

FREEDOM OF SPEECH AND EXPRESSION vis-a-vis ROLE OF MEDIA:

A FACADE OF LIVING CONSTITUTION OF INDIA

Dr. Shikha Dhiman

ABSTRACT

India being a secular state with huge diversity in languages, religions, caste and creed; freedom of speech is basically a sensitive and essential right guaranteed to citizens. The very essence of 'Freedom of Speech' (Article 19(1)(a) of the Constitution of India) lies in the fact that it moulds and shapes the public opinion, assists in bringing about healthy discussions and discourses, helps in better exchange of ideas and opinions, serves as the ground of debates and effective decision making as well as develops stronger democratic institutions. Even the Preamble to the Constitution echoes the very sentiment of this freedom as 'Liberty of thought, expression, belief, faith and worship'. It becomes crystal clear that any unwarranted attack on any of the aspects of media whether actuated by malice, paranoia or any other executive schizophrenia is considered to be a sledgehammer assault on the freedom of speech and expression. Time and again, judiciary seemed to reiterate the significance of freedom of speech by giving it different colours and wider connotation under the living Constitution of India. For media, freedom of speech is very important because it forms a base to spread the idea amid public. The indispensable part is that freedom of speech to media gives it the power to manipulate minds, covering up the things and pull down the shield of fraud as well as expose the naked truth. Both the media and free speech are believed to be essential to build a democracy, thus they should co-exist as the rule of law in a country requires each of them to go hand in hand.

INTRODUCTION

The social interest in free expression is based on the idea that without expression, there is no society at all, because communication is the very essence of social life¹.

* Assistant Professor, Department of Laws, Guru Nanak Dev University, Amritsar.

Email: shikha.laws@gndu.ac.in Mobile:7837212744

¹ Lon L. Fuller, "The morality of Law", 184-186 (1963). [Cited in Dr. Madhabhusi Sridhar, The Law of



The people of India gave to themselves, the Constitution of India, with a view of make it Sovereign, Democratic, Socialistic, Secular and Republic. In our democratic society, pride to place has been provided to freedom of speech and expression, which is the mother of all liberties. One of the main objectives of the Indian Constitution as envisages in the Preamble, is to secure LIBERTY OF THOUGHT AND EXPRESSION to all the citizens. Freedom of Expression is among the foremost of human rights. It is the communication and practical application of individual freedom of thought. Irrespective of the system of administration, various constitutions make a mention of the freedom of expression. While freedom of thought is a personal freedom; freedom of expression is a collective freedom.

The media has undoubtedly evolved and become more active over the years. Mass media have great influence on human life in the present century. They have provided information and entertainment to people across countries. Print media was been the leader of mass medias over a considerable period of time. But now it has got competition from Television, which is reshaping many of the social responses. Radio apart from providing news and views has also developed a flair for entertainment, thereby getting a lot of acceptance. There is also the new media with internet being its flag bearer. Internet has indeed made it possible to disseminate information and ideas in real time across the globe.

LIVING CONSTITUTION

The time when Constitution of India was framed there were some of the words in the Constitution that itself depicts flexibility in their nature. Originalists argue that written content should not be changed and Constitution should be studied in a way as it was framed. But the debate arises over the issue that what to do if the Constitution itself embraces few phrases that needs to be understood with the changing time and circumstances of the nation. Non-originalists opined that no doubt, the 'meaning' of Constitution should not be changed in order to protect its originality but however its 'application' needs to be changed as per the changing situations of the nation. In order to be aware about as to how the Constitution acts as a 'living document', there are two things related to it²:

Expression, An Analytical Commentary on Law for Media 20 (Asia Law House, Hyderabad (2007)].

