

MEDIA'S RIGHT: FREEDOM OF SPEECH MUZZLED

Ms. Apoorvi Shrivastava*
Ms. Kuhu Tiwari**

Introduction

“Social Media is about the people! Not about the business. Provide for the people and for the benefit of the people.” - Matt Goulart

Media is one of the most beneficial and useful thing of a human's life. Media is the mirror of the society. Daily through out in twenty-four hours of a day, people come across different facets of media; sometimes by rummaging through pages of magazine, newspaper or by running through different channels of television or sometimes in the form of sounds and films, pixel, headlines or jingles. All these colors of media lead to all-round development of a human. Media not only gives information to society about different on-goings but holds a very powerful capacity to set a social issue for a debate in mass audience.

Media is considered as a source of entertainment but apart from it, media provides platform for conversation regarding various social, political and economic issues. It helps in the intellectual development of human. Information as a main task of media sounds easy but it is not that simple at all. Information is always a balancing act between objectivity and subjectivity. Media have to inform about all important happenings and keep the information as neutral as possible. Mass media have big influence on our daily life, whether we want it or not. They set trends and spread them, they influence our way of thinking in an enormous way and they have a long arm in political issues.

India is a democratic country and in a democracy its 'demos' should know what is going on in the country and what is the country's state in global forum. Such democracy can only be achieved with the help of media¹, who is always on their toes to update the people of the country. It works as an agent between public and state or as a

* Assistant Lecturer, Hidayatullah National Law University, Raipur, India.

** Assistant Lecturer, Hidayatullah National Law University, Raipur, India.

¹ Julie L. Andsager, "A Constant Tension: Public Support for Free Expression", *Standard Journal of International Law*, 3 (2002).

medium between two entities of state that is government and people. It's practically impossible to call the entire population of country and interact with them and seek their opinion on single forum but it is possible through media.

“When you give everyone a voice and give people power, the system usually ends up in a really good place.” - Mark Zuckerberg

Even India's current government realizes importance of role of media as intermediary and Prime Minister Narendra Modi has made an effort to interact with all the citizen of India through radio program “Mann ki Baat”.

But in spite of it government, court and police curb the right to freedom of speech and expression of media. There are umpteen numbers of scenarios when voice of media is crushed brutally without any reasonable ground. Such restriction on media not only affects media's right but also deprives the society from the ugly truth. Media derives its power from Fundamental Right- “Freedom of Speech and Expression”, thus protection of this basic right is essential.

Media plays a crucial role in building the human environment in which we live, so at this juncture it is healthy for government and society to recognize the importance of media and appreciate the efforts of the same.

Media's Voice – Freedom of Speech and Expression

Importance of Right of Freedom of Speech and Expression

Media is known to be the fourth pillar of the Indian democracy. Media works efficiently when its powers are not only acknowledge but also respected. Media's right are not separately laid down but it gets its power from Right of Freedom of Speech and Expression which is folded under Article 19(1)(a) of the Constitution of India². The media derives its rights from the right of freedom of speech and expression available to the citizen. The Freedom of speech and expression under the constitution is a subject with varied facets including the content of the speech and expression and the mode of speech and expression. The subjective involvement of the content and its circulation through different mode is necessary to be regulated and controlled in special occasions. The authority for controlling the right and imposing reasonable restrictions on the right is governed through Article 19(2)

² Brij Bhushan & Anrs. v. State of Delhi, AIR 1950 SC129.

of the Constitution by the terms of 'reasonable restrictions'. It exhaustively frames the grounds upon which freedom of speech and expression can be restricted.

The freedom of speech and expression enjoyed by the press can be brought to a halt by imposition of 'reasonable restrictions' by the government. Now the question that tweaks the mind is that what conditions can be classified as the 'reasonable conditions' in the light of freedom of press. As discussed above that the freedom of the press serves the larger purpose of the right of the people to be conversant of a broad gamut of facts, views and opinions. It is the medium through which people gain access to new information and ideas, an essential component of a functioning democracy. Thus, "the survival and flowering of Indian democracy owes a great deal to the freedom and vigour of our press³."

There are several cases in which the restriction imposed by the government on the media was held to be unreasonable by the judiciary. The apex court in *Sakal Papers v. Union of India*⁴ held that the state could not make laws which directly affected the circulation of a newspaper for that would amount of 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.⁵ Similarly in *Bennett Coleman & Co. v. Union of India*⁶, the Supreme Court held that the newspapers should be left to determine their pages and their circulation. This case arose out of a constitutional challenge to the validity of the newspaper (Price and 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 the Article 19(1)(a) since it would have a direct impact on circulation of newspapers⁷. The court held that any restriction leading to a loss of advertising revenue would affect circulation and thereby impinge on the freedom of speech of media.

