

## **RIGHT TO INFORMATION AND THE FREEDOM OF PRESS: THE COMPLEMENTING AND INEVITABLE MEDIUMS**

*Written by Kishan Sandu\* & Prof. Dr. Komal Audichya\*\**

*\*BA LLB, Seedling School of Law and Governance, Jaipur National University*

*\*\*Assistant Director, Seedling School of Law and Governance, Jaipur National University*

---

### **ABSTRACT**

It goes without saying that an informed and updated citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. And information is any material in any form, including records, press release, e-mails, etc, therefore Right to Information Act was formulated to empower people's fundamental right to information. And the best way of being informed and updated is through press and the strength and importance of media in a democracy is well recognized in article 19(1)(a) of the Indian Constitution, which gives freedom of speech and expression and includes within its ambit, freedom of press. The existence of a free, independent and powerful media is the cornerstone of a democracy.

The purpose of the following research is to give a descriptive analysis of, why freedom of press is important to keep us informed. The research gives an answer to our questions:

1. Why right to information is important and because of which the government was compelled to pass Right to Information Act, the present position of the act
2. The history and evolution of press in India, its inevitable place in our lives; which led to the inclusion of art. 19 (1) (a) in the Constitution of India; did this article really help; and
3. How Freedom of Press and Right to Information complement each other; they keep public informed about not only government but also other institutions, organizations and individuals by which they are or are likely to be affected.

Till now, the research has led us to the conclusion that, informed citizens shall keep the institutions and individuals under pressure to perform proficiently, effectively for larger benefit and ensure transparency in the system and this can happen only if the press of our country is free.

## **RIGHT TO INFORMATION**

To suppress the information from its subject and thereby repress any move by the subject against the government the British Raj enacted The Official Secrets Act in 1889 and later redesigned the same in 1911, and 1923. Fifty years after independence, secrecy was the norm in the working of the government, and transparency, the exception. In the guise of protecting the state's interest, secrecy in public affairs has been a shield for those in government, concealing their actions from public scrutiny. Access to information, on the other hand, is power in the hands of electorate. It demands accountability and transparency. This is fundamental to the functioning of any truly democratic society. The feature of a meaningful democracy is the institutionalization of transparent and participative processes which gives to power and enables it to make an informed decision to remove that government from power, if it so chooses

For many decades, despite the establishment of parliamentary democracy in India and formulation and passing of different bills, there was no legal Right to Information (RTI). It was then through the interpretation of Article 19(1)(a) of the Constitution that the Supreme Court carved out a fundamental RTI as being implicit in the right to free speech and expression. The right to impart and receive information is a species of the right to freedom of speech and expression guaranteed by Article 19(1) (a) of the constitution of India. A citizen has a Fundamental Right to use the best means of imparting and receiving information. . It must, however, be noted that freedoms under Article 19, including Article 19(1) (a), are available only to citizens of India Moreover, reading Article 19(1) (a) along with International Covenant on Civil and Political Rights, it must be recognized that right to freedom of speech and expression includes freedom to seek, receive and impart information of ideas.

In *Romesh Thappar v. State of Madras*<sup>i</sup> the Supreme Court laid emphasis on the people's right to know. In another case the apex court upheld the RTI as being part of the freedom of speech

and expression and relied on the dictum of Lord Simon of Glaisdale in *Attorney General v. Times Newspapers Ltd.* <sup>ii</sup>In the landmark judgment of *State of U.P. v. Raj Narain* <sup>iii</sup>, the Supreme Court observed, “The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption<sup>iv</sup>.”

In early 1960s Scandinavia and USA enacted laws giving the citizens a statutory right to information and it was not for over another forty years, that a bill called the Freedom of Information Bill, 2000 finally came to be introduced in the Indian Parliament.

The campaign for legislation on the RTI: The campaign in India for the RTI evolved with a grass root movement in Rajasthan in the mid-1990s. The Mazdoor Kisan Shakti Sangathan, an organization of peasants and rural workers, led a sustained campaign for information on development expenditure in Panchayati Raj institutions. The MKSS campaign was followed by the efforts of a coalition of senior journalists, lawyers, academicians and NGOs called NCPRI to draft a model bill on the RTI for the Central Government’s consideration. This became a wide consultative process with the participation of the Press Council of India. In India, some states such as Goa, Tamil Nadu, Rajasthan, Madhya Pradesh, Karnataka, Maharashtra, Delhi and Assam initiated provisions under law to provide selective information between the mid- 1990s and 2003.

Eventually, the Central Government introduced Freedom of Information Bill in 2000 which was passed by Parliament in December 2002 and the Freedom of Information Act, 2002 came into force. But even as the Freedom of Information Act, 2002 came into force, the government continued to grope for pretexts to justify withholding information from the citizens.