² Anil K. Mohapatra, "Constitution of India: An Instrument of Social Change," *Odisha La Review*, Vol.5



- i. Constitution of India should be understood as the original Constitution adopted on 26.11.1949 along with successive amendments of the constitutional provisions. Many times, the constitutional provisions are also being supplemented and complemented by the Acts passed by the Parliament and the State Legislature and judicial interpretations on them. These can also be included in the term 'Constitution' to have a proper grasp of the Constitution of India.
- ii. One of the functions or purposes of the Constitution is that, "in addition to laying down a framework for government, constitutions invariably embody a broader set of political values, ideals and goals. This is why constitutions cannot be neutral; they are always entangled, more or less explicitly, with ideological priorities. The creators of constitutions therefore seek to invest their regime with a set of unifying values, a sense of ideological purpose, and a vocabulary that can be used in the conduct of politics. In many cases, these aims are accomplished explicitly in preambles to constitutional documents which often function as statements of national ideals".

Some debatable issues about bringing change in the constitution are: firstly, is the Constitution so sacrosanct that no one can alter it? secondly, is it so ordinary like other laws that can be easily remodeled? But however, our framers were so able – bodied that they kept the Constitution at higher pedestal in comparison to other laws and at the same time, made it necessary to provide some modifications in it as and when required. As pointed out earlier, Indian Constitution was the result of intense deliberations as happened to be there among the members of Constituent Assembly. As a matter of fact, nothing can remain constant in this world and is adaptable to change. Dr. B.R. Ambedkar in his earliest speeches mentioned that the Constitution of India will be amended with time in the coming future years and the amendment process of Constitution of India as enshrined under Article 368 was made comparatively easier and simpler than the Australian and American Constitution. By quoting this, he asserted that it is this 'amendment' in the Constitution that makes it a 'LIVING DOCUMENT'.



The problem in our democratic society is not that the Constitution cannot or should not be changed, but the problem is that how the Constitution is to be changed?, who is to change the Constitution?, in what direction it will be changed?, whether or not any limitations will be imposed in changing the Constitution? etc. The answer to these questions is not easy as it appears because it requires a profound analysis of each and every provision of the Constitution itself along with the ideas, values and opinions of the framers of the Constitution.

The earliest mentions of the Constitution as “living”, particularly in the context of a new way of interpreting it, comes out of Woodrow Willson’s book ‘*Constitutional Government in United States*’ where he wrote³:

“Society is a living organism and must obey the laws of life, not of mechanics; it must develop. All that progressives ask or desire is permission – in an era when “development”, “evolution”, is the scientific word – to interpret the Constitution according to the Darwinian principle; all they ask is recognition of the fact that a nation is a living thing and not a machine”.

The term ‘living constitution’ means the one which can be altered according to the want of time and situation. But the question comes as to what type of change is required? We call the Constitution of India as a ‘Living Document’ or ‘Living Constitution’. So what sort of ‘livingness’ or ‘change’ can be done. In order to understand its true sense, the ‘change’ can be studied in two ways:

a. Express Change

This type of change occurs when the constitutional provisions are amended through the process as mentioned under Article 368 of the Constitution of India. This can also be referred as ‘change by the Parliamentarians’.

b. Implied Change

This change implies the change in the interpretation of the constitutional provisions. At times, it can be textualist approach or it can be living and dynamic approach. This can be referred as ‘change by the Judiciary’.

³ Retrieved from <http://en.m.wikipedia.org/wiki/Living_Constitution> accessed on 16.06.2018 at 08:35 a.m.



Therefore, it is both the political upheavals as well as ruling of the judiciary that brings the change in the Constitution. It is because of this factor that has made the Constitution of India as a 'Living Constitution'.

FREEDOM OF SPEECH UNDER LIVING CONSTITUTION

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties"

– John Milton

The freedom of speech is considered as one of the first condition of liberty. It occupies an important and preferred position in the hierarchy of the liberty, It is also said that the freedom of speech is the mother all liberties. Freedom of speech means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. In the modern era, right to freedom of speech is one of the essence of free society and it must be protected at all time. Liberty to express opinions and ideas without any hindrance, and especially without any fear of punishment plays an important role in that particular society and ultimately for the state.

