

HUMAN RIGHTS AND RESPONSIBLE MEDIA – DOES NEGATIVITY AND SENSATIONALISM AFFECT HUMAN RIGHTS?*

Human Rights day commemorates the anniversary of the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations 65 years ago.

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.”¹

These words, from the preamble of the Universal Declaration of Human Rights have reverberated through 65 years of history in a multitude of Human Rights instruments the world over. Human rights are rights, which are intrinsic to every living being. They are those fundamental rights that are sacrosanct to ones very existence and cannot be taken away or infringed upon by state or individual action. These rights that we are entitled to inherently, by virtue of us being human are guaranteed to every individual through a variety of instruments such as international covenants, the Constitutions of nations, and a variety of other human rights instruments through the means of which, the state assumes the role of the protector of these indivisible, inherent rights. This role as a protector of human rights entails both rights and obligations. The obligation to respect requires the state to refrain from interfering with or curtailing the enjoyment of these rights. The obligation to protect involves the protection of individuals and groups against human rights abuses. This means that the exercise of the inherent rights of every individual must be respected; however they must also be regulated such that they do not violate the human rights of others. The final, and most important duty, falls upon the recipients of these rights, which is that while we are entitled to the enjoyment of these rights, we must also respect the human rights of others.

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¹ The Preamble to the Universal Declaration of Human Rights

In India, the Constitution forms the supreme law of the land. Such supremacy essentially means that all legislations are required to be in conformity with the Constitution and its provisions. Any legislation that is deemed by the Court to be ultra vires to the Constitution is struck down as unconstitutional and void. In its nascent stages as a country, India had no separate legislation for the protection of Human Rights. It was only in the year 1993 that the Protection of Human Rights Act was enacted which established the Human Rights Commission in India and explicitly enumerated the Human Rights, which were to be protected. For 43 years before that, ever since the formation of the Indian Republic however, Human Rights have been enshrined in our Constitution, albeit known by another title. In other words, Fundamental Rights that constitute Part III of the Indian Constitution and is the keystone of the Constitutional ark. These rights contain the basic human freedoms, which every Indian citizen is entitled to, including the right to equality, the right to freedom, which includes speech and expression, the right against exploitation, the freedom of religion, etc. They apply irrespective of race, place of birth, religion, creed, etc. and they not only protect individuals from arbitrary state actions but are also enforceable against private agencies. The basic human rights of the citizens of India are derived from Fundamental Rights, which have the inherent qualities and are synonymous with Human Rights and form the basic structure of the Indian Constitution. Article 32 of the Constitution of India vests the Supreme Court with Original Jurisdiction in all cases involving the enforcement of the fundamental rights of citizens, while Article 226 vests the High Courts of each State, the power to issue writs to defend the rights of citizens and adjudicate upon the same. The Supreme Court as the highest court in the land is considered the guardian protector of the fundamental rights of Indian citizens.

The Human Rights that we speak of, encompass a range of different freedoms that every individual is entitled to. They include the right to equality, the freedom from discrimination, the right to life, liberty and personal security, the right to fair public hearing, the freedom of speech and expression among a host of other rights and freedoms. In this day of modern technology, the freedom of speech and expression and the extent of its reach is worth considering. Concepts of the protection of the freedom of speech date back to England's Bill of Rights of 1689².

Article 19 of The Universal Declaration of Human Rights states as follows; -

² The English Bill of Rights of 1689 states as follows: "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament"

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”³

The importance of the freedom of speech and expression was also recognized by the Supreme Court of India, on the 26th of May 1950, merely four months after the Indian Republic was formed, in the case of *Romesh Thapar v. State of Madras*⁴ where the Court recognized that the

“freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible.”

It is widely acknowledged that one of the most valuable fundamental rights provided by our Constitution is the Freedom of speech and expression. Freedom of speech is considered to be the bulwark of a democratic Government, which is essential for the proper functioning of a democratic process. The freedom of speech and expression is regarded as the first condition of liberty and it occupies a preferred position in the hierarchy of liberties, giving succor and protection to all other liberties. It has been described as a "basic human right"⁵ as well as "a natural right." Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Within the ambit of the freedom of speech and expression is also the right to receive information and the freedom of the press, which is also known as the fourth estate of the realm⁶. The press has an important role to play in society, which involves bringing information into the public arena and keeping people abreast of the ongoing of their society. The press acts as a stimulus for the advent of new ideas and provokes the minds of individuals toward the formation of opinions by conveying information that they would have otherwise not had access to. It has an invaluable role to play in creating awareness in society and in keeping people informed such that they can integrate with the rest of society and make informed decisions on an array of subjects from politics to healthcare to corruption.

