



FACULTY OF JURIDICAL SCIENCES

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NAME OF FACULTY: Ms. Anjali Dixit

Lecture-8



LECTURE 8: Freedom of expression

Freedom of expression in particular, freedom of the press guarantees popular participation in the decision and actions of government, and popular participation is the essence of our democracy - Corazon Aquino

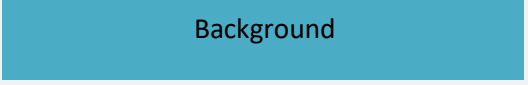
The right to freedom of expression is probably the most universally accepted human right. The freedom of the press is considered to be the most important right which must be protected in a democratic society. This freedom can only be available in a society where there is a right to free speech and expression. Similarly, the freedom of information can be enjoyed only if there are sources from which information can flow. These sources, again, would be available where there is a right to speech and expression. The freedom of expression and the freedom to receive and impart information are corollary of one another. In fact, there is an overlap between the freedom of expression and the freedom to receive or impart information. The freedom to impart information can be considered as an expression of an opinion, of the informant or of a third person.

The seeking of information, on the other hand, precedes the formation of an opinion by the person who seeks the information, and consequently also its expression. But with regard to the press, freedom of expression and information run parallel to each other. While the press might be the medium of expression, someone else might possess the information. Until and unless these two freedoms are exercised together both would be useless. In the case of information the only one who has the right of free distribution of that information is the party who is the author, originator or otherwise the intellectual owner of the information in question. In case of the press, however, the press can express opinions of others also, of course, held in good faith and believed to be true.

It is incumbent on the press, with regard to the print media as well as audio-visual media, to impart information and ideas which the public has the right to receive. Otherwise, the press would not be able to play its role of public watch dog. Freedom of press is conferred on by virtue of article 19 (1) (a). This constitutional provision is getting obsolete in the newly evolved scenario and therefore it needs to be revised. Thus for exercising the freedom of expression one

must have the freedom of information. In this regard, the approval of the Freedom of Information Bill, 2000 (Information Bill) by Indian Parliament would be a welcome move.

1. Developments in UK

Historically, restriction of the press has occurred in two ways. The first may be either censorship or mandatory licensing by the government in advance of publication; the second is punishment for printed material, especially that considered by the government to be seditious libel, i.e., material that may excite disaffection against constituted authority. Censorship of the press began not long after the invention of the printing press. Pope Alexander VI issued (1501) a notice requiring printers to submit copy to church authorities before publication, in order to prevent heresy. Penalties for bypassing the censors included fines and excommunication. Stronger restrictive measures were taken by the later Tudor and Stuart monarchs, and censorship came to be applied more to political criticism than religious heresy. John Milton in his *Areopagitica* (1644) attacked the licensing law and called on Parliament to suppress offensive publications after their appearance if necessary. Milton's objections to prior restraint eventually became a cornerstone of press freedom, but it was not until 1695 that the licensing and censorship laws were abolished. Severe restrictions on the press continued, however, in the form of seditious libel laws under which ish any printer who published material in any way ~~critical of the government.~~

2. Developments in USA

The defense of John Peter Zenger against libel charges in 1735 is often seen as the cornerstone of American press freedom. After the American Revolution, several states provided for freedom of the press, and the First Amendment (1791) to the U.S. Constitution declared that Congress shall make no law abridging the freedom of speech or of the press." Wartime situations often present challenges to the legal limits of press freedom. In 1931, the Supreme Court, in **Near v. Minnesota**[283 U.S. 697 (1931)], for the first time declared almost all forms of prior restraint to be unconstitutional. The only recognized grounds for prior restraint, national security, was tested in 1971 when Daniel Ellsberg, a former government employee who believed that information that should be made public was being withheld by the government, released the , pentagon paper a

collection of classified government documents concerning the Vietnam War. The government tried to block their publication, but the U.S. Supreme Court, in **New York Times Co. v. United States** [403 U.S. 713 (1971)] permitted their release. The U.S. Supreme Court has recognized no unrestricted right of press confidentiality.

Indian perspective

Press laws in India have a long history and are deeply rooted in the country's colonial experience under British rule. The earliest regulatory measures can be traced back to 1799 when Lord Wellesley promulgated the Press Regulations, which had the effect of imposing pre-censorship on an infant newspaper publishing industry. The onset of 1835 saw the promulgation of the Press Act, which undid most of the repressive features of earlier legislations on the subject. Thereafter on 18th June 1857, the government passed the Gagging Act, which among various other things introduced compulsory licensing for the owning or running of printing presses.

Then followed the **Press and Registration of Books Act** in 1867 and which continues to remain in force till date. Governor General Lord Lytton promulgated the **Vernacular Press Act of 1878** allowing the government to clamp down on the publication of writings deemed seditious and to impose punitive sanctions on printers and publishers who failed to fall in line. In 1908, Lord Minto promulgated the Newspapers (Incitement to Offences) Act, 1908 which authorized local authorities to take action against the editor of any newspaper that published matter deemed to constitute an incitement to rebellion.