Expression is a matter of liberty and right. The liberty of thought and right to know are the sources of expression. Free Speech is live wire of the democracy. Freedom of expression is integral to the expansion and fulfillment of individual personality. Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. In the words of Krishna Iyer J. „This freedom is essential because the censorial power lies in the people over and against the Government and not in the Government over and against the people". The rights granted by Article 19 are available only to citizens and not to aliens or foreigners. In order to give effect to this objective, "freedom of speech and expression" has been guaranteed as a fundamental right under Article 19(1)(a) available to all citizens, subject only to restrictions which may be imposed by the State under clause (2) of that Article. The relevant portion of Article 19 reads as follows: Article 19 (1) All citizens shall have the right (a) Freedom of speech and expression. Article 19(2) Nothing in sub clause (a) of clause (1) shall effect the operation of any existing law,



or prevent the State from making any law, in so far as such law imposed reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of Sovereignty and Integrity of India, the Security of the State, Friendly relations with foreign States. Public order, Decency or Morality, or in relation to Contempt of court, Defamation or Incitement to an offence.

ROLE OF MEDIA

The right to freedom of speech though belongs to every individual, institution and organisation it becomes imperatively necessary in the media world. Media world serves as the best communicator of information and the best instrument of expression. Exercise of right of freedom of expression is the professional duty and character work of media, whether it is print or electronic media. The media gets as a mass communicator. It has to enjoy this freedom for promoting public good and for informing the people in general as to the state of affairs in every sphere of life and activity. The preamble to the Constitution of Indian resolves to secure for the citizens of India, liberty of thought, expression and belief. Article 19(1)(a) of the constitution is also applicable to media along with citizens. The media derives the rights from the right to freedom of speech and expression available to the citizens. Thus, the media have the same right no more and no less than any individual to write, publish, circulate or broadcast. In a case that arose in Pre Independent India, the Privy council held: The freedom of the Journalist is an ordinary part of the freedom of the subject and to whatever length the subject in general may go, so also may the journalist, apart from the statute law, his privilege is no other and no higher... No privilege attaches to his position. The framework for analysing media rights remains much the same in Post-Independence India. In *M.S.M. Sharma v. Krishna Sinha* the Supreme Court observed: A non-citizen running a newspaper is not entitled to the fundamental right to freedom of speech and expression, and therefore cannot claim, as his fundamental right, the benefit of the liberty of the press. Further being only a right flowing from the freedom of speech and expression, the liberty of the press in India stands on no higher footing than the freedom of speech and expression of the citizen and that no privilege attaches to the press as such, that is to say, as distinct from the freedom of the citizen. The freedom of speech and expression under Article 19(1)(a) is a concept with diverse facets, both with regard to the content of the speech and expression and in the means through which communication takes place.



It is also a dynamic concept that has evolved with time and advances in technology. Article 19(1)(a) covers the right to express oneself by word of mouth, writing, printing, picture or in any other manner. It includes the freedom of communication and the right to propagate or publish one's views. The communication of ideas may be through any medium, newspaper, magazine or movie including the electronic and audiovisual media.

STATUS OF FREEDOM OF SPEECH IN INDIA

1. Firstly, freedom of speech and expression in India can only be enforced by its citizens. Therefore the freedom to express and speak cannot be exercised by any non-citizen visiting or present in India.
2. Secondly, this fundamental right under article 19 (1) (a) cannot be enforced by a company as given in *shree sidhballi steels ltd. V state of uttar Pradesh* which stated that company not being a citizen has no fundamental right.
3. Thirdly, there exists freedom of speech and expression on social media/ internet also, where the Supreme Court struck down section 66A of the Information Technology Act which provided for police action for social media posts construed as "offensive" or "menacing" , in *shreya singhal v UOI*, thus fortifying article 19 (1)(a).
4. Fourthly, the right to expression under Article 19 also involves the right not to express. The Supreme Court in *Excel Wear v UOI* held that the fundamental right under Article 19 has reciprocal rights i.e. the "*right to freedom of speech includes the right not to speak and the right not to form an association is inherent in the right to form associations*".

