

ROLE OF MEDIA IN INDIA

S. SAROJINI

Research Scholar, Saveetha School of Law, Chennai, Tamil Nadu, India

ABSTRACT

Media is regarded as the fourth pillar of our Indian Democracy. Media plays a vital role in giving information to people all around the world and it is capable of changing and moulding the opinion of society. Media derive its right from the freedom of speech and expression available to citizen under Article 19(1)(a) of the Constitution of India. The right to freedom of speech and expression provides several rights to the Media. Sting Operation is a method of exposing the crime done by the public. It is a deceptive operation designed to apprehend the person committing crime. Thus Sting should not prevent the public servants from doing their duty and it should not interfere in the privacy of others. Most of the big scams were expressed by the press, but the Media trial should not affect the fair trial by the Judiciary.

Since reasonable restrictions are available to the freedom of speech and expression under Article 19(2) of the Constitution of India, it is also available to the freedom of press. Thus Media plays a major role in changing the opinion of society. With its increased role, they should have professionalism, transparency and accountability is essential. . Media should not publish matters which portrays wrong opinion to the society. Media trial should be fair and it should not interfere with the Judiciary to give a fair Justice.

KEYWORDS: Media, Information, Speech, Expression, Media Trial, Sting Operation

INTRODUCTION

Media is regarded as the fourth pillar of our Indian Democracy. Media plays a vital role in giving information to people all around the world, and it is capable of changing and moulding the opinion of society. Media plays a vital role in good democracy. Media makes the people aware of social, economic, political and other cultural activities through-out the world. The impact of Media is active over the years.

Constitutional provisions form the basis of rights in India. Article 19(1) (a) deals with the freedom of speech and expression. In **Ramlila Maidan Incident re¹** case, the Supreme Court held that, the freedom of speech and expression is the mother of all liberties and therefore, within its ambit freedom of press also arises. Article 19(1) (a) of Indian constitution is derived from the first amendment of U.S. Constitution.

Status of Media

Media derive its right from the freedom of speech and expression available to citizen. Thus Media has same rights as that of individual to write, publish, circulate or broadcast. In **M.S.M. Sharma vs. Krishna Sinha**, the Supreme Court observed that a non-citizen running a Newspaper has no freedom of speech and expression and therefore they have no freedom of press. Thus only citizens of India have the freedom of press. Thus Media has every rights as that of citizen and

¹ (2012) 5 SCC, 31

liable for defamation also.

Right to Circulate

The right to freedom of speech and expression includes right not only to publish but also to circulate information and opinion. The freedom of circulation is an important element for publication.

In **Romesh Thappar vs. State of Madras**², the Supreme Court struck down the order issued by the Government of Madras under Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949, which imposed a ban on circulation of Journal. The Supreme Court quashed the order passed under section 19(1-A) because it curtailed the freedom of speech and expression and fell outside the scope of Article 19 (2) and hence unconstitutional.

In **Sakal Paers Ltd vs. Union of India**³, the Supreme Court observed that State could not make any law which directly affect the circulation of Newspaper because it would amount to violation of freedom of speech.

Thus freedom of press which is guaranteed under Article 19(1) (a) includes right to circulate the information also. Any ban on circulation would amount to violation of freedom of speech.

Right to Dissent

The right to criticize the Government also falls within the freedom of speech and expression because it is a pre-requisite of democracy. Every citizen of India has the right to express their own views.

In **Kedar Nath Singh vs. State of Bihar**⁴, the Kedar Nath was challenged under Sections 124-A and 505 of Indian Penal Code, for his publications which made a dis-affection towards Government. The Supreme Court dismissed the challenge and held that criticism of public measures or comment on the Government action are within the reasonable limits and consistent with Article 19(1)(a).

In **Kushboo vs. Kanniammal**⁵, several criminal complaints were filed against film-star Kushboo under section 292, 499, 500,504,509 and 509 of IPC, because of her views on pre-marital sex in urban India. The Supreme Court held that complaints are malafide and uphold the freedom of speech and expression, to express her views.