³ Article 19 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948.

⁴ *Romesh Thapar v State of Madras* [(1950) 655 S.C.R. 594]

⁵ Extract of the judgment of the Supreme Court in *Ramleela Maidan Incident vs. Home Secretary, Union of India and Ors* [(2012) 5 SCC 1]

⁶ The news media print journalism, or “the press” also known as the "Fourth Estate." The origin of the term is attributed to Edmund Burke, who used it in a parliamentary debate in 1787 on the opening up of press reporting of the House of Commons of Great Britain comparing the press to the other organs of the state i.e. the executive, legislature and the judiciary.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 provides as follows; -

“Freedom of expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

It is an accepted norm of society that with great power comes great responsibility. It is unfortunate that this freedom that encompasses the power of the media has been misused in recent times. The media is known to be the eyes and ears of the public. In today’s world, every individual is exposed to some form of the media or another, through a variety of mediums, from televisions in homes, to advertisements, to newspapers, the list is endless. The information that is received through these mediums must be unbiased for us to have a free thinking society consisting of people who can make up their own minds and opinions. Sadly, in the state that we have reached today, that is not the case. Today, sensationalism sells and the object of the media has changed. It is no longer just a platform that keeps people informed and circulates information on occurrences across the nation and the rest of the world. Instead, it has become a thriving cutthroat business where the first person that publishes the news gets the largest payout and in the rush to publish information is most often not verified. Moreover, the press doesn’t report in an unbiased fashion any more. Every news channel has an agenda and a perspective and every

report of individual news channels are colored by the image and the perspective they want to project. There is no longer any opportunity for a viewer to make up his own mind objectively on the basis of a neutral news report. Such a thing as neutrality doesn't even exist in today's reporting. Chief Justice of India Justice P. Sathasivam's statement on July 24th 2013, while speaking at an award ceremony for excellence in journalism sums it up by saying that "*the media creates a mindset about what is right and wrong. When a judgment is not on those lines, the judge's image is tarnished and all sorts of motives are attributed to him and his judgment becomes suspect.*"⁷

A trial by the media can cause prejudice in the minds of judges, witnesses, victims as well as their families. A sensational piece of news creates an adverse public opinion not allowing witnesses in a trial to depose freely and fairly. There have been many instances where media interviews of witnesses, victims or their families before a judicial hearing has influenced them negatively and clouded their judgment. Interviewing lawyers appearing in the matter during the pre-trial and trial stage can also lead to the formation of a biased public opinion before evidence is brought forth in a court of law and a conclusion is arrived at by the judiciary. Quite often, the media releases information in a matter under investigation or even pleadings made in the public domain without verification which influences the public's perspective on the relative guilt or innocence of the person under trial. In addition, giving media coverage to a matter at the investigation stage also pressurizes the police to arrest an accused where no arrest is required or warranted. The problem faced due to sensationalism of the news is that the public of the country are given opinions and their so called judgments are actually formed by the media and are not based on the facts as they exist. The media has assumed the role of an investigative, adjudicatory and speculative body, which projects a biased view before society. People are bombarded with opinions not letting them form their own. A free public debate on any matter of controversy is certainly not the problem, however when the pseudo debates that take place on television channels entice you with questionable titles and end with an open ended question, subtly pointing in a direction, which leaves the audience with a pre-determined conclusion, that is when

⁷ Chief Justice of India Justice P Sathasivam delivering an address at the Ramnath Goenka Awards for excellence in Journalism that took place on July 24th 2013.

the media oversteps its limit. The situation as it stands today is that the power of the media has been exercised in an unfettered manner, which is a gross abuse of the exercise of this right. It is a common phenomenon on news channels to have experts, ministers and lawyers called for panel discussions on sensitive issues. During such discussion, the anchor instigates the speakers in a manner in which he determines the outcome of the discussion. In a nation like India, where a majority of our population lacks education, this is a dangerous ground to tread where viewers blindly believe the outcome of such discussions to be true. If this continues to be the case, the installation of the media as a new pillar in the democratic setup would weaken the working of the judiciary and thereby cause the very framework of the government to crumble and slowly disintegrate.