This Act was repealed and substituted by the Right to Information Act, 2005 which received the assent of the President on 15<sup>th</sup> June, 2005 and was published in the Gazette of India on 21<sup>st</sup> June, 2005. The Act seeks “To provide for setting out the practical regime of RTI of citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of

Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto <sup>v</sup>.

The Act is in accord with both Article 19 of the constitution as well as Article 19 of the Universal Declaration of Human Rights, 1948. The act will enable the citizens to have an access to information on a statutory basis. With a view to further this objective, Section 3 of the Act specifies that subject to the provisions of this Act, every citizen shall have the right to freedom of information. Obligation is cast upon every public authority u/s 4 to provide information and to maintain all records consistent with its operational requirements duly cataloged, indexed and published.

An important improvement in the Act of 2005 over the act of 2002 was the imposition of a duty to publish on public authorities. Duty to publish is recognition of the principle that transparency must be the norm and not the exception. The government authorities were made to disclose on their website or through such other accessible means, information of public interest. Other accessible means here refer to press where the word 'press' encompassing the electronic media also.

This right is of special importance to the media whose lifeline is information and whose business is to communicate information to the electorate so that the latter may make informed choices.

A citizen surely cannot be expected personally to gather news to enable him or her to form such opinions. Hence, the media play an important role in a democracy and serve as an agency of the people to gather news for them. It, however, goes without saying that information can be published through press and correct information can be published only when press is free.

The press gathers information from various sources which must be assured anonymity and protection to ensure the free availability of information. Investigative journalism is assisted by sources who would be exposed to danger or embarrassment if named and to whom anonymity must be assured as a precondition for assistance. In *British Steel Corporation v. Granada Television Ltd.*<sup>vi</sup>, Lord Salmon observed 'The immunity of the press to reveal its sources of information save in exceptional circumstances is in the public interest, and has been so accepted

by the courts for so long that I consider it is wrong now to sweep this immunity away...The freedom of the press depends on this immunity. Was it to disappear so would the sources from which its information is obtained; and the public would be deprived of much of the information to which the public of a free nation is entitled<sup>vii</sup>.

## **EVOLUTION OF PRESS / MEDIA IN INDIA**

The word press is an exhaustive term which shall for the all practical purposes besides newspaper and news magazine includes news bureaus, television, radio, cinema and now in present times internet the strongest and effective mode of mass and social media. The Indian media was initiated since the late 18<sup>th</sup> century with print media started in 1780 by James A Hickey who started the first Indian newspaper the Bengal Gazette and then came to be known as the father of Indian press, radio broadcasting initiated in 1927, and the screening of Auguste and Louis Lumiere moving pictures in Bombay initiated during the July 1895. Over the period newspapers in Hindi and other vernacular languages started to be printed in the pre-independence era.

The British Indian Rulers wanted to suppress the criticism in the press and brought the Censorship Law in 1799, which was the beginning of the oppressive legislation against the print media. To further tighten the control on media the British Government enacted various Censor and Oppressive laws in India. After independence it was felt that the oppressive laws prevalent during the British rule were sought to be reviewed and repealed. The Constitution of India that came into force on 26<sup>th</sup> January, 1950 assured freedom for press and liberty of thought and expression.

Indian media is one of the oldest and largest media of the world. In India, the media have played a historical role in providing information to the people about social, economic and political issues. The media have informed the people about the social and economic evils and crimes. It is the media which have at times kept the issues live by reaching the masses and forced the administration as well as judiciary to try and prosecute the guilty. The media in the beginning was a humble newspaper which over the period of time and development in printing, electronic and information technology has now become mass social media. The advent of magazines, television, cinema, internet and now mobile technology has enabled dissemination of information at lightning speed.



The Indian media has kept pace with the international peers and has undergone phenomenal changes post-independence of the country or more precisely after the Constitution of India came into force. Considerable freedom was granted to press with reasonable restrictions on the exercise of rights in the interests of the 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.

Several laws have been enacted in free India maintaining the freedom of press but to keep the misuse of rights under check. Delivery of Books and Newspapers (Public Libraries) Act, 1956, the working Journalists' (Conditions of Service and Miscellaneous Provisions Act, 1955, The Newspapers (Price and Page) Act, 1956, Parliamentary Proceedings (Protection of Publication) Act 1960 are some of them. The Constitution of India was amended relating to provisions concerning the freedom of speech and expression. Prasar Bharathi was passed to regulate the management of Radio and Television under government. The Cable Act was made. The Broadcast Regulation Bill is being revised. Several sections of Indian Penal Code and Criminal Procedure Code deal with definition of offences, prescription of punishments and procedure for trial, concerning the media. Information Technology Act, 2000 was amended in 2008 which had several provisions affecting the media, especially the new media internet.

Media is not only a medium to provide information but also express one's feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. The criminal justice system in this country has many lacunae which are used by the rich and powerful to go scot-free. Figures speak for themselves in this case as does the conviction rate in our country which is abysmally low at 4 percent. In such circumstances the media plays a crucial role in not only mobilizing public opinion but bringing to light injustices which most likely would have gone unnoticed otherwise.