Thus every individual has the right to express their views in the democratic country like India because their rights are protected under the freedom of speech and expression (Article 19(1) (a) of Indian Constitution)

Right to Portray Social Evils and Historical Events

The freedom of speech and expression includes not only the depiction of social good but also social evils. In **Anand Patwardhan case**, the Doordarshan refused to telecast the award winning film because it depicted the evils of communal violence. The Supreme Court upheld the right of film-maker to telecast the film because; it is a documentary film, which showed the reality of crime and violence against women. The court observed that it does not violate the constitutional provision.

² AIR 1950 SC 124

³ AIR 1962 SC 305

⁴ AIR 1962 SC955

⁵ AIR 2000 SC 3196

In **K.A.Abbas vs. Union of India**⁶, the Court held that depiction of social evils such as rape, prostitution cannot be censored. Only how the theme is handled by the film-maker should be taken into consideration.

An artist or film-maker has the right to present historical event.

In **F.A. Picture International vs. Central Board of Film Certification**⁷, when a featured film which brings about the riots in Gujarath and applied for certification, the committee refuses to grant certification. The Court held that film cannot be censored because Article 19(1) (a) guarantees freedom of speech and expression. Film is regarded as a powerful medium of expression. Artists, writers, playwrights and film-makers are the eyes of the society and they have the right to communicate their own ideas.

Thus freedom of press gives right to the artists or film-maker to present the historical event and violence that happens in the society. Their rights cannot be banned as such like they may create a bad opinion on the viewers. Thus Artists have every right to portray historical and social events that happens in the society.

Right of Press to Conduct Interviews

The press has only limited right to conduct interviews. The right to conduct interviews by the press is restricted and it is only subject to the consent of person being interviewed. In **Prabha Dutt vs. Union of India**⁸, the petitioners were seeking to interview the condemned prisoners Billa and Ranga. The court held that press do not have absolute and unrestricted right to conduct interviews and there is no legal obligation upon a person to give information to press. The interview can be conducted; only then the consent person gives his consent to be interviewed. Thus press cannot make an interview to every individual without their consent and individuals need not provide information if they are not interested to do it.

Reporting Court and Legislative Proceeding

The Journalists have the fundamental right to attend the proceedings of the court and to publish it. They have right to publish the true proceedings of the court. The right to report judicial proceedings arises from the need of transparency to the public. Justice should not only be done but it should be seemed to be done. The publicity of judicial proceeding or the proceeding of the court is not an absolute rule. For example, the name of the rape victims or riot victims should be protected. In **Naresh Shridhar Mirajkar Vs. State of Maharastra**⁹, the Court may restrict the publicity of proceedings in the interests of the Justice. The Court has absolute power under Section 151 of Civil Procedure Code for trial to be held in-camera. But this power should be exercised with great precaution and in such a way Justice is not defeated.

Thus press has the right to publish true report of judicial proceeding. They cannot publish any information which is malafide. If they publish some wrongful information, it may change the opinion of viewers and it will be restriction to conduct fair media trial.

The right to report proceedings of parliament and legislative assemblies arises from the right to be informed to the public about the debates of their elected representatives. The Article 361 A states that there is no liability for publication of

⁶ AIR 1971 SC 481

⁷ AIR 2005 Bom 145

⁸ AIR 1982 SC 6

⁹ AIR 1967 SC 1

true report of parliamentary proceedings or proceedings of legislative assemblies. The right to report legislative proceeding is curtailed by the Privilege available to Parliament and legislative assemblies. In Powers, privileges and immunities of State legislature, re case, when conflict arose between the legislative privilege and freedom of speech, the Supreme Court held that legislative privilege is subject to the freedom of speech and expression.

Right to Advertise

In **Tata Press Ltd. Vs. MNTL**¹⁰, the Supreme Court interpreted that Fundamental right of Freedom of Speech and Expression includes Right to advertise. Only after this Judgment the right to advertise were included in freedom of speech and expression under Article 19(1)(a).

In **Sakal Paers Ltd vs. Union of India**¹¹, the validity of Newspaper (Price and Pages) Act, 1956, was challenged, which regulated the number of pages, prices and allocation of space for advertisement. The Supreme Court held that allocation of space for advertisement would hit Article 19(1) (a).

Thus Media has unrestricted right to advertise.

