

THE CONVOLUTED RELATIONSHIP OF MEDIA AND DEMOCRACY IN INDIA

Once a noble man said, 'Democracy is the Government of the people, by the people and for the people¹'. It's true that 'people', in particular, 'people with freedom of speech' are the focal points for the successful existence of any democracy in the world. Freedom of speech has always been a much discussed issue and various nations treat this as the paramount right given to their citizens. However, the existing circumstances surrounding the liberty of speech strikes at the very root of the Democracy making way for nebulous conjectures.

In this context it can be said that the Press occupies a position of utmost importance in any democratic society and has a very special and multi-dimensional role to play in strengthening the democratic edifice. The press is at once a creator of public opinion, a watchdog, an educator and above all a facilitator of an informed democracy. On another plane, democracy can sustain and develop only if it encompasses in its fold a free, responsible and objective press. Across democratic societies, the press is recognized as the fourth estate, with the right to discharge its varied functions in a bona fide and constructive manner. It has ever to be alive to its duties and responsibilities by dissemination of faculty objective information, or else the foundations of democracy could flounder. There has to be a commitment not to confuse one's views as news².

India being the biggest Democracy in the world takes pride in having, 1 billion and odd populace, 28 states, thousands of castes, hundreds of languages and yet, unified in the middle of such diversity. Save for; does Indians exercise actual freedom of speech? What does it takes to be called a Democracy? Does Democracy really exist in the world in its purest form? What is the role of media in upholding Democratic values of a country? On this note, a

¹ Abraham Lincoln, former President of the US.

² Chaterjee, Somnath: Ex-Speaker, Lok Sabha, October 2005, New Delhi, in foreword to Forbidden Zones, Sebastian Paul.

detailed assessment should help understanding the concepts of Democracy, Freedom of speech and Media.

CONSTITUTION OF INDIA AND THE FREEDOM OF SPEECH

When Independence dawned on India in 1947, the people who fought for the independence of India undoubtedly knew one thing i.e. the establishment of a Democratic form of Government. It was a difficult process, a sticky situation where Pakistan got separated from India and there was an intricate conflict going on between Hindus and Muslims in the country. Around the same time the Constituent Assembly was formed wherein its resolution envisaged for a Constitution to India which guaranteed justice, equality and freedom to all people. Clause 5 of the resolution specifically provided for the freedom of thought, expression, belief and faith in the Constitution. This was the major step towards giving shape, in the printed and written word, to a Nation's dream and aspiration³. Most importantly it was crystal clear in the minds of the framers of our Constitution that the Right to live in a free country, the Right to express one's opinion freely is crucial and to build a system where such Rights were respected and upheld. They also clarified that the freedom in question included the guarantee of freedom of the press. However, there were divergent views regarding the nature of restrictions which the state could impose on the freedom of the press. After a detailed discussion as well as satisfactory explanation from Dr.Ambedkar, it was agreed upon that the state should be given some powers to enact legislation imposing reasonable restrictions on the exercise of this freedom. It was realised that such restrictions were necessary so that the freedom does not become a license to say, write or point anything that one likes without owning any responsibility. It was with a view to maintain a social peace and harmony and enable others to enjoy the freedom that the State was permitted to impose some restrictions on freedom of the press. Thus we find that, the Assembly by according it

³ Constituent Assembly Debate, Vol. I at 59

the status of fundamental rights recognized the importance of the freedom, as an essential aspect of a democratic form of Government.

As in other countries, freedom of the Press has been given the highest priority and recognition in our political system too, as it is implicit in the fundamental right of the freedom of speech and expression guaranteed under Article 19(1) (a)⁴ of the Constitution. This freedom however, is subject to reasonable restrictions as contemplated by the Constitution itself. The freedom of expression means the right to express one's convictions and opinions and also to seek, receive and impart information and ideas, either orally or by written or printed matter or by legally operated visual auditory devices, such as the radio, cinematography, loudspeaker and the like⁵. Since the ideas require propagations, it has been held to include their publication and circulation⁶. It must be admitted that freedom of expression has a direct relation with the acquisition of knowledge and the means to write and to print and so freedom of press means the right of an individual to print and publish through printing, whatever he wishes, subject to the corresponding right of every other person and subject to the right of the society to restrict publications which are not conducive to public or collective interests⁷. Thus, the freedom of press is regarded as a "species of which freedom of expression is a genus."⁸

Article 19(1) (a) in the original Constitution guaranteed the fundamental right to 'freedom of speech and expression' subject to the qualifiers in clause 2: the government's authority to legislate concerning libel, slander, defamation, contempt of court, any matter offending

⁴ Article 19: Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression.