The publication of comments on the nature or gravity of allegations, without verifying the same, is what occurred in the case of *Court on its own motion v. State*⁸, whereby, a sting operation was conducted on a Delhi school teacher where it was alleged that she was forcing a student into prostitution. Later, it came to light that the girl shown as the student was neither a student nor a prostitute and was actually a journalist eager to make her name in media world. Unsurprisingly, no concrete evidence was found against the teacher in the case. It is evident from a case of this kind, that the media is usurping the function of the judiciary and simply will not let the law take its natural course. Another recent incident that portrays the media's misdoing is with regard to an allegation made by a law intern of being sexually harassed by a retired Supreme Court Judge where she used a blog to relay the incident. Subsequently, an online news column published an article with the heading "Law student sexually harassed by ex-Supreme Court judge: Case is not unique but speaking out is nearly impossible"⁹ Clearly, this is a statement reflecting an affirmed thought expressed by the author of the column as opposed to an allegation that was not confirmed by any investigative agency.

In the above mentioned instances it is evident that if the right of the victim or the accused to a fair trial is violated then there is an infringement of his fundamental right and most importantly, his human right. As stated by the Supreme Court in the case of *Natasha Singh v.*

⁸ Court of Its Own Motion vs. The State [(2008) 146 DLT 429]

⁹ Article published on the website www.legallyindia.com on the 11th of November 2013 and written by Kian Ganz

CBI (State)¹⁰ *“Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered with or threatened in any manner. Fair trial entails the interests of the accused, the victim and of society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized.”* Thus, even if a person is not in the midst of a trial, there is an invasion of his right to privacy due to the excessive media spotlight. In the garb of exercising their right of freedom of speech and expression, the press ends up violating many others. This is definitely a misuse of the freedom that the press has derived from the right of speech and expression guaranteed by the Constitution.

As stated by the Court in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and. Ors*¹¹, *“Privacy and dignity of human life has always been considered a fundamental human right along with the right to freedom of association and freedom of speech. Therefore, every act which offends or impairs human dignity is tantamount to deprivation pro tanto of a person's right to live and the State action must be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.”* The right to fair trial has to be harmonized with the right to free speech. The media is considered a trustee of the public. Fair comment must be permitted even during the pendency of a case, and so long as it is temperate and balanced, there can be no objection to the same. It could be argued that in cases such as that of Aarushi Talwar, the pressure put by the media may have sent the investigation in a wrong direction. The Court was and continues to be under immense pressure to adjudicate the matter expediently and the coverage of the case on the news included scores of speculative theories on what could have happened during the alleged murder, and who was guilty and the punishment that should be levied. Every possible aspect of the case was speculated upon. Judges that are adjudicating the same are all exposed to this news. One should wonder how their perspective could remain independent in such a biased atmosphere as this with every news channel covering the story for months together.

¹⁰ (2013)5 SCC 741

¹¹ AIR (1981) SC 746

It continues to remain a moot point on how the media should exercise its freedom in a controlled manner. Whether, to curb the malpractices of the media self regulation and strengthening of the Press Council of India is the most appropriate way? Or should the Court step in and issue guidelines to regulate the conduct of the media. In the case of Sahara India Real Estate Corporation v. SEBI¹², it was laid down that the most suitable way to regulate the media will be to exercise the contempt jurisdiction of the court to punish those who violate the basic code of conduct. The Constitutional Bench held, passing an order postponing publication by the media was a reasonable restraint that the court could exercise. A Law Commission report in the year 2006 highlighted the issues relating to trial by media.¹³ It suggested amendments to the Contempt of Courts Act, 1971 whereby it was proposed that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge-sheet, so that the media do not prejudge or prejudice the case. Another proposal that the report stated was, to confer powers so as to empower the High Court to direct the print or electronic media to postpone publication or telecast pertaining to a criminal case. The implementation of these proposals will go a long way in disallowing the media to exercise its freedom of speech and expression to an extent so as to prejudice the trial itself.

Although the media has in some situations assisted in the delivery of justice, the negativity in its reporting and the sensationalist approach adopted while performing its function has caused detriment to the society. The public is put in a vulnerable state where it is snatched of its discretion to make decisions. Persons who are involved in a trial suffer anguish in the entire process because of unnecessary publicity and continued exposure. The judges, investigation agencies and allied adjudicating bodies face pressure to expedite the decision making and pass a verdict in favour popular public opinion. Many innocent persons are deprived of their privacy, dignity and right to fair trial in the process. Therefore, it is of utmost importance that the media play a responsible role to enable the smooth functioning of a democracy and not act as a trigger to the failure of rule of law in this nation.

¹² (2012)10 SCC 603

¹³ The 200th Law Commission of India report on Trial by Media, free speech and fair trial under Criminal Procedure Code, 1973 published in August 2006