JURISPRUDENTIAL NORMS

The preamble to the Constitution of Indian resolves to secure for the citizens of India, liberty of thought, expression and belief. Article 19(1)(a) of the constitution is also applicable to media along with citizens. The media derives the rights from the right to freedom of speech and expression available to the citizens. Thus, the media have the same right no more and no less than any individual to write, publish, circulate or



broadcast. In a case that arose in Pre Independent India, the Privy council held:

The freedom of the Journalist is an ordinary part of the freedom of the subject and to whatever length the subject in general may go, so also may the journalist, apart from the statute law, his privilege is no other and no higher... No privilege attaches to his position.

The framework for analysing media rights remains much the same in Post-Independence India. In *M.S.M. Sharma v. Krishna Sinha*⁴ the Supreme Court observed:

A non-citizen running a newspaper is not entitled to the fundamental right to freedom of speech and expression, and therefore cannot claim, as his fundamental right, the benefit of the liberty of the press. Further being only a right flowing from the freedom of speech and expression, the liberty of the press in India stands on no higher footing than the freedom of speech and expression of the citizen and that no privilege attaches to the press as such, that is to say, as distinct from the freedom of the citizen.

The right to free speech and expression includes the right not only to publish but also to circulate information and opinion. Without the right to circulate, the right to free speech and expression would have little meaning. The freedom of circulation has been held to be as essential as the freedom of publication⁵.

In *Sakal Papers v. Union of India*⁶ the Supreme Court held that the State could not make laws which directly affect the circulation of a newspaper for that would amount to a violation of the freedom of speech. The right under Article 19(1)(a) extends not only to the matter which the citizen is entitled to circulate but also to the volume of circulation. This case arose out of a challenge to the newsprint policy of the Government which restricted the number of pages a newspaper was entitled to print. Likewise, in *Bennett Coleman & co. v. Union of India*⁷ the Supreme Court held that newspaper should be left free to determine their pages and their circulation. This case arose out of a constitutional challenge to the validity of the Newspaper

⁴ AIR 1959 SC 395.

⁵ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124; *Virendra v. State of Punjab*, AIR 1957 SC 896; *Sakal Papers v. Union of India*, AIR 1962 SC 305

⁶ AIR 1962 SC 305.

⁷ (1972) 2 SCC 788; AIR 1973 SC 106.



(Price & Page) Act, 1956 which empowered the Government to regulate the allocation of space for advertisement matter. The court held that the curtailment of advertisements would fall foul of Article 19(1)(a), since it would have a direct impact on the circulation of newspapers. The court held that any restriction leading to a loss of advertising revenue would affect circulation and thereby impinge on the freedom of speech. In *Indian Express Newspapers v. Union of India*⁸, a challenge to the imposition of customs duty on import of newsprint was allowed and the impugned levy struck down. The Supreme Court held that the expression „freedom of the press“ though not expressly used in Article 19 was comprehended within Article 19(1)(a) and meant freedom from interference from authority which would have the effect of interference with the content & the circulation of newspapers.

CONCLUSION

The role of media in India, the largest democracy of the world is different from merely disseminating information and entertainment. Educating the masses for their social upliftment needs to be in its ambit as well. In a country where there is large scale poverty, unemployment and underdevelopment media has a responsibility towards developmental journalism. It has a role to play behind formation of public opinion which can force the political parties to address the core issues haunting the country's progress. It is thus referred as fourth pillar of democracy. However; public opinion can be manipulated by vested interests to serve their own goals. Good governance is an ideal system which is difficult to achieve in its totality. In other words, no country or society has ever said to achieve good governance in totality. We can only come close to this by our activities with the aim of making this ideal a reality. The journey of India from developing nation to a developed nation will depend on the role played by the media in the country. It needs to be focused on the real matters, which are mostly social and economic in nature, instead of trying to divert the attention to the non issues. Achieving the good governance requires the understanding and participation of every member of the society. The media, their significant roles, channels and contents, are considered to be the most powerful weapon to make this achievement a reality.

⁸ (1985) 1 SCC 641.





Edit with WPS Office