

FREEDOM OF MEDIA - ITS ROLE AND SIGNIFICANCE IN INDIAN DEMOCRACY

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ABSTRACT

"Freedom of expression, which includes the right to knowledge, is a fundamental right as well as a guarantor of democratic principles and an enabler of other human rights. The right to freedom of expression includes the freedom of the media. It enables the general population to look for and receive information and ideas, make informed decisions about anything from politics to economics to social issues to cultural matters, get involved in public affairs, and generally improve society. Media that are free, diverse, and independent are a crucial tenet of democracy. For democratic society and institutions to operate effectively, media freedom must be protected. The author of the paper has made a modest attempt to highlight the function of the media in Indian democracy. The paper emphasises the value of media independence and how it serves as a watchdog over the operations of various governmental and non-governmental authorities in a democratic nation like India. By citing and evaluating important case laws, the article further assesses India's judiciary's stance on media freedom. It addresses the problem of escalating worries regarding the violation of media freedom and the waning authority of Indian mainstream media. Concluding remarks and recommendations for augmenting the role as well as the credibility of Indian media are provided in the article's final section.

Keywords: Democracy, Media, Freedom, Speech and Expression

INTRODUCTION

Media (such as newspapers, magazines, radio, television and the internet) is a means of communication that is designed to reach a mass audience. The Indian media has a long history spanning from the colonial past in the second half of the 18th century to the present as the largest functioning democracy of the 21st century.¹ With the publication of the Bengal Gazette in 1780 by James Augustus Hickey, the foundation of Mass Media was laid down in India. During the British colonial period, newspapers played a crucial role in disseminating information and shaping public opinion. The first Indian language newspaper, Samachar Darpan, was published in Bengali in 1818. In 1857, during the Indian rebellion, newspapers played a critical role in spreading news and views among the masses.² The social reformer Raja Ram Mohan Roy published Bengali newspapers which helped in creating awareness

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¹ Available at <http://india.mom-gmr.org/en/context/history/>, (visited on March 1, 2023)

² Available at History of Mass Media in India, <https://www.nimc-india.com/history-mass-media-india.html>, (visited on March 1, 2023)

about menaces like Sati Pratha. The Jallian Wala Bagh massacre of 1919 was published by the Tribune, creating a public movement against the British oppression throughout the nation.

There is no denying that media has been a blessing to citizens in the age of digital boom. It informs the general public about current events in the country from the comfort of their own homes. Whether it is a case of human rights violations, corruption, custodial abuse, rape, domestic violence, or politicians abusing their authority, the media serves as a conduit to educate the public and develop and mobilise a strong public opinion against such wrongdoings.

According to popular belief, the court, legislature, executive branch, and media all support Indian democracy. The fourth pillar, the media, is regarded as the watchdog of our society and the Indian democratic system. Without a powerful, independent, and watchful media, democracy cannot thrive. The general public needs to be aware of what is going on in their nation, as well as how the government, law enforcement, and political leaders (their representatives) operate. Only with competent and quality reporting is this achievable.

ROLE OF MEDIA- INVESTIGATIVE JOURNALISM

Investigative journalism and conventional journalism are the two main categories of journalism that drive the media. Conventional journalism presents daily happenings as headlines without going into great detail. The news that is broadcast has received very little research. Such journalism's primary goals are to enlighten the audience about current events and to amuse them.

Investigative journalism, on the other hand, is a form of journalism in which reporters deeply investigate a single topic of interest, such as serious crimes, political corruption or corporate wrong doing. An investigative journalist may spend months or years researching and preparing a report. Investigative journalism is a primary source of information. It is mostly conducted by newspapers, wire services and free lance journalists. It is also popularly called 'watchdog reporting' or 'accountability reporting'.

N. Ram in his article entitled " Journalism as Investigation" explains investigative journalism as "the discipline of digging deep and bringing to light verified facts about wrongdoings or about a matter of significance, which are sought to be covered up or are otherwise inaccessible to the public."

