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**Address:-Ashok Yakkaldevi 258/34, Raviwar Peth, Solapur - 413 005 Maharashtra, India
Cell : 9595 359 435, Ph No: 02172372010 Email: ayisrj@yahoo.in Website: www.isrj.net**



CONSTITUTIONAL ASPECTS OF MEDIA LAW IN INDIA: AN ANALYSIS

SIDDHANT S. KONDARWAR

Assistant Professor in New Law College, Bharati
Vidyapeeth Deemed University, Pune

Abstract:

Media is one of the forth pillar of democracy. The importance of media is found in all the democratic countries like U. S. It brings transparency in the governance and also helps in protecting the democratic principles. Media keep watch on the functioning of the government. Hence there is need to protect the rights of media. Though there are reasonable restrictions given under Art. 19 (2). Sometimes government curtails the rights of media through different legislations. Such activities are harmful for citizens, because their right to know is violated through of such legislations. In this Article I mention different the rights of media. There is need to develop rights of media so that we can more effectively control on the corrupt activities of the government.

INTRODUCTION

Constitution of India provides liberty of thought, expression, belief, faith and worship. Right to freedom of speech and expression which is provided under Art. 19 (1). The Indian constitution does not provide freedom for media separately, but there is an indirect provision for media freedom. In case decided by the Privy Council as, "the freedom of the journalist is an ordinary part of the freedom of subjects apart from the status law, his privilege is no more and no higher...no privilege attach to his position." The same view was expressed by the Supreme Court while deciding the case, "press in India stands on no higher footing than the freedom of speech and expression of the citizen and no privileges attaches to the press as such."

DEMOCRACY AND MEDIA:

Justice P. N. Bhagwati in *Maneka Gandhi v. Union of India* mention importance of right to freedom of expression in democracy in these words, "democracy is based essentially on free debate and open discussion, for that is the only corrective of government 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 democracy in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matter is absolutely essential"

The democratic credentials of state are judged today by the extent of the freedom given to media. Douglas, J. of the U.S. Supreme Court has observed that, "acceptance by government of a dissident press is a measure of maturity of the nation." The Supreme Court laid emphasis on number of cases on the importance of rights given to media. Supreme Court in *Printer (Mysore) Ltd. v. Assistant Commissioner Tax Officer* the supreme Court has reiterated that though freedom of the press is not expressly granted as a fundamental right, it is implied in the freedom of speech and expression. Freedom of press has always been a cherished right in all democratic countries and the press has rightly been described as 'fourth estate'. The

democratic credentials of a state are judged by the extent of freedom the press enjoy in that state.” In case of press it is the prime object to provide comprehensive and objective information on all aspects of the country's social, economic and political life. The media serves as a powerful antidote to any abuse of power by government official and also as a means for keeping the elected officials responsible to the people whom they elected to serve. Provisions regarding media and law also found in the Amendment I of the U.S. Constitution which says, “Congress shall make no law which abridges the freedom of speech or of the press.” This provision gives protection to the right to receive information and ideas. Media also plays very important role in protecting the right to information of the people. In one of the land mark judgment Supreme Court held that right to receive information acquires great significance in the context of election. In Leonard Hector v. Att. Gen. of Antiqua and Barbuda the Privy Council has observed, “In a free democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to fetter such criticism amount to 'political censorship' of the most objectionable kind.”

Art. 19 (1) (a) is allies to the citizen only and non-citizen cannot exercise this freedom in India. This can be controlled in case of print media. But what about digital media? Because there are no boundaries for cyber space. Even non-citizen also can exercise this right in digital media more effectively than print media.

RIGHTS OF MEDIA:

We have world's largest democracy. The democratic form of government provided in the constitution of India is a unique and ideal example for number of countries in the world. Hence it is necessary to focus on the different aspects in the constitution regarding the forth pillar i.e. media. Art. 19(1) (a) covers the right to express by words of mouth, writing, printing, or any other media. This right also include right to propagate one's view. The communication of ideas may be through electronic, print or digital or any other.

In U.S., the first Amendment specifically gives protection to the press. The views expressed by judiciary in U.S. is that freedom of 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.

RIGHT TO CIRCULATE:

The right to free speech and expression includes the right not only to publish but also to circulate information and opinions. State could not make any law which directly affect on the right to circulation of a newspapers and it being treated as violation of freedom of speech. Supreme Court also held that news papers should be free to determine their pages and circulation. Reduction in the area for advertisements would reduce revenue forcing the news papers to raise their price which was also bound to affect circulation.