However, the most significant day in the history of press Regulations was the 26th of January 1950 the day on which the Constitution was brought into force. The colonial experience of the Indians made them realise the crucial significance of the Freedom of Press. Such freedom was therefore incorporated in the Constitution; to empower the Press to disseminate knowledge to the masses and the Constituent Assembly thus, decided to safeguard this Freedom of Press as a fundamental right. Although, the Indian Constitution does not expressly mention the liberty of the press, it is evident that the liberty of the press is included in the freedom of speech and expression under Article 19(1) (a). [Indian Express Newspapers v. Union Of India, (1985) 1 SCC 641.] It is however pertinent to mention that, such freedom is not absolute but is qualified by certain clearly defined limitations under Article 19(2) in the interests of the public. It is necessary to mention here that, this freedom under Article 19(1)(a) is not only cribbed, cabined and

confined to newspapers and periodicals but also includes pamphlets, leaflets, handbills, circulars and every sort of publication which affords a vehicle of information and opinion.[Sakal Papers Ltd. v Union of India, AIR 1962 SC 305]

Role of UNO

In 1989, after the end of the Cold War, UNESCO further strengthened its commitments to freedom of the press. To this end, UNESCO organized in all regions of the world a series of seminars on freedom of the press, independent and pluralistic media which led to the adoption of key reference texts. These texts were subsequently endorsed by all Member States. Since the adoption of the New Communication Strategy by the General Conference in 1989, UNESCO has contributed to a wider recognition and public awareness of the importance of freedom of expression and freedom of information as a fundamental human right.

Scope And Limitation of Freedom of Press

Article 19(1) (a) of the Indian Constitution states simply that all citizens shall have the right to freedom of speech and expression. The companion Article, Article 19(2) qualifies this right by providing that the State can impose reasonable restriction on its exercise 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. Article 19(1)(a) does not refer specifically to the freedom of the press as does, say, the corresponding provision in the American Constitution, but judicial decisions have repeatedly affirmed that the Article is sufficiently wide to include the freedom of the press and, by extension, the freedom of other mass media.[Romesh Thapar Vs. State of Madras, AIR 1950 SC 124]

In **Romesh Thapars Case** and in several subsequent cases strict and narrow limits have been placed on the Legislative powers to abridge the right conferred by Article 19(1) (a). Any restriction on Article 19(1) (a) can only be valid if three conditions are met: - It is supported by the authority of law; The law in question is related to one or more of the permitted heads of restrictions laid down under Article 19(2); and the restriction is reasonable. It is also necessary that the procedure and the manner in which the restriction is imposed be just, fair and reasonable.[Express Newspapers Limited Vs. Union of India, AIR 1958 SC 578 at 621]

Although the constitutional validity of censorship itself has not been subject to any judicial

decision (except in relation to cinematograph films), the overwhelming weight of judicial opinion has on the whole, been against interference with the freedom of the press through the instrumentality of censorship. This is illustrated by a catena of decisions handed down during 1975-76 state of emergency, when for the first time in the history of independent India, a censorship order of sweeping character was issued, requiring editors and publishers to submit all material intended for publication to an officially designated officer "Censor" for clearance before publication.

The Bombay High Court came down heavily on the "Censor" and asserted that: It is not the function of the Censor acting under the Censorship Order to make all newspapers and periodicals trim their sails to one wind or to two along in a single file or to speak in chorus with one voice. It is not for him to exercise the statutory powers to force public opinion in a single mould or to turn the press into an instrument of brainwashing the public. Under the Censorship Order the Censor is appointed the nurse-maid of democracy and not its grave-digger. Dissent from the opinion and views held by the majority and criticism and disapproval of measure initiated by a party in power make for a healthy political climate, and it is not for the Censor to inject into this the lifelessness of forced conformity. Merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication. [Binod Rao Vs. M.R.Masani, (1976) 78 Bom.L.R.125 at 169] It is clear, on the basis of this and other decisions that, although censorship cannot per se be said to be unconstitutional, any attempt at imposing prior restraint on publication will have to meet the rigorous standards laid down under Articles 19(1)(a) and 19(2).

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Freedom of expression in particular, freedom of the press guarantees popular participation in the decision and actions of government, and popular participation is the essence of our democracy	True	False
2.	The right to freedom of expression is probably the most universally accepted human right.	True	False
3.	The freedom of expression and the freedom to receive and impart information are corollary of one another. In fact, there is an overlap between the freedom of expression and the freedom to receive or impart information.	True	False
4.	The news is the most common form of electronic media	True	False
5.	On 18th June 1857, the government passed the Gagging Act, which among various other things introduced compulsory licensing for the owning or running of printing presses.	True	False

Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)