom to speech and expression. Right to freedom of speech and expression is a fundamental right under Indian Constitution which makes right of the press as a fundamental right being part of it. The media is considered as the fourth estate of the country due to its crucial role in society.

It doesn't just ensure the democracy in the country by providing information useful to form opinions of the public but also helps in proper functioning of the agencies

responsible to the public. The media provides information which is useful in cases which would otherwise be ignored if not reported on time like scams, high profile cases etc. The freedom of speech and expression of media means freedom to print, publish and inform in a free way without any check or authority or scrutiny. Freedom means free from all the hinderances but Article 19(1)(a) of Constitution of India, which is right to freedom of speech and expression and includes right to freedom of the press is not an absolute right and are subjected to various restrictions which are rational and reasonable. These restrictions are equally important as right guaranteed, it ensures proper use of the right. There should be balancing of interests according to Roscoe Pound's principle of sociological jurisprudence, therefore, freedom of the press cannot be absolute. So, now the question is if freedom of the press has been given with certain restrictions, then what is the extent of freedom, how far media can exercise its right, what is the point at which media surpasses its freedom and how much area to be given to media for free exercise of its right.

HISTORICAL STRUCTURE OF MEDIA

POSITION OF MEDIA IN ANCIENT INDIAN HISTORY

Right of freedom of speech and expression is a right which is basic right and when a child is born, he possesses this right of expressing himself with him. Expression is not a right which needs legal enforcement for its existence as it can be traced back in ancient era in Magadh period, there were Ashoka's edicts and many stone engraved with the information showing the activities and culture of that period. Freedom of Press was alien concept by that time as it found relevance after the growth of newspaper and media. Earlier people use to send informative messages via various hidden modes and through several persons handed over with letters that was also a source of information. So, these exchanges of letters were considered to be the earliest known newspaper as they consist several news in it¹.

POSITION OF MEDIA IN MEDIEVAL INDIAN HISTORY

During the Mughal period there was not proper existence of the Media as we witness in modern era. During medieval era there were persons designated for exchange of information which were beneficial for the management of the reign. King use to designate persons for communication and information who were reliable sources of that era. There were no newspapers or media to know about the surrounding happenings so these messengers were best communicators of information. These informants were not like media as we see in today's era as their job was restricted to provide information to the private individual i.e., King and to the public in general. Earlier as there was king who ruled the kingdom and there was no concept of

¹ Soli Sorabjee, Freedom of Expression: Problems and Perspectives, (Journal Commemorating Fifty years of Indian Constitution) pg.9

democracy the public was not active as there was one monarchy head⁴⁰. Informants who were considered major source of information during Mughal era though, not to the public, but the head who govern the kingdom can be compared to the informants of the public of today's era which means media or press. These informants of that era functions like media and helps in proper management and administration of the kingdom.

POSITION OF MEDIA IN MODERN INDIAN HISTORY

The above discussion has made it clear that media is not new concept in modern era rather its roots can be traced in ancient times as well. In modern era after arrival of British growth of media can be seen. First printing press was established in 1674 in Bombay. Second printing press was established in 1772. In 1776 a step towards starting a newspaper was made by William Bolts, who before starting newspaper made an announcement that he is possession of various important documents which holds historical relevance and are concern of public. After this William Bolts had to face criticism and he was forced to leave the country. First printing press was started in Calcutta in 1779, and soon after in 1780 James Augustus Hickey started first newspaper. This newspaper in 1782 was closed by governor general Warren Hastings as James Hickey wrote against the policy of the governor general who immediately took action against him.

This newspaper though couldn't run for larger period but it being the start of conflicts between the press and government holds much relevance. Madras gazette is famous for the first censorship concept introduced by British in 1795. In this case British asked to submit to military general for censorship test before publication. Here the British government started to regulate the freedom of media and they in the name of censorship used various methods like: pre-publication censorship, refusal of privileges, expulsion of the reporters and publishers. Lord Wellesley passed first regulation of censorship which was later abolished by Warren Hastings in 1799. The scope of regulations was to regulate media as it prescribed the condition of printing the names of printers, publishers and editors with the news in newspapers. It also made mandatory reporting of pre-publication to secretary of government of India. Bengali newspaper Samachar Darpan came in 1818. In 1822, Bombay Samachar came and it is a milestone as this newspaper is still functional and considered as most ancient newspaper of Asia. Earlier these newspapers were medium to fight against British government and main moto behind the publication was to provoke Indians for independent India. Newspapers were main source of providing information about the British policies which were arbitrary. Newspaper played vital role in freedom struggle and it was basically to awaken the people of India and unite them as one. Newspapers publishes news which aims to spread thought of freedom in masses and it was part of freedom movement. Newspapers like Indian Mirror and Hindi Patriot, started by