⁵ Basu, D.D: Law of the Press in India, (1st edition.,1980) pg. 34

⁶ All India Bank employees Association V. N.I. Tribunal, AIR 1962 SC 171, 179

⁷ AIR 1973 SC 1091

⁸ Sakal Newspaper Ltd V. Union of India, AIR 1962 SC 305

decency and morality, 'or which undermines the security of or tends to overthrow, the State'.

Early in 1950 three State governments invoked these qualifiers to curb freedom of expression. In Bihar, the Government challenged a political pamphlet as inciting violence. In East Punjab, the Government imposed pre-censorship on an English-language weekly in the name of maintaining public safety and order. In Madras, the Government banned the entry of the journal 'Crossroads', into the state. Each State took action under some version of 'Public safety acts', and each defendant turned for protection to the first clause of Article 19.

The Patna high court rejected the Bihar Government's contention that the pamphlet incited violence where as the East Punjab Public Safety Act, 1950, was struck down in the Supreme Court- by the same bench that decided the Crossroads case- on the ground that pre-censorship restricted liberty of the press. The Madras incident in its effect proved the most significant of the three. Mr. Romesh Thapur, the applicant⁹ in the Madras incident, appealed to the Supreme Court under Article 32, which gives the Court, original jurisdiction in fundamental rights. On 26th May, 1950, the Court decided the case where it said that, "unless a law restricting freedom of speech and expression is directed solely against undermining the security of the State or the overthrow of it, such law cannot fall within the reservation of Clause 2 of Article 19."¹⁰ Although the applicants were happy that they had been vindicated by the Supreme Court and that the case 'went on the statute book... establishing the freedom of expression in India,¹¹ it was far more significant that the Home Minister Sardar Patel thought the Crossroads decision 'knocks the bottom out of most of our penal laws for the control and regulation of the press'.¹²

⁹ Romesh Thapur V. State of Madras, AIR 1950

¹⁰ Justice M.C.Mahajan's thoughts on these cases, see his Looking Back, Asia Publishing House, New York, NY, 1963, pp 198-201

¹¹ Thapar, All these Years, P.87. The Thappars had expected an adverse decision, especially from Mahajan.

¹² Patel-Nehru letter dated 3 July 1950. Durga das, Patel's Correspondence, vol.10 pg. 358.

These judgements depict the dimensions of the freedom of speech in India which principally deal with the concept of reasonable restrictions and the right of a private person including the media in relation to the State. Though there has been an upper hand of the private individuals, it has to be noted that the freedom of speech expands only to the extent of expression of a legitimate opinion and does not include any derogatory or illegal estimation about a particular person or an event.

DEMOCRACY AND MEDIA

“Tell me, why is the media here so negative? Why are we in India so embarrassed to recognise our own strengths, our achievements? We are such a great nation, we have so many amazing success stories but we refuse to acknowledge them .Why?”

-Dr. Abdul Kalam

The above observation made by our former President holds absolutely right for the present functioning of media in India. The objective of this section is to analyse the working of media in India and elucidate the possibilities for the smooth sailing of media and democracy.

Media especially the television, the news channels, have a greater impact on the opinions of the mass in India. A significant number of people are less educated and it can be said that they do not have a stand on current affairs and plainly believe what they perceive through television. The other sections of the society who are well educated are having opinions crafted by the newspapers. This is an obvious situation where one has to believe what he/she watches or reads in television and newspaper respectively. In such state of affairs the media has to be very cautious about what they are passing on to the people. Unfortunately what is happening is not something to be appreciated. It might not be right to say that the modern

media is ignorant on exploring the truth behind any event for that matter but it is definitely not acting responsible for what it is circulating to the mass.

