

Comprehending Media Freedom

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ABSTRACT

The concept of freedom of expression and freedom of electronic media along with its related connotations have been discussed at length under this article. This article comprehended and analyzed as to what is included in the media freedom and what are the rights associated with it. Under the current study Doctrinal legal research method is adopted. This article finds among others that media freedom finds its protection under the parasol of freedom of expression and press. With the progression of technologies, the electronic media has gained much more importance as compared to print media.. This article concludes that although media has attained much importance and freedom in recent times, but this freedom must not be unbridled or uncontrolled. Furthermore, new technologies have also necessitated that the freedom of expression principle needs liberal interpretation to save the interests of citizens and also to make room for protection and promotion of new technologies.

Keywords: Freedom of Expression, Media freedom, PEMRA Ordinance, Electronic Media.

To cite this article: Rafique, M,Z., Umar, M. & Aleem, Y. (2022). Comprehending Media Freedom. Competitive Social Science Research Journal (CSSRJ), 3(1),131-139

INTRODUCTION

Expression is protected as well as promoted as one of the basic fundamental liberties under the international covenants and written constitutions in all over of the world. Although freedom of expression is widely protected but still it is amongst the most contested of fundamental rights (Stone, 2010). The nature of protection afforded to freedom of expression may vary according to the constitutional framework of different states. In Pakistan, the Constitution has also protected freedom of expression and speech along with other fundamental rights (Basit, 2017). Constitution holds that all citizens shall be allowed to hold ideas and express their opinions without being reprimanded for doing so (Zaheer Uddin and others vs The State and Others, 1993). It implies that citizens are free to express their thoughts, opinions in written form, print

form, telecast via any medium or present them in any way possible. Freedom of expression includes numerous forms of arts and other forms of observable statements.

Freedom of expression also carries with it the right to receive, seek and impart information with regard to any matter (Engineer Jameel Ahmed Malik v Per Nazim Hussain Siddiqui, 2004). Media work as the best apparatus of expression and source of information. This exercise of right of expression is the basic right as well obligation of both electronic and print media. In Pakistan Electronic media according to PEMRA Ordinance consists of distribution services and broadcast media. Electronic media in recent times has attained the status of mass communicator. Electronic media must relish this right of expression for informing the public at large about the conditions of people along with activities in society. Media and more specifically electronic media in addition to providing information to public also performs several other functions in the society. Educating as well entertaining the masses are some of the other important functions of the electronic media.

Electronic media also keeps constant vigilance on behalf of the citizens over the matter of public importance and also express opinions, views, criticisms for curative actions if things are to go in wrong way. In Pakistan the recent developments of General Pervez Musharraf expulsion from the power and former chief Justice Iftikhar Muhammad Choudhry reinstatement movement indicate that the media is a vital pillar to impart its valued commitment to the democracy, justice, and fundamental rights (Jamil, 2016). Keeping in view the recent developments, the commitment of media towards democracy, justice and fundamental rights and the efforts of different governments to control media has once again highlights the questions of significance as well meaning of media freedom in country. Therefore, this study tries to manifest meaning of media freedom, where freedom of media can be discussed and what elements comes into the ambit of media freedom.

METHODOLOGY

Legal research is divided into doctrinal and non-doctrinal legal research methods (ONeill, 2017). Doctrinal legal research normally revolves around four different methods. Those methods include theoretical legal research, analytical legal research, comparative legal research, and historical legal research. Doctrinal legal research methods further adopt an organized method of exploring, investigating, conceptualizing, and critically analyzing legal concepts and problems (Aynalem, 2009). Whereas Non-Doctrinal legal research is also called as the socio-legal research. Socio-legal research ordinarily adopts any of the research techniques practiced in the field of social science research (Bryman, 2015). Social science research engages and practice both Qualitative and Quantitative research methos (Basheer et al., 2021). This article adopts theoretical and analytical legal research methods offered under doctrinal legal research. Theoretical and analytical legal research comprehended and critically analyzed media freedom in general and media freedom in Pakistan more specifically. Data for this study was collected from judicial decisions, statutes, published law books, law articles and analysis made by jurists.

Freedom of Expression

Fundamental rights are counted as the heart and soul of a vibrant Constitution. These fundamental rights should always be prepared to protect and incorporate the sensibilities of the people of the state. Therefore, these must be construed progressively to improve the concepts and notions of freedom, free choice, and individual autonomy.

Living constitutions in the world demands such vibrancy and vitality (Sheikh, 2007). Freedom of expression is one of the key cornerstones of fundamental rights and also of democratic institutions. It extends from all themes to all subjects.