Girish Chandra Ghosh brought a wave where the demands had been made by Indians against British government. Many newspapers editors and publishers were meanwhile arrested and punished for the sedition charges as they opposed the policies made by the government. British government in order to regulate the freedom struggle put various restrictions on press which were rigid. As J. Natarajan says, “the first two decades of the 19th century saw the imposition of a rigid control of the press by Lord Wellesley and Warren Hastings”. The regulations promulgated by the British government were very strict, as they not only regulate the circulation and publication of the news but also check on the content of the news. Later, crown rule also imposed restrictions on media.²

FREEDOM OF SPEECH AND EXPRESSION AND FREEDOM OF PRESS UNDER CONSTITUTION OF INDIA

Constitutional law is considered as basic law of the country. All laws derive its power from the Constitutional principles and so is the case with the Indian legal system. Therefore, every right claimed, duties asserted, liability or immunity finds its source from the Constitution and until it finds its mention in Constitution it cannot be enforced. So, when we talk about right to press or media, we imply its roots are found in the Constitution and therefore, right to freedom of press can be enforced by the citizens of the country. Under Indian Constitution there is no express provision which declares right to freedom of press but it is implicit in right to freedom of speech and expression under Article 19(1)(a) and also it finds mention in our preamble.

PREAMBLE OF THE INDIAN CONSTITUTION

The preamble of the Constitution is considered as essence and spirit of the Constitution and therefore, it is very important part of the Constitution Our preamble consists words citizens have the liberty of thoughts, expression, belief, faith and worship which means that every citizen of India has freedom or liberty of expression and when we say citizen it includes press⁴⁸. Liberty is very wide and vital right for the human existence and hence it finds an important place in the Indian Constitution. Liberty means freedom and attaching it to expression means freedom of speech, thought, opinion, etc., where person can speak and express without any interference. Right to freedom of expression is certainly an important right and so does our Constitution framers think as they put this right in main parts of the Constitution like Preamble and part III of the Constitution as well. Both Preamble and Part III of Constitution are considered basic structure of the Constitution. Hence, right to freedom of press is one of the most important rights under the Constitution.³

SIGNIFICANCE OF FREEDOM OF SPEECH AND EXPRESSION OF PRESS

² Mamta Rao, Constitutional Law 1st Edition (2013), pg. 170

³ V.N. Shukla, Constitution of India

Freedom of speech and expression is a fundamental right and hence it is placed under Part III of the Constitution of India. Constitution drafting committee must have thought this right to be very important that's why they mentioned it in preamble as well. The right to freedom of speech and expression is a right that is very basic and essential for human being. By birth we human are the species that can communicate and make others understand our feelings, views or opinion and this right give us freedom to speak and express our thoughts and expression as they are. This right give meaning to human existence. The right to freedom of speech and expression like any individual is guaranteed to press as well. The press is a huge network which impart information worldwide. The press means basically newspaper they provide information of world happening and make people aware of their surroundings. The media is a biggest source of information and hence it should be free from interferences which are unreasonable. It gives shape to the human views. Media is an important agency of communicating thoughts and expression and hence, it is necessary to have a freedom of press. Freedom of press ensures democracy. Press is considered as fourth pillar of the society because of its informative character. Media brings news and information which are useful for the public at large. It helps in proper governance of the country. When we talk about democracy, we imply privilege to people of the country as it means dedicated to people and media draws attention of public in areas which might get unnoticed for e.g., Government policies and measures. Press plays vital role in the society as it covers the news which is helpful to reveal real incidents. Press also helps in ensuring the transparency between the government and the public. Freedom of press is important as it connects us from the worldwide news and its areas are very wide. These days media also help in educating people. Press also helps in framing a rational opinion of the public as it produces information useful for making a view. Press and media are the effective medium which makes public aware of the happenings and reveal truths as they collect data and information which are real. Press also brings information which make public vigilant regarding the malpractices and corruption of the individuals and government like scams etc. Press and media are the vigilant agency of the public. Press also helps in bringing unity among the public and ensure the integrity of the nation. Press is a medium by which people feels connected with the whole nation. It helps in strengthening the bond between the wide range of the society.⁴