As discussed before the Constitution of India has provided greater rights to the press to express their opinions. Though those rights are restricted, to an extent the media is given certain privileges when compared to countries like China or Pakistan where the journalists are being punished brutally for being brave enough to write against the Government. This is obviously not the case in India.

It would be outrageous to claim that the media is a total failure in infusing the Democratic sentiment among the mass but there is an absence of sensitivity and sincerity in their outlook. It is true that the sentiments of people is driven by what they see or hear instantly, which might change after a thorough introspection but it certainly cannot change the harm which has been done because of the sudden burst of emotions. Especially in a country like India any issue can light up a pandemonium if not dealt in the right way. India is a country with diverse culture and to an extent has still maintained the traditional attitude. Communal and regional clashes happen often because of trivial issues wherein there are instances of media being involved directly or indirectly.

The role of media is to create an informed citizenry. It is absolutely important that media does not involve in sensationalizing any news and act coherently in times of crisis. Cultural studies have investigated changes in the increasing tendency of modern mass media in the field of politics to blur and confuse the boundaries between journalism, entertainment, public relations and advertising¹³. A diverse range of information providers are necessary so that viewers, readers and listeners receive a broad spectrum of information from varying sources

¹³ Meyer, Thomas; Hinchman, Lew (2002). Media Democracy: How the Media Colonize Politics. Cambridge: Polity Press. pp. x. ISBN 0745628443

that are not tightly controlled, biased and filtered¹⁴. Access to different sources of information prevents deliberate attempts at misinformation and allows the public to make their own judgements and form their own opinions¹⁵. This is critical as individuals must be in a position to decide and act autonomously for there to be a functioning democracy¹⁶.

Further it would not be a rational approach to completely forget the rightful deeds of media which has successfully hatched the cases like that of Jessica Lal, Cash for query Parliament scam, the recent issue of watching indecent videos in Karnataka Legislative Assembly by Members of Legislative Assembly, the role of media in the Naxalite quandary and also the British scandal of Rupert Murdoch empire etc. It is as well factual that people are not afraid of approaching police or court because of the backing of media which is working positively in that way. All this is highly commendable, but on the other hand there is a big void being created between responsible media and the democratic values because of the following developments.

- Involvement of people in media with vested interest like politicians and huge conglomerates wherein the politicians themselves have started numerous news channels and newspapers promoting themselves and have completely forgotten the basic principles of democracy.
- Cut throat competition among the media personnel which undermines the whole idea of responsible journalism where the so called respectable journalists involve in hurling dirt over each other's reputation.
- Sensationalizing the critical issues for more coverage which may amount to internal disturbances. For example in the Kaveri river water distribution case, the media instead of

¹⁴ Williams, Frederick and John V. Pavlik, ed. (1994). *The People's Right to Know: Media, Democracy, and the Information Highway*. New Jersey: Lawrence Erlbaum Associates. pp. 153. ISBN 0805814914

¹⁵ Exoo, Calvin F. (2010). *The Pen and the Sword: Press, War, and Terror in the 21st Century*. California: Sage Publications. pp. 195–196. ISBN 978-1-4129-5360-3

¹⁶ Meyer, Thomas; Hinchman, Lew (2002). *Media Democracy: How the Media Colonize Politics*. Cambridge: Polity Press. pp. 1. ISBN 0745628443.

acting maturely is creating perplexity among the people of Karnataka and Tamil Nadu for which the media personnel of both the states are equally responsible.

- Profit motive newspapers provide more coverage for advertisements, inane cinema stories and glitz. It can be said that the modern media is mainly interested in entertainment and is engrossed in unethical practices.
- The sanctity of the profession of journalism is tainted by the alleged involvement of journalists in blackmailing the politicians and other persons in reputable positions for fulfilling their malicious objectives and also for money.

The Advocates and Media personnel clash in Bangalore throws much light on the subject matter. As per the eye witnesses¹⁷ the issue was inconsequential as it was a petty clash between the Police and an Advocate. But it grew to such an extent where both the sides (Media and Advocates) indulged in creating hatred towards each other which captured the national attention. The Advocates and media personnel forgot that they belonged to the highly regarded sections of the society and involved in nasty fights and vulgar exchange of words. Here, both the sides had their own story to tell. The media played their side of the story while the Advocates were busy filing defamation cases against the media personnel. However the truth is that there was an utter failure of Democracy.