Sanchari Pal in his article³ says, " For years, Indian journalists have used their work to call the Government and Corporate firms to account for wrongdoing, illegal practices and corruption, often sparking public outcry and reform."⁴ He has covered most important cases of Investigative Journalism that highlight the positive power of the Press. These cases are, " The Hindu's Bofors Expose", " Tehelka's Defence Deals Expose", " Indian Express's Cement Scam Expose" and " Indian Express's Human Trafficking Expose."⁵

³ Sanchari Pal, "Power of Press: 5 times India was rocked by Investigative Journalism", available at <https://www.thebetterin>, (visited on February 27, 2023)

⁴ *ibid.*

⁵ *ibid.*

The recent report of *TheCaravan*⁶ on the death of Judge Loya presiding *Sohrabuddin Case* is glaring instance of investigative journalism in India. Niranjana Takle⁷, in his report entitled 'A family breaks its silence: Shocking Details emerge in death of judge presiding over *Sohrabuddin Trial*' has investigated the circumstances and events surrounding the death of Judge Loya.⁸ The report is quite detailed and well-researched and raises disturbing questions about inconsistencies in the reported account of death; about the procedures followed after his death and about the condition of the judge's body when it was handed over to the family.⁹ Whatever may be outcome of this report, the important fact is that such a case has come into limelight before general public only because of investigative journalism.

However, in India journalists who are daring to speak up against the drawbacks of various governmental functionaries are facing tough times. Ravish Kumar, a senior Executive Editor at NDTV India hosts Prime Time and Hum Log, is known for his fearless coverages of various issues. For this he has to face life threats at the hands of the supporters of powerful politicians.

Ravish Kumar, interestingly, wrote an open letter to Prime Minister Narendra Modi, regarding the life threats faced by him. In his words, "To speak in front of Power is the courage which has been rightly given by the Constitution and you are the protector of it."¹⁰

Some bravehearted journalists have even lost their lives on the mission of Investigative Journalism. Recently, Gauri Lankesh was shot dead by two unknown assailants outside her residence on September 5, 2017. "She was an Indian journalist turned activist from Bangalore, Karnataka. She ran her own weekly named GauriLankesh Patrike. She was honored with Anna Politkovskaya Award for speaking against right-wing Hindu extremism, campaigning for women's rights and opposing caste based discrimination."

SIGNIFICANCE OF FREEDOM OF MEDIA

As was previously said, print media was essential to India's war for independence. It acted as an instrument for disseminating the tenets of nationalism, freedom, and camaraderie throughout the nation. M. Neelamalar noted that "the majority of the leaders of the freedom struggle, including Mahatma Gandhi, either edited a newspaper or wrote in the newspapers against the tyranny of British rule and its policies." It goes without saying that all forms of media connect the public and have an impact on all facets of society.

Freedom of speech is the bulwark of democratic government. This freedom is essential for the proper functioning of democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a special position in the hierarchy of liberties giving succour and protection to all the liberties. It has been truly said that it is the mother of all the liberties.¹¹

⁶ The Caravan - A Journal of Politics and Culture, November 20, 2017.

⁷ Niranjana Takle is a journalist and works for CNN- IBN and The Week.

⁸ supra note 7.

⁹ Ibid.

¹⁰ Available at <https://thewire.in> (visited on February 5, 2023)

¹¹ Report of the Second Press Commission, Vol. I, pp.34-35, quoted in M.P. Jain, Indian Constitutional Law, Lexis Nexis, Gurgaon, 2013, p.1079.

Article 19 (1)(a) of Indian Constitution Provides Fundamental Right to Speech and Expression to Indian citizens. Unlike American Constitution there is no separate provision for Freedom of Press in Indian Constitution. In the U.S.A., the First Amendment specifically protects a free press. The view developed by the U.S. Supreme Court is that freedom of the press includes more than merely serving as a "neutral conduit of information between the people and their elected leaders or as a neutral form of debate."¹² Interestingly, in India media derives its right to circulate information and opinion from Article 19 (1) (a) itself.

"In today's free world," remarked the hon'ble Supreme Court of India, "freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society."¹³ The court further emphasised 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. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of Government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power."¹⁴

The importance of media is well highlighted by Thomas Jefferson in a letter to Edward Carrington dated January 16, 1787 as follows:

"Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter."¹⁵

The hon'ble Supreme Court's observations in *M.S.M. sharma v Krishna Sinha*¹⁶ are worth mentioning here:

"...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 and 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."

JUDICIAL APPROACH TOWARDS THE FREEDOM OF MEDIA

The Supreme Court has laid emphasis in several cases on the importance of maintaining freedom of press in a democratic society. The press seeks to advance public interest by

¹² M.P. Jain, *Indian Constitutional Law*, Lexis Nexis, Gurgaon, 2013, p.1085.