This above apex court decisions in favour of the freedom of press reflects its importance in the society. The fourth pillar's empowering right of freedom of speech and expression does not work in isolation but it comprises in itself certain sub rights, as right to circulate, right

³ Amartya Sen, "The glory and the blemishes of the Indian news media", The Hindu, April 25, 2012.

⁴ AIR 1962 SC 305.

⁵ *Ibid*, paras 33-34, p.313.

⁶ AIR 1973 SC 106.

⁷ *Ibid*, para 82.

to criticise, right to receive information, right to conduct interviews, reporting legislative proceedings, right to advertise, right of rebuttal, right to broadcast, right to entertainment . These rights make the media more efficient in performing its vital role, uncovering the truth and rousing public opinion, especially in the face of wrongdoing.

Protection of the Media's Right through One Regulatory Body

As Lord Justice Leveson wrote in his path-breaking report on '*Culture, Practice and Ethics of the Press*' in Great Britain: "With these rights (of press freedoms) come responsibilities to the public interest: to respect the truth, to obey the law and to uphold the rights and liberties of individuals."⁸

The above discussions on importance of freedom of speech and expression for empowering press and imposition of reasonable restrictions bring us to an analytical point which can be bifurcated under two heads; firstly, the need of unified governing body and secondly, relates to the regulation of content.

With the advent of vivid technologies the horizons of the public have also expanded, but it also brought with it certain new concerns. As today, the source of the dissemination of news and current events is not restricted to the print media but it has opened its wings to different spheres of communication technologies. There are distinct systems of regulation for broadcast media, print media and social media. Each system is interpreting different circumstances and law as per their need and are curtailing media's speech. The law applicable to broadcast media is the Cable TV Networks (Regulation) Act, 1995. The Act brought into force the Programme Code and the Advertising Code, which prohibit transmission of any programme or advertisement not in compliance with the code. There is no regulatory authority set up under the Act. Additionally, the Electronic Media Monitoring Centre established by the Ministry of Information & Broadcasting monitors the content of all TV channels up linking and down linking in India to check the violation of the Programme and Advertisement Code. It also monitors content of Private FM Radio Channels. The Ministry of Information & Broadcasting, also have issued Policy Guidelines for Uplinking of Television Channels from India, the latest in 2011, which include mandatory compliance of the Cable TV Networks (Regulation) Act 1995. Self-regulation of content in the broadcast media is also conducted through a two-tier mechanism of self-regulation by individual broadcasters as well as

⁸ Lord Justice Leveson, '*An Inquiry into the Culture, Practices and Ethics of the Press*' (Leveson Inquiry Report, London: November 2012).

industry level regulatory bodies. The BCCC⁹ hears complaints and may issue directions to the channel to modify or withdraw the objectionable content, and can impose fine also.

The self-regulatory body for news and current affairs channels is the News Broadcasters Association (NBA) which has set up the News Broadcasting Standards Authority (NBSA) to adjudicate complaints in relation to broadcast content on news channels but the jurisdiction of the NBSA is restricted only to members.

Print media in India is governed by the Press Council Act. In the midst of different rules and regulatory authority the real voice of media gets muzzle. Truth which media wants to show gets buried deep down below the burden of laws.

With the advancement of Internet technology, the Information Technology Act, 2000 also came into picture. Section 66A was inserted in the Act by an amendment in 2008 under which sending offensive or false messages through a computer device is a punishable offence, which again was restricting freedom of e-media and internet users. However now, Section 66A is declared unconstitutional¹⁰ as being violative of free speech as it has often been said to have been invoked arbitrarily or with political motive to block access to content allegedly objectionable. This is one wise step towards protecting most important right of media-Freedom of Speech and Expression.

Media regulation in India is not unified, and has a multiplicity of regulatory bodies. Further there are issues surrounding the enforceability of decisions of such bodies. Such distributed regulations are arbitrary sometimes violating media's freedom of speech and expression. An independent broadcasting media authority along the lines of TRAI is needed to protect media from unjust restrictions. Uniform authority was first suggested by the Supreme Court in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*.¹¹ Thereafter, the Ministry of Information & Broadcasting has made various failed attempts, the latest in 2007, to draft a Broadcasting Services Regulation Bill in order to set up a Broadcasting Regulatory Authority of India (BRAI).

⁹ Broadcasting Content Complaints Council.

¹⁰ Shreya Singhal vs. Union of India, Writ Petition Criminal No. 167, 2012.

¹¹ AIR 1995 SC 1236.

In *Indraprastha People v. Union of India*¹², the Delhi High Court recommended that an independent statutory body be set up under the Cable Television Networks (Regulation) Act, “consisting of men and women of eminence.