Under Pakistani constitution the emphasis on always made towards the state's commitment to Islam. At the same time the Pakistani constitution features the vital civil rights essential and inherent in a civilized democracy (Ali Raza v Federation of Pakistan, 2017). Freedom of expression along with speech and press are protected under the constitution of Pakistan (Chaudhry, 2011). Constitution of Pakistan under article 19 provides that its citizens (Basheer et al., 2019):

“Every citizen shall have the right to freedom of speech and expression, there shall be freedom of press, subject to any reasonable restrictions imposed by law in the interest of glory of Islam or the integrity, security or defense of Pakistan or any part thereof friendly relations with foreign states, public order, decency, or morality or in relation to contempt of court, [commission of] or incitement to an offence”

Only citizens are pledged freedom of expression and speech under article 19. non-citizens and foreigners are deprived of the enjoyment of this right (PLD, 2019). In Pakistan the notion of freedom of speech and expression does not take the shape of a positive or enforceable right (Salman Shahid v Federation of Pakistan, 2017). Freedom of expression and speech are covered under the umbrella of negative liberties to communicate with others or even demand of immunity from interference by others. negative liberties means that citizens are only allowed to say or write as long as his expression does not violate any law or infringe the rights of other people (Basheera et al., 2019). This freedom is always subject to statutory restrictions and may also be curtailed by the judiciary as a mood of development of law (DG Cement v Federation of Pakistan, 2013).

As suggested earlier freedom of expression is inclusive of right to receive as well impart information and communication. Dissemination of information or communication can be done by all lawful means including loudspeakers (Province of Punjab v Qaiser Iqbal, 2018). However, while exercising this freedom restrictions can be placed on enjoyment of that as there is no such thing as absolute freedom (Sakal Papers (P) Ltd And Others v The Union of India, 1962).

Therefore, broadcasting of ideas, culture, history, literature, opinions, thoughts, emotions, and art through the medium of plays and dramas signifies freedom of expression in a country (PLD, 2019). The right of the public to have knowledge about their government and state of democracy in the country is also included in the fundamental right of expression (Lerner, 2009). As this right keeps a constant vigilance over the government therefore normally democratic governments attach huge value to this fundamental right. It can also be said that the nature and extent of expression determines about the maturity and quality of democracy in the state (Awais, 2008). This fundamental right to expression applies to all subjects of life without any limitation or restrictions of subject matter. As suggested earlier that right to expression includes right to circulate, publish, broadcast one opinions, views and ideas with extensive authority and freedom (A. G. Chaudhry and Shazib Masud, 2017). For, that purposes the individual have the authority to resort any available means of publication or transmission.

Freedom of press is also included in the freedom of expression and speech. As freedom of expression and speech is not offered to the organizations or companies, so freedom

of press was explicitly protected as an exception to general rule (Munir, 1999). Normally freedom of press is termed as freedom of publication. The importance of press freedom was reiterated by several judgments.

Press freedom is protected with same expression and speech and therefore does not find or receive any distinct protection as equated to the citizens of the state. It is subject to same regulations of freedom of expression and speech (Zaheer Uddin v State, 1983). However, it is interesting to note that freedom of speech and expression is not absolute or restricted (bin Hidthiir et al., 2019). As the unrestricted or unbridled freedoms does not find place in modern democratic systems as there is no such thing as uncontrollable or absolute liberty (Shariq Saeed v Mansoob Ali Khan, 2010). With the evolution of technologies, the press has also evolved into two organs of media: the print and electronic media. Print and electronic media are defined by “Black’s Law Dictionary” in the following words,

“The industry that is involved in printing and distributing media through publications such as magazines and newspapers. Electronic media any type of device that stores and allow distribution or use of electronic information. This includes television, radio, Internet, fax, CDROMs, DVD, and any other electronic medium”.

The prime focus of this article is on electronic media and the freedom enjoyed by it. Therefore, this study manifests the answer to question that where freedom of media can be discussed and what elements comes into the ambit of freedom of expression of electronic media.

Comprehending Media Freedom

In Pakistan, electronic media is controlled and run by the enactment “Pakistan Electronic Media Regulatory Authority ordinance 2002”. Certain amendments were incorporated in 2007 and 2015 and most recently in 2018. In addition to PEMRA Ordinance 2002, there are many regulatory and legislative mechanisms that indirectly or directly affect electronic media. Those include the Constitution of Pakistan, and “The Electronic Media (Programs and Advertisements) Code of Conduct 2015, Freedom of Information Ordinance of 2002, the Defamation Ordinance of 2002, the Contempt of Court Ordinance of 2003” (Electronic Media in Pakistan, n.d.). Superior courts in different countries have comprehended the concept of media freedom. While comprehending media freedom the courts and others have pointed out as to what is included in the freedom of media and what are the rights of media. Next portion elaborates the concept of media freedom along-with all interpretations made.