RIGHTS IMPLICIT IN FREEDOM OF SPEECH AND EXPRESSION OF PRESS

To understand the rights of the press it is necessary to understand the meaning of the press. Press means printing media which includes newspapers, magazines, journals,

⁴ Holland, The Elements of Jurisprudence 84 (2004)

books, pamphlets, documents or other printed materials. Newspapers are considered to be vital agency of the media. Newspapers are considered as vital organ of press because since early times we have print media. In general sense when we say press it means printing agencies like newspapers. From the British times there is conflict between the media and the restrictions imposed on it due to active role of media in the society.

RIGHT OF PUBLICATIONS

In *Re Daily Zemmedar* it was stated by the judiciary that the printing and publication of the news was the essential right of the press. Further, it was also stated by the court that it is the right of the press to print the facts of the contemporary history

RIGHT TO COMMENT ON PUBLIC AFFAIRS

In *Bennett Coleman v. State of J & K* in this case it was held by the court that right to press includes right to comment on public affairs. In *Gravel v. United States* it was held that this right includes the right to comment on public affairs and to criticise public men and measures and to criticise the government including its defence policy and the conduct of armed forces, without prejudice to national security

Right of Denial to Publish

Right to freedom of press include right to publish the views or news without any interference on free will and this right also includes right not to publish the news on pressure of any individual, authority or government. This right of press denying the publication of news according to the procedures and rules of the publication is essential right. All these above rights are very essential for the press to exercise its right of freedom of speech and expression as guaranteed under Article 19(1)(a) of the Constitution. These rights are implicit in right of press so that it effectively plays its role in the society and circulate information to the public in most authentic and genuine manner.

LIMITATIONS AND RESTRICTIONS OF FREEDOM OF SPEECH AND EXPRESSION OF PRESS

Limitations of the right means an extent of the right which can be exercised by a person. Every right has a corresponding duty according to jurisprudential principle of right and duty. So, if a person has a right than other person has a duty not to interfere with the right of the person. According to sociological engineering of the roscoe pound social interest to be balanced with the individual interest in the society. When there is conflict between the societal or public interest and individual interest than in such case to protect the right of the larger number of the society, individual right can be curtailed. Therefore, there are restrictions imposed on the freedom of speech and expression of press to protect public interest. Right of free speech and expression is a wide right and hence it needs to be restricted to protect the others interest and to avoid misuse of it. Limitations are imposed with the object that the person should be clear

about the extent of the rights and not act beyond it. The main functions of the restrictions are that the person scope is defined and such extent is useful in cases of conflicts. It also functions to protect the rights of the others and restrict oneself to go beyond its exercisable limit of rights⁵.

REASONABLE RESTRICTIONS

Reasonable restrictions mean the restrictions imposed under Constitution means restrictions which are imposed on ground of reasonability. Restrictions imposed on the right of free speech and expression must be subjected to reasonableness as when a freedom is curtailed it must pass the test of reasonableness to avoid misuse of it. The question of reasonableness is to be decided by the court in each and every case according to circumstances of the case⁸⁸. Article 19(2) of the Constitution of India sets out the exhaustive grounds on which right of free speech and expression of press is reasonably restricted. Where a ground on which right of free speech and expression is restricted does not falls within the scope of Article 19(2) of the Indian Constitution it would not be valid and struck down. Article 19(2) originally stated reasonable restrictions on freedom of speech and expression on the ground of government's authority to legislate on matters concerning "libel, slander, defamation, contempt of court, any matter offending decency and morality, or which undermines the security of or tends to overthrow the state".

In case *Romesh Thappar v. State of Madras*, Madras government challenged the cross roads publication which suggest criticism against government policy and action which amounts to sedition according to Section 9(1-A) of the Public Order Act. Supreme Court struck down Section 9(1-A) and held only an act which is dangerous in nature can constitute ground to restrict right to free speech and expression.