Recently, the Supreme Court of India, in Writ Petition (Civil) No. 1024/2013, agreed to hear a Public Interest Litigation praying for an independent regulatory authority to govern broadcast media alleging that the Information & Broadcasting Ministry had failed to constitute sufficient infrastructure to ensure quick decision-making against offending channels and in not imposing deterrent penalties as provided by law. The Court tagged the case with another pending matter, Writ Petition (Civil) No. 963/2013, seeking guidelines to regulate the content of television channels. So till now everything is in pipeline and there is no ray of hope of positive decision in favour of set up of one regulatory authority for entire media arena.

Similar concerns have been voiced and addressed in other jurisdictions also, most notably in the United Kingdom where, following a series of media scandals¹³, a committee headed by Lord Justice Brian Leveson was set up to inquire the ‘culture, practice and ethics’ of the press, including the media’s relations with politicians and the police. The report recommended a strong and independent regulator be set up to replace the existing Press Complaints Commission.

Whether media accountability is better served by such self-regulatory institutions which are diverse and widely viewed as lacking powers of enforcement or should be replaced by statutory regulations enforced by one, has been a vexed question in recent debates surrounding media reform. Even for social media which currently does not have a dedicated regulator, the key question is whether to regulate and if so, which model of regulatory institution to adopt. If the problem of internal regulation will be unraveled then creation of unified authority will simplify the issues concerning the freedom of speech and expression of media. As the unified authority will work as a content filter and will accordingly pass the content for publication according to a uniform code. Due to lack of uniformity the question on the media’s right of freedom and expression is put in the light of doubt or ‘unreasonable restrictions’ are imposed without any valid ground, which have a propensity to break the soul of freedom of

¹² WP (C) No.1200/2011, (Del. HC).

¹³ Megan J. Conboy and Alice R. Scott, “*Tipping The Scales of Justice: An Attempt to Balance The Right To A Fair Trial With The Right To Free Speech*”, *St. John’s Journal of Legal Commentary*, Vol. 11, 1995.

speech and expression. As the recently happened with the documentary made by BBC on *Nirbhaya Rape* case 'India's daughter', which was decided to be exhibited on auspicious occasion of woman's day but was banned by the Indian government on unreasonable grounds, curtailing the rights of this fraternity.

Blatant Disregard of Truth and Media's Right - "Ban on India's Daughter"

17th December 2012, a black day, the day every Indian woke up to come face to face with a hideous and painful rape incident that incited horror, shame and anger throughout the nation. It wasn't a nightmare, but it was a reality even worse. Soon as the word of the incident spread, thousands of young protestors marched towards Rajpath to express their resentment and aversion towards the government and clashed with the security forces that tried to confront and stop them midway. For the next few weeks that followed, virtually all news channels covered the horrific incident, the Politicians of the ruling government went into hiding to save themselves from the media and the protestors whereas the opposition 'netajis' kept trying to capitalize on the situation. The flames of the Nirbhaya Gang rape case had engulfed the entire nation in such a way that every individual from every nook and corner of the nation could feel the pain and plight of the Indian women. It can be said that the flame that engulfed the entire nation, ended up lighting a small flame inside everyone. Rapists were all caught and rewarded maximum sentences for their crime. Unfortunately, Nirbhaya could not be saved. After fighting valorously for nearly two weeks, she died. But that was not the end. She left behind a question in every single Indian's heart- "Till when?" "Till when women will be victimized?"

Wave which ran throughout the nation brought a drastic change in criminal law of our nation. Women favoring laws were drafted but the irony is after the amendment of laws also, after making rape laws more stringent the rates of rape in India has not dropped. Still in every twenty minutes a gal, a woman is raped. It clearly points out that law cannot bring change until society's ideologies are changed.

Then, came the chapter of "India's Daughter" a UK-produced documentary, which covered the brutal 2012 gang rape of Delhi that shook the conscience of the entire country. Produced and directed by Leslie Udwin, the documentary, which was aired for the first time on BBC. Through this documentary Leslie tried to portray the bitter reality of India that it's not provocative clothes of girls or western culture behind these rapes but the seed of this problem is in the ill-

mentality of society including all lower and upper strata people, illiterate and literate class. Documentary aims to bring the spotlight back at Nirbhaya and every other Indian girl that has been harassed or sacrificed for a morbid male's carnal desires.

But a great move couldn't thrive because of government ban. Lot of criticism was made on an interview of a convict Mukesh Singh; a key point of documentary as he is waiting for an appeal hearing. Such kind of baseless criticism should not be entertained as in case of *Sheela Barse v. Union of India*¹⁴, Supreme Court of India has clearly stated that: "The right to interview of prisoner sentenced to death would be subject to Rule 594(4) of the Manual for the Superintendence and Management of Jails which allows them to give interviews, engage in communication with relations, advisors etc."