Limitations on the Rights of Media

Since reasonable restrictions are available to the freedom of speech and expression under Article 19(2) of the Constitution of India, it is also available to the freedom of press. Thus the freedom of press should not collapse the sovereignty, unity and integrity of India, the security of State and friendly relation with foreign states. Further the freedom of press should never disturb the public order, decency and morality of a State. Any publication or criticism of media should not lead to contempt of Court, defamation and incitement of offence. Thus Media has all restrictions as that of individuals or citizens of the country.

Sting Operation

It is a method of exposing the crime done by the public. It is a deceptive operation designed to apprehend the person committing crime. Journalists will play the role of criminal partner to gather evidence of crime. They expose themselves as a general public and find the bribe and crime of public and political parties. A sting operation exposes corruptions and crime. There are two types of sting operation, positive and negative sting operation.

In **Tehelka case**, a team of undercover Journalists pretended to be arm dealers and fixed meeting with the army members and politicians to expose corruption relating to defence equipment in armed forces. This operation is famously called West End Operation. It showed how Minister George Fernanda's accepting cash rewards defence. The national TV for the first time telecasted hoe people accepted cash rewards. This sting operation resulted in resignation of Defence Minister and BJP president.

The West End operation was followed by "Operation Duryodhana". This sting operation exposed 11 members of public who received bribes for asking questions in the parliament. FIR was filed against them for committing the offence of abetment under Section 12 of prevention of Corruption Act. The Delhi high Court held that it does not amount to crime because the sting operation should not discourage the people (public servant) from performing their duties instituted by the

¹⁰ AIR 1995 SC 2438

¹¹ AIR 1962 SC 305

Constitution of India and other legislations.

In **Court on its own motion vs. State**¹², a television news channel telecasted a programme based on sting operation. The sting operation showed how Ms. Uma Khurna, a teacher of school forcing girl students to prostitution. The girl forced by Umakhurna is not a student but a Journalist. The police found no evidence. The Supreme Court reprimanded the TV channel and suggested certain guidelines. They are:

- Channel proposing to do sting operation should obtain certificate from person who records it for genuine of his knowledge or for the declaration.
- They should have a con-current record in writing of various stages of operation.
- For telecasting a sting operation should obtain certification from the committee appointed by the Ministry of Information and Board.
- Both edited and unedited tapes should be produced before the committee.
- Sting operation should be in compliance with the rules prescribed in Cable TV Network (Regulation) Act, 1955 and rules made there under.

Thus sting operation should be done in such a way to find a crime which happened and not make people involve in doing crime. Thus Sting should not prevent the public servants from doing their duty and it should not interfere in the of privacy of others.

Media Trial

Most of the big scams were expressed by the press. For example in **Neera radia Tape case**, the 2G spectrum scandal for illegally undercharging mobile telephone for allocation of frequency and license. The difference between money got and instigated by law is estimated as Rs. 1, 76, 00,000. The issue came to the public by the media. Six conversations between Nira Radia and Kanimozhi (member of legislative assembly) were published. The Indian income tax department started their investigation only after such publication. It leads to arrest of Raja (member of legislative assembly) and Kanimozhi. Thus, media exposed the scam of political parties.

In **Jessica lal case**, a model was murdered by Manu Sharma, the son of congress leader. Manu Sharma asked for a drink which was refused by Jessica lal. So, she was shot dead. The witness was influenced by Manu Sharma's father. Due to lack of evidence, the Manu Sharma was acquitted. Finally media interfered in this case and gave a tape and the Government ordered for re-trial and the Manu Sharma was convicted.

Trial by media has created a problem in free trial by the Judiciary. For example in **Arushi Talwar case**, media exposed the elements of illicit relationship, adultery, honour killing, etc. The media was criticized for unprofessionalism. Thus Media trial should not affect the fair trial by the Judiciary. It should influence the Judge to give a wrong Judgment or it should not present a case other than as such what happened.

¹² (2008) 146 DLT 429

CONCLUSIONS

Thus media has vast rights to provide information to the society, to circulate, to conduct interviews and to report the court and legislative proceeding. Thus Media plays a major role in changing the opinion of society. With its increased role, they should have professionalism, transparency and accountability is essential. It is the duty of press to expose wrongs in the society. But it should be based upon facts and evidence. Media should not publish matters which portrays wrong opinion to the society. Media trial should be fair and it should not interfere with the Judiciary to give a fair Justice.

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