In case *Brij Bhushan v. State of Delhi* Punjab government-imposed pre- censorship on the English weekly circulated in Punjab on the ground of public safety and public order under East Punjab Public Safety Act, 1949. Supreme Court held that Section of the said act authorising restriction on the ground of public safety and order does not falls under the ambit of Article 19(2).

JUDICIAL APPROACH AND PRONOUNCEMENTS AND PRESS

Freedom of speech and expression is a fundamental right guaranteed under Article 19(1)(a) of the Constitution of India. The scope and ambit of the freedom of speech and expression has been evolving with the time. When Article 19(1)(a) was made a fundamental right by our Constitution framers its scope was not interpreted in the way it was interpreted by various court in different cases. Our judicial system has been while dealing with the cases concerning press and media gave wider interpretation to free speech and expression. The right to free speech and expression was widened and

⁵ M.C. Jain Kagzi, "Constitution of India" Vol. II (2001) pg.948

includes in it right to press whereas the restrictions were also interpreted by the courts while dealing with the cases involving media. Judiciary plays a vital and important role in safeguarding and limiting the scope of right of free speech and expression of press. Judiciary being the repository for protecting the fundamental and Constitutional right of the citizens has to act as a guardian. Press is the agency which is the biggest source of the information and hence its functioning is very important to ensure democracy in the country. Press sometimes lays proactive role in the society making public aware of the events which are beneficial for them and act as an informant and at times it surpasses the limits defined for it and adversely affects the rights of the citizen like in criminal cases generally accused suffer defamation charges etc. Here, judiciary comes into picture and it deals with the conflicts of the rights of press and rights of the public⁶.

EXPRESS NEWSPAPER (P) LTD. V. UNION OF INDIA

Facts: In this case validity of Working Journalists and other Newspaper Employees (Conditions of Service) and miscellaneous Provisions Act, 1955 was challenged and along with-it decision of the wage board constituted under the said Act was also challenged on the ground of infringing the fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a), 19(1)(g) and Article 14 and Article 32 of the Constitution of the India. The object of the Act was to regulate the conditions of service of journalists and other associated employees. The Act extended industrial laws of the journalists and made provisions in respect of the gratuity, hours of work, leave and fixation of the wages for working journalists and other persons employed in newspaper associations. The petitioners contended that the said Act adversely affect the freedom of the press and put financial burden which would ultimately limit the scope of the imparting the information by the newspaper. The petition further contended that the said Act doesn't put reasonable restriction and it is out of the purview of Article 19(2) of the Constitution. Therefore, the question before the court is whether the said Act is valid and fall within the scope of Article 19(2) or it violates right to free speech and expression of the press

Held: Supreme Court held observed that the government can levy taxes on industries and as far as newspaper agencies is concerned it can be considered as industry for the purpose of taxation and same rule and condition would apply on it as in other industries. Further it observed that characterisation of industries into small, medium and large scale on financial parameters and then taxing them has a rational nexus to the power of tax assessment and hence, Act nor arbitrary. In any case where tax collection curtails right of free speech and expression it would come under Article 19(2) of the Constitution. Supreme Court on question of reasonable restriction on the

⁶ Konvitz M.R., "Fundamental Liberties of Free People" (1962)

ground of “public interest” held that to assess whether the restriction is reasonable or not two principles must be considered first that the tax payer appreciates and willingly contribute in the tax policy of the government and contribute sensible portion of the government income through tax collection like any other industry and secondly, the taxation must not be disproportionate or extreme. Supreme Court held that tax policy is valid and taxation can be imposed on the newspaper but within the prescribed limit and such taxation should not be unreasonable and excessive.⁷

CONCLUSION

Lastly, researcher observed and concludes that the development of the right of freedom of speech and expression of the press can be significantly seen. The right has been interpreted in the widest term as this is one of the most basic and important right which has been inserted by the Constitutional framers not just under part III of the Constitution but also in the preamble it finds its mention. The right cannot be curtailed unless there is law prescribing for it.

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⁷ K. K.Birla v. The Press Council of India I.L.R. (1976) 15 Delhi 753