¹³ *Vinod Dua v. Union of India*, available at <https://indiankanoon.org/doc/50969306/> (visited on September 2, 2023)

¹⁴ *Vinod Dua v. Union of India*, available at <https://indiankanoon.org/doc/50969306/> (visited on September 2, 2023)

¹⁵ Quoted in Madhav Goradia, p.2

¹⁶ AIR 1959 SC 395

publishing facts and opinions without which a democratic electorate cannot make responsible judgements.¹⁷

The Supreme Court in *Romesh Thapar v. State of Madras*¹⁸ held that "freedom of speech and expression includes freedom of the press. The Court observed that the press has a significant role to play in informing the public and promoting democratic values. Therefore, any attempt to curtail the freedom of the press would violate the right to freedom of expression."¹⁹ The court further emphasised that "... (The freedom) lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse.... (But) 'it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits.'"²⁰

In *Brij Bhushan v. State of Delhi*,²¹ the SC held that "freedom of the press cannot be curtailed unless there is an imminent danger to public safety. The Court observed that any attempt to restrain the press must be based on clear and present danger, and not on vague or remote possibilities."²²

In the case of *Indian Express Newspapers (Bombay) Private Ltd. & Ors. v. Union of India & Ors.*²³, this Court observed that "The freedom of press, as one of the members of the Constituent Assembly said, is one of the items around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal constitutions prevail. The said freedom is attained at considerable sacrifice and suffering and ultimately it has come to be incorporated in the various written constitutions."²⁴

The SC recognised the link between the Right to Privacy and Freedom of Speech in *Manohar Lal Sharma v. Union of India*, and emphasised that "a breach of privacy can lead to self-censorship. They said that press freedom and privacy were allies and that the fear of surveillance is an 'assault' on the press, which is the fourth pillar of democracy."²⁵

The division bench of Supreme Court in *Vinod Dua v. Union of India & Others*,²⁶ held that "criticism of the government and its policies is not seditious and that the right to free speech and expression extends to the press."²⁷

As regards the role of media, in *Ranjit D. Udeshi v. State of Maharashtra*²⁸, the court very aptly observed that, "Freedom of speech and expression is that cherished right on which our democracy rests and is mean for the expression of free opinions." Press and media is a

¹⁷ibid p. 1086

¹⁸ AIR 1950 SC 124, 1950 SCR 594

¹⁹ ibid

²⁰ AIR 1950 SC 124, 1950 SCR 594

²¹ (1950) SCR 605

²² ibid

²³ (1985) 1 SCC 641

²⁴ ibid

²⁵ ibid

²⁶ Available at <https://indiankanoon.org/doc/50969306/> (visited on September 2, 2023)

²⁷ ibid

²⁸ AIR 1965 SC 881

medium of social, public and political intercourse. It is a platform for expression of opinion, a means of communication of facts and circumstances of public affairs. It is always regarded as the fourth pillar of the Democracy."²⁹

In *Indian Express Newspapers Pvt. Ltd. v. Union of India*,³⁰ the Supreme Court observed that "Freedom of the press has not been used in Article 19 but it is comprehended within Article 19 (1) (a). The expression means freedom from interference from the authority which would have the effect of interference with the content and circulation of a newspaper. There cannot be any interference in the name of public interest the purpose of the press is to advance the public interest by publishing facts and opinion without which a democratic electorate cannot make responsible judgments."³¹

In another historic case in *Sakal Papers Pvt. Ltd. v. Union of India*³², "Daily Newspapers (Price and Pages) Order, 1960, which fixed the number of pages and size, which could be published by a newspaper at a price, was challenged. The State defended the law as a reasonable restriction on the business activity of a newspaper, in the interest of the general public. The hon'ble Court struck down the Order and held that the right to freedom of speech cannot be taken away, with the object of placing restrictions of the business activities of a citizen."³³

Later, in *Bennett Coleman v. Union of India*,³⁴ reiterating its view the Supreme Court further explained that freedom of speech and expression is not only in the volume of circulation but also in the volume of news and views. The press has a right to free propagation and circulation without any previous restraint. If a law was to single out the press for laying down prohibitive burden on it that would restrict the circulation, penalize the freedom of choice as to be personnel, prevent newspaper from being started and compel the press to seek government aid, this would violate Article 19(1)(a) and would fall outside the protection."³⁵ Chief Justice A.N. Ray remarked that "The faith of a citizen is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular Government rests on the old dictum 'let the people have the truth and the freedom to discuss it and all will go well'. The liberty of the press remains an 'Ark of the Covenant' in every democracy.... The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct."³⁶