Even in case of *State v. Charulata Joshi*¹⁵, Supreme Court has reiterated that the undertrial could be interviewed or photographed if he expresses his willingness to do so.

If law is recognizing the right of a convict to give interview so how can these reactionary consider the interview wrong. How can they blame media for crossing the limits of the rights granted to it by *Suprema Lex-Constitution*? Allegations are again made that this interview will influence the fair trial of the convict but again the question which comes in front of us is whether a truth of a society could influence a trial in adverse manner? Isn't it a duty of judge to see every aspect of a case before pronouncing judgment, so if through the lens of media some sides of the case are shown then what's wrong in that?

Documentary has been opposed as it revealed the identity of the rape victim which is not permitted by law. If parents of the victim permitted for the same then what is the logic for such opposition. Instead of blaming media for misusing its freedom of speech, critics should look for the reason that why victims parents revealed the identity. They did so to help media to attain its objective to portray truth, to bring social change, to pose social question in the minds of every Indian, so that every other *Nirbhaya* could be protected and attain justice.

Government imposed a ban on India's daughter on the ground of public order given under Article 19(2) of Indian Constitution. Ban was unreasonable because the basic rule of *audi altrem partem* was broken in this case. Director Leslie and BBC were not given

¹⁴ (1987) 4 SCC 373.

¹⁵ (1999) 4 SCC 65.

opportunity to defend their stand. Media's supreme right Freedom of Speech and Expression was curtailed arbitrarily.

In *State of Madras v. V.G. Rao*¹⁶, Supreme Court said: "restrictions imposed in the interests of public order are not reasonable if aggrieved person is not allowed to make good representation. Such restrictions are the act against Article 14 of the Constitution where there is no reasonable basis for such differential treatment."

Thus, not only right given to media under Article 19 but also its right of equality under Article 14 of Indian Constitution was violated by this ban.

What purpose this ban is going to serve to this country or its women. Let media speak the ugly truth. Why do we have to run away from accepting that we are actually facing a severe problem within our nation? Airing of the documentary, respecting the freedom of speech and expression of media will not spoil India's international image but the ban definitely will! Society doesn't need stringent laws more than it requires men to change their mindsets and give women their share, which can only happen when government and its machinery will not unnecessary restrict the rights of media.

The strong support that the documentary has garnered from the Indian youth is a clear indicator that times have changed. Media is successful enough in utilizing its right of freedom of speech and expression in a correct direction which can reform our society and could lead to the development of better and secure home to live.

Conclusion

"A free press can be good or bad, but, most certainly, without freedom a press will never be anything but bad." - Albert Camus

Freedom of Speech and Expression is not only a right but an effective weapon in the hands of media. It can fulfill its function efficiently, when its right is protected. A writer without pen is useless, a teacher without book is directionless, and similarly media without freedom of speech is helpless. Instead of making media cripple other alternatives should be used to check the function of media.

An institution can act in an arbitrary manner and therefore some checks are required. Similarly, media is also checked and regulated

¹⁶ 1952 AIR 196.

through reasonable restrictions mentioned in Article 19(2) of Indian Constitution. But government and courts are taking undue advantage of these restrictions and impose unreasonable ban and hurdles in front of media as they did in India's Daughter documentary ban incident.

Thus, to create a balance between government and media, to culminate faith between the two and to protect media from such steeplechases it is necessary that separate regulatory authority should be set up which will check and govern the functioning of media. Instead of TRAI, a separate independent body is needed so that media will not be able to disregard the rights granted to them. Government every now and then makes mockery of media by curtailing media's right to freedom of speech and expression, to prevent that it is necessary that government should lay down proper strict scrutiny guidelines to check every publication of media. In U.S. case *California First Amendment Coalition v. Lungren*¹⁷ this strict scrutiny concept was propounded. It means that if news, video, movie, book does not pass through that guideline than government could ban it otherwise not. Such guidelines will bring uniformity and will prevent such arbitrary and diplomatic acts of government against media. Even on the other side, media people will also have to maintain some standard of their news, story, publication etc.

A state could survive, its people could grow only when it's all the pillars are intact and are working effectively. This could be only achieved when government will stop interfering in affairs of media and media's right will be protected under the wings of proper regulatory authority.

Right to hear is the listener's right, let the listener decide what they want to hear. Muzzling the roar of media by ban will lead to chaos not the truth presented in the society. Still the question stands firm that whether truth of the society is important or political agenda's of government; freedom of speech and expression of media is vital or a ban to hide society's weakness.



¹⁷ C95-0440-FMS, 1995 WL 482066.