Right to Disseminate Information

The first right while comprehending media freedom is the right of dissemination of information to the diverse world. The freedom of dissemination of information can be elaborated as right to broadcast, spread, or proclaim one’s ideas, novelty or information that is considered as milestone of this right (James Rhodes v OPO, 2015). In 1913, Louis Brandeis, a celebrated United States jurist, noted: “Sunlight is said to be the best of disinfectants. Although it took a long time to transform the feelings of citizens into legal enactment regarding the right to access to information or the right to information, the last 25 or more years have seen witnessed a virtual revolution regarding right to information and dissemination of information in the world. Till 1989 there were only 13 or less than right to information laws in the world but this number has grown to more than 100 in recent times. Now more than 78% of the world population enjoy this right to information which includes right to dissemination of information. Article 19 of the

International Covenant on Civil and Political Rights (ICCPR) protects not only the right to communicate, but also the right to seek and receive information and ideas. This right serves as the jurisprudential base for the human right to information in modern world of international law (Song et al., 2021). In 1946 the United Nations in its inaugural session adopted right to information as one of the basic and fundamental human rights and the touch stone upon which all human rights of united Nations are consecrated. The UN and its General Assembly in 1948 adopted the Universal Declaration of Human Rights (UDHR) and its article 19 protected and promoted freedom expression. International covenants and UN special representatives have also highlighted the significance of freedom of information along-with freedom of expression and speech.

Right to Receive Information

The freedom of expression has been used in wide connotation and many aspects like presentation rights, and to express and sermonize information as well as receiving information is also included in this right (Union of India v Association for Democratic Reforms, 2002). The apex courts have acknowledged the right to receive information as a part of this right to expression. In brief, expression includes to present, to propagate, to sermonize and to receive information. Different activities enable people to present or receive information like advertisement on TV about vital drugs, even sports lovers can entertain themselves by watching match on TV and public has a right to know the previous results of candidate to make their opinion better (Pakistan Broadcasters Association vs Pakistan Media Regulatory Authority, 2016).

Right to Broadcast

With the invention of new techniques and innovation in scientific field, the theory of expression as a right has been revolutionized and new dimensions have been introduced. Likewise Indian Supreme Court has clearly narrated that “Broadcasting is a means of communication and medium of speech and expression within the framework of Article 19” (Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal). The Court has further clarified in a case regarding allocation of Broadcast rights of a cricket match to a company as to their own accord and it was expounded that right to entertain and right to be entertained via broadcast media is within the circumference of Article 19. But this freedom has certain reasonable restrictions and broadcasting agencies should be within these bounds and these agencies have not unlimited and unchecked liberty and impunity. These agencies cannot disseminate such material which is determined to individual or society or any defamatory material to damage the reputation of any person. The promotional campaign of accompany through advertisement is under such restrictions (7C'S Corporate Services vs Oil and Gas Development Company Limited, 2017). The restrictions as laid down in Article 19 are very much clear and all material should be within these limitations and restriction.

Commercial Speech

Any commodity or product or merchandising can be advertised through electronic media, but it should not cross the restrictions as enshrined in Article 19. In a case titled “Tata Press Limited vs Mahangra Telephone Nigam Limited court held that a commercial speech or commercial advertisement as a service or product may be made an object of advertisement on broadcast media if it does not cross the ambit of restrictions on freedom of expression” (Tata Press Limited vs Mahanagar Telephone-

Nigam, 1995). It was also reiterated that a commercial advertisement or commercial speech are included in the connotation of “expression” as mentioned in Article 19 and this right can only be abridged when it crosses the bounds of restrictions. With the passing time, the periphery or circumsphere of the word expression has been enlarged and widened and many new insights of rights have been included in this word expression. Commercial speech is beneficial and public at large is motivated and information can be transmitted, and public get awareness through advertisement.

Valuable and effective marketing to public at large can be influential when public is educated through information and advertisement (Pakistan Broadcasters Association vs Pakistan Media Regulatory Authority, 2016). This does not mean that there is no restriction on the time and length of advertisement. Although Article 19 does not disclose or impose restrictions on duration of these advertisements and spacing and slots between advertisement and contents of the program in Pakistan (Sheikh, 2007). However, the PEMRA Ordinance have made rules for the duration between advertisement and program contents and those rules must be respected while resending advertisements on electronic media.

Right to Report Court Proceedings

Under the ambit of media freedom, the electronic media can report the court proceedings within the word expression and these right benefits the public at large to check and to aware the transparency of these judicial proceedings. It is widely believed that justice should not only be done, but it should also see to be done. The reporting of judicial proceedings is compulsory to check errors and misconduct in judicial system of the country (Attorney-General v Times Newspapers LTD, 1973).