In the instant case, if the media would have been a little cautious and responsible the clash between them and the Advocates wouldn't have taken place. Same way if the Advocates had acted rationally the triumph would have been that of the truth and the ideals of Democracy.

This is an apt example for the working of the modern media. It shows that the media is so much gripped in the invincible web of self claimed righteousness that it hardly tries to search for the ways to beat it. The media might claim that, what they circulate is absolutely true but

¹⁷ In reference to the Compact Disc provided by the Advocates of High Court of Bangalore and other newspaper articles and videos.

the impact of it could be estimated only when such clashes happen which shudders a common man's belief in Democracy.

Gone are the days of strict adherence to moral values. By and large, people are more interested in making money and raking them in tax haven. The basic principles of our Constitution which are Democracy, Justice, Equality, Fraternity etc are no more regarded with inviolability.

On this note, it is equally important to explore new ways for harmonizing the relationship between media and Democracy. It is imperative to bring certain changes in the Media Law in India. Implementation of reforms is as important as having laws on the books, which creates an enabling environment for media freedom and makes it more responsible¹⁸.

The Newspaper Act (prices and pages) 1956, Defence of India Act, 1962, Press Council Act 1978, Drug and Magic Remedies (Objectionable Advertisements) Act 1954 are few of the legislations dealing with the media in India. It is rather saddening that they do not have a great impact on the functioning of the media. Above all, these legislations do not and cannot edify ethics to media. Regulation of media censorship is also the need of the hour. Accountability, rationality and objectivity are the three pillars of journalism. It is important that the media adopt these pillars in their practice and work towards creating a safer and knowledgeable society.

ON A POSITIVE NOTE

“Whoever controls the media, the images, controls the culture.”

- Allen Ginsberg

¹⁸ The role of media in democracy: A strategic approach. Center for Democracy and Governance Bureau for Global Programs, Field Support, and Research, U.S. Agency for International Development. Pg.15.

What the media publishes has a direct connection with the day to day actions of the members of the society. It is undeniable that media controls the emotions of commoners which solidly connects to culture and the way of life of the people.

For security and prosperity, the spread of democracy is essential. Democracy is impossible without a free press. There is no doubt that the press should be responsible. But responsibility is not likely to be taught by the John Twyn treatment or lesser forms of repression. At the same time any external regulation, be in the form of pre-censorship or otherwise, is anathema because of the importation of the Blackstonian concept of press freedom to our Constitution on board a series of US Supreme Court decisions¹⁹.

Thus there exists a complicated relationship between the Media and Democracy which has continued for decades together and perhaps will continue unless the Government and Media understands the gravity of the issues affecting the society and act determinedly towards promoting peace.

It would be pertinent to conclude by quoting Justice Bhagavathi's observation in *Maneka Gandhi V. Union of India*,²⁰ which runs as, "Democracy is based essentially on free debate and open discussion, for that is the only corrective of Governmental action in a Democratic set-up. If Democracy means government of the people, by the people, it is obvious that every citizen must be entitled to participate in the Democratic process and in order to enable him to intelligently exercise his right to making a choice, free and general discussion of public matters is absolutely essential. Manifestly, free debate and open discussion, in the most comprehensive sense is not possible unless there is a free and independent press. Indeed the true measure of the health and vigour of a Democracy is always to be found in its press. Look at its newspapers – do they contain expression of dissent and criticisms against governmental policies and actions, or do they obsequiously sing the praises of the government or lionize or

¹⁹ Paul, Sebastian : *Forbidden Zones, Law and the Media*, Pg. xii

²⁰ AIR 1978 SC 597

deify the ruler? The newspapers are an index of the true character of the government, whether it is democratic or authoritarian. It was Mr Justice Potter Stewart (of US Supreme Court) who said: “Without an informed and free press, there cannot be an enlightened people”. Thus freedom of the press constitutes one of the pillars of Democracy.

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