TRAMPLING OF FREEDOM OF MEDIA: RISING CONCERNS

In *Manohar Lal Sharma v. Union of India*³⁷, "multiple petitions were filed on the Pegasus controversy at the Supreme Court. The petitioners have requested a judicial probe to

²⁹ *ibid*

³⁰ AIR 1986 SC 515

³¹ *ibid*

³² AIR 1962 SC 305

³³ *ibid*

³⁴ AIR 1973 SC 106

³⁵ *ibid*

³⁶ *ibid*

³⁷ Available at <https://indiankanoon.org/doc/39021018/> (visited on September 2, 2023)

investigate if the Indian government used Pegasus to spy on journalists and other citizens, and if due process was followed. They also submitted to the Court that Pegasus would have a chilling effect on freedom of speech and expression and violate the right to privacy.”³⁸ The court emphasised that “even a lawful encroachment on the Right to Privacy has to be proportional to the purpose of the law. The Union Government cannot invoke national security to evade accountability. The Bench recognised the link between the Right to Privacy and Freedom of Speech, noting that a breach of privacy can lead to self-censorship. They said that press freedom and privacy were allies and that the fear of surveillance is an ‘assault’ on the press, which is the fourth pillar of democracy.”³⁹

According to a news report "India's ranking in the 2023 World Press Freedom Index has slipped to 161 out of 180 countries, according to the latest report released by global media watchdog Reporters Without Borders (RSF). In comparison, Pakistan has fared better when it comes to media freedom as it was placed at 150, an improvement from last year's 157th rank. In 2022, India was ranked at 150."⁴⁰

According to Reporters Without Borders (RSF) freedom of press implies “the ability of journalists as individuals and collectives to select, produce, and disseminate news in the public interest independent of political, economic, legal, and social interference and in the absence of threats to their physical and mental safety.”⁴¹

According to a joint statement issued by the Indian Women's Press Corps, the Press Club of India, and the Press Association, "For developing democracies in the Global South where deep pockets of inequities exist, the media's role cannot be understated. Likewise the constraints on press freedom due to hostile working conditions like contractorisation have to also be challenged. Insecure working conditions can never contribute to a free press."⁴²

CONCLUDING REMARKS AND SUGGESTIONS

The foregoing discussion makes it clear that an independent and free media is essential for an informed populace and a healthy democracy because it promotes the responsibility of those in authority and strengthens the rule of law by serving as the voice of the oppressed. Free media acts as a watchdog on the government in power "by scrutinising those in power and exposing corruption, human rights violations, other wrongdoing and mismanagement, the media help to hold governments and other powerful actors in society to account."⁴³

³⁸ Available at <https://www.scobserver.in/cases/manohar-lal-sharma-prime-minister-pegasus-spyware-probe-case-background/> (visited on September 2, 2023)

³⁹ *ibid*

⁴⁰ The Hindu, May 3rd 2023, available at <https://www.thehindu.com/news/national/india-slips-in-world-press-freedom-index-ranks-161-out-of-180-countries/article66806608.ece> (visited on September 2, 2023)

⁴¹ The Hindu, May 3rd 2023, available at <https://www.thehindu.com/news/national/india-slips-in-world-press-freedom-index-ranks-161-out-of-180-countries/article66806608.ece> (visited on September 2, 2023)

⁴² *ibid*

⁴³ Joint Declaration issued by United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa, May 2nd 2023, available at

It acts as a forum for opposing viewpoints to be expressed. Through media reports, the populace can learn how the government operates, assess it, and choose the best candidate for election in the future. The public is informed and kept up to speed on national and worldwide happenings through media outlets. It is crucial to remember that the media, by documenting instances of violations of human rights and promoting the cause of justice, contributes significantly to the defence of fundamental rights. The protection and augmentation of media freedom are crucial. In addition, the journalism must be honest and ethical. "Democratic societies are stronger when they can rely on voices of reference, which actively disseminate information of public interest and contribute to informed decision-making. Free, independent and pluralistic media can be such voices of reference when they respect established professional standards, follow diligent verification methods and promote intercultural understanding, social inclusion and respect for diversity."⁴⁴

<https://www.ohchr.org/sites/default/files/documents/issues/expression/activities/2023-JD-Media-Freedom-and-Democracy.pdf> (visited October 2, 2023)

⁴⁴ *ibid.*