RIGHT TO INFORMATION:

The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression. Without adequate information person cannot form an informed opinion. In State of Uttar Pradesh v. Raj Narayan the Supreme Court has held that Art. 19 (1) (a) not only guarantees freedom of speech and expression, it also ensures and comprehend the right of citizen to know, the right to receive information regarding matters of public concern. In Dinesh Trivedi, M. P. and Others v. Union of India Supreme Court observed 'in modern constitutional democracies, it is expected that citizen have a right to know about the affairs of the government which seek to formulate policies of government aimed at their welfare.' Supreme Court has observed, “there are widespread allegations of corruption against persons holding post and power. In such a situation, the question is not of knowing personal affairs but to have openness in democracy for attempt to cure the cancerous growth of corruption by a few rays of light.”

RIGHT OF REPORTER TO CONDUCT INTERVIEW:

To conduct interview is also important aspect of media. This right is subject to reasonable restriction i.e. consent of the person being interviewed. The press does not have an absolute or unrestricted right to information and their no legal duty on the part of citizen to supply information.

REPORTING LEGISLATIVE AND JUDICIAL PROCEEDINGS:

This has origin in the people's right to know legislative proceedings of parliament and state assemblies. In *Naresh Shridhar Mirajkar v. State of Maharashtra*, the Supreme Court held that court may restrict the proceeding 'in the interest of justice'. The court has inherent power under Sec. 151 of the Civil Procedure Code, 1908 to order a trial to be conducted in camera. But this power can be exercised only where the court is satisfied beyond doubt that the ends of justice would be defeated if the case is to be open court. Publicity of proceeding serves another important purpose. It enhances public knowledge and appreciation of the working of the legislature and judiciary. But it is not an absolute rule.

RIGHT TO ADVERTISE:

Supreme Court has considered this important question in *Hamdard Dawakhana v. Union of India*. In this case parliament enacted legislation with a view to control advertisement of drug in certain cases. The Act was challenged on the ground that restriction on advertisement was unreasonable restriction on right to freedom of speech. Court ruled that the object of the Act is not merely to curb advertisement offending against morality but also to prevent self-medication. A commercial advertisement having an element of trade and commerce and no longer falls within the concept of freedom of speech. An advertisement promoting drug and commodities, the sale of which is not in public interest, could not be regarded as propagating ideas and hence cannot claim protection of Art. 19(1) (a). Supreme court finally conclude in *Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd.* that 'commercial speech' cannot denied the protection of Art. 19(1) (a) merely because the same is issued by businessmen. 'Commercial speech' is a part of freedom of speech guaranteed under Art. 19(1) (a), and public also have right to receive the 'commercial speech'.

RIGHT TO RESPOND:

The article criticised unfair trade practices adopted by the LIC of India. A member of LIC responded to this article challenging the conclusion of the trustee and published them in the same newspaper. Supreme Court upheld the views of Gujrath High Court and held that LIC was under obligation to publish rejoinder or give response.

RIGHT TO BROADCAST:

With the development in science and technology, there is change in expression of medium. Telecommunication which is also one of the effective media. Speech and expression can also found in electronic media. In *Secretary, Ministry of Information and Broadcasting v. Cricket Assn. Bengal* the Supreme Court held that broadcasting is a means of communication and a medium of speech and expression under Art. 19(1) (a). Here court also held that broadcasting media depended on the use of airwaves.

Finally we can conclude that media plays very important role in democratic countries. All those rights given to media under the constitution are necessary for proper functioning of the democratic process. Different principles of democratic government are strengthened if there is protection to the rights of media.

¹Preamble of the Constitution of India.

²Infra foot Note No. 5

³AIR 1978 SC 597

⁴*Terminiello v. Chicago*, 337 U.S. 1.

⁵(1994) 2 SCC 434

⁶*Association for Democratic Reforms v. Union of India* AIR 2001 Del 126.

⁷(1990) 2 AC 312

⁸"Indian Constitutional Law", M. P. Jain, 2007, Page No. 990

⁹*Sakal Papers v. Union of India* AIR 1962 SC 305

¹⁰*Bennett Coleman & Co. v. Union of India* (1972) 2 SCC 788

¹¹AIR 1975 SC 865

¹²(1997) 4 SCC 306

¹³ ibid footnote no. 4

¹⁴ Prabha Dutta v. Union of India (1982) 1 SCC 373, Sheela Barse v. Union of India (1987) 4 SCC 373

¹⁵ AIR 1967 SC 1

¹⁶ AIR 1960 SC 554

¹⁷ AIR 1995 SC 2438

¹⁸ LIC v. Manunhai Shah (1992) 3 SCC 637

¹⁹ (1995) 2 SCC 161

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