However, the media have a great responsibility also to see that the news they present is accurate and serve the interest of the people. If the media convey false news that may harm the reputation of a person or a section of society, it may do great damage since reputation is a valuable asset for a person. Hence, the media should take care to carefully investigate any news item before reporting it.

## **FREEDOM OF PRESS**

The strength and importance of media in a democracy is well recognized. Article 19(1)(a) of the Indian Constitution, which gives freedom of speech and expression includes within its ambit, freedom of press. For a proper functioning of democracy and more specifically in a highly mixed society like India it is essential that citizens are kept informed about news and information from various parts of the country and even abroad, to enable them to think and form rational opinions. It is for this reason that freedom of the press has been emphasized in all democratic countries, of course this freedom comes with a responsibility and sovereign limitations.

Blackstonian concept of freedom of press which was expressed as early as in 1769 contained four basic points<sup>viii</sup> which still form the crux of the concept of press freedom. They are as follows:

1. Liberty of the press is essential to the state.
2. No previous restraints should be placed on the publications.
3. Press freedom is not an absolute freedom and is subject to prohibitions of by law.
4. Every freeman has the undoubted right to lay what sentiment he places before the public, but if he publishes what is improper, mischievous or illegal he must take the consequence of his own temerity.

Article 19(1)(a) of Indian constitution which says that 'all citizens shall have the right to freedom of speech and expression has been inspired by the constitution of the United States of America. Unlike the American constitution, the Indian constitution did not make a specific or separate provision for the freedom of the press. The constituent assembly made a decision that separate right for the press as distinct from that of the ordinary citizen should not be inserted. Freedom of press is implied from the Article 19(1)(a) of the constitution however, as mentioned in Article 19(2), reasonable restrictions can be placed on this right, in the interest of the sovereignty and integrity of India, the security of the state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Hence, freedom of the media is not an absolute freedom. 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. Briefly, Article 19(1)(a) covers the right to express oneself by word of mouth, writing, printing, and 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,<sup>ix</sup> including the electronic and audiovisual media.

Although no special provision was made to safeguard the rights of the press, the courts time and again confirmed that the rights of the press are implicit in the guarantee of freedom of speech and expression under article 19(1)(a). In *Express Newspapers (P) Ltd. V. Union of India*<sup>x</sup> the court said 'Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its rights to choose the instrument or to seek an alternative media...would be struck down as constitutional<sup>xi</sup>. In *Romesh Thapar v. State of Madras*<sup>xii</sup> it was observed that 'Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion. No public education, so essential for the proper functioning of the process of popular government, is possible'. In *Indian Express v. Union of India*, it was held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements: freedom to access to all sources of information, freedom of publication and freedom of circulation.

At this juncture, as we are approaching the seventh decade of our freedom, let's keep in mind the pertinence of freedom of press and what our former Prime Minister Rajiv Gandhi had said about press freedom:

"Freedom of Press is an Article of Faith with us, sanctified by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation."

## CONCLUSION

In Indian democracy media has a responsibility which is deeply associated with the socio-economic conditions. The present scenario is not quite encouraging and certain areas need to be addressed. Media organizations, whether in print, audio visual, radio or web have to be more



accountable to the general public. It should be monitored that professional integrity and ethical standards are not sacrificed for sensational practices. The freedom of press in the country is a blessing for the people. However, this blessing can go terribly wrong when manipulations set in. The self-regulatory mechanism across media organizations need to be strong enough to stop anomalies whenever they occur. Agencies like Press Council of India need to be vigilant to stem the rot. Big media conglomerates are a serious threat. To counter these problem pluralistic media organizations which are financially viable need to be encouraged? Community participation is a goal that the media should strive for in a country like India. As far as the right to information is concerned, the RTI Act has laid out a mission statement of sorts by stating that it is essentially a practical roadmap, detailing how citizens of India can gain access to information which in turn will promote good governance. Indeed, the Act itself states that the paramount of the democratic ideal must be preserved by reconciling and harmonizing information that must be shared with the public, and secure information, that is integral to the security and economy of India.

## REFERENCES

- 
- i. AIR 1950 SC 124
  - ii (1973) 3 All ER 54
  - iii (1975) 4 SCC 428: AIR 1975 SC 865
  - iv Ibid., Para 74, p.453 (SCC)
  - v The RTI Act, 2005, Preamble
  - vi (1981) 1 All ER 417
  - vii B.S.C. v. Granada Television, (1981) 1 ALL ER 417, p. 475.
  - viii Press and the Law (1990) by Justice A.N. Grover; pg 7 Para 2
  - ix S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574
  - x AIR 1958 SC 578
  - xi Supra n. 15, Para 150, p. 617.
  - xii AIR 1950 SCC 124