Electronic media has the right to present and discuss court proceeding in the interest of public and media enjoys this privilege without privilege without prejudicial to the contents of the judicial proceedings. This privilege does not provide an opportunity to settle personnel scores and biasness on the electronic media. This reporting of judicial proceeding is for the public awareness and journalist have right and as well duty to observe and report judicial proceedings. It is the utmost duty of media to report court proceedings with authenticity and correctness without polluting with their personal whims. Supreme Court of Pakistan in a *Suo Motu* case as writ of mandamus issued guidelines to electronic media to follow strictly and to avoid any ambiguity and to suppress haphazardness. The parameters regarding *res sub-judice* matters were clearly defined by the Supreme Court and stressed that the court proceeding reporting right is not infinite and this right must be within the bounds of certain restrictions and guidelines as laid down by the Supreme Court of Pakistan.

Right to Expression Beyond National Boundaries

The advent of new technologies has made the access of information much easy as compared to old times, the same is the case with electronic media. Now electronic media is not limited to national boundaries only as it has surpassed the national borders. Information can be shared worldly within seconds with advancements of new technology. Even the Supreme Court held that Constitution provides space for applicability beyond the boundaries of the country (Maneka Gandhi vs Union of India, 1978).

In addition, High Court contended that even foreign contents or material does not fall in prohibitory category and can be disseminated in Pakistan through electronic media (Leo communications Limited vs. Federation of Pakistan, 2017). This right can be

abridging when it is in direct in conflict with the laws of the land. The Indian private channels declined to on air the Pakistani contents material that does not mean the interest of Pakistan has been jeopardized. In short the court was of a view that foreign contents might be broadcast but within the limitation as inscribed in Article 19 of the Constitution.

Copyright and Right to Expression

The law of copyright is for intellectual property to avoid plagiarism and unlawful exploitation. The word expression and restrictions upon expression are connected to copy right laws as such laws are within the sphere of reasonable restrictions imposed by the Constitution and it may rightly be called the extension of Article 19.

Any broadcast agency has to ensure that there is no violation of intellectual property as copy right being negative right instead of positive right, that hinder to copy original work of the real author and to avoid the pecuniary loss to original author. It may rightly be called as right in rem as it restrains other against the right of original author. The main benefit of copy right law is to protect the rights of one person and at the same time limiting others from exercising such rights. The issue arises whether the copy right of one person restricts the freedom of expression of other person or freedom of business of that person. The word copy right is not mentioned in the Constitution, but it is included can be interpreted from the connotation “reasonable restriction can be imposed”. Although the Constitution provides fundamental right of free trade, profession, business and right of expression but it does not mean that one can enjoy or can be entitled on the cost of others property or cannot establish oneself with the decree of others. Now citizens are aware of their copy rights and people have vital interest in saving their copy rights to have their pecuniary interests as copy rights saves the public interest (Schriker, 1994).

Right to Criticism

Right to criticize is an integral part of freedom of expression. Justice Deepak Gupta in his address to lawyer’s community in India, clarified that freedom of expression is a wide term and criticism on different organs of state does not amount to sedition. These are not sacred cows and are not immune to criticism. The right of expression does not hinder to criticize even judiciary, executive and bureaucracy etc. To maintain and buildup a healthy environment and to establish accountable democracy in the country, the criticism on government activities and plans is mandatory. Even in limited states, the masses are aware of their rights to criticize the governmental activities (Terminiello v Chicago , 1949).

The Indian Courts are of a view that any expression that tends to disrupt public peace might be suppressed and curbed down. Sections 124-A and 505 Penal Code of India, the court decided that those words which tend to disrupt public tranquility and serene atmosphere and hate words, are equal to existing and inciting disaffection and discomfort against the government and needs punitive action (Kedar Nath Singh v. State of Bihar, 1962). But criticism can be in sober words. The words use for criticism should be within reasonable limits. The words used for criticism should not be derogatory and repugnant to fundamental rights as freedom of expression of speech and expression including media. The right to criticism is considered as the fundamental and most important right under the conception of media freedom. Media is considered as the fourth pillar of state along with legislature, executive and judiciary. Therefore,

media must always remain vigilant about the activities of these three organs and criticize them whenever they are leaving their space.

CONCLUSION

Freedom of expression is an important fundamental right. With the advancement of new innovations, a revolution has occurred in the information technology, and it has surpassed the traditional and conservative concept of freedom of press. The notion of freedom of expression and freedom of electronic media along with its related connotations have been discussed at length under this article. This article finds among others that media freedom finds its protection under the umbrella of freedom of expression and press. With the progression of technologies, the electronic media has gained much more importance as compared to print media. This article comprehended and analyzed as to what is included in the media freedom and what are the rights associated with media freedom. This article concludes that although media has attained much importance and freedom in recent times, but this freedom must not be unbridled or uncontrolled. Restrictions as imposed under the freedom of expression clause must be taken into consideration by media. Furthermore, new technologies have also necessitated that the freedom of expression principle needs liberal interpretation to save the interests of citizens and also to make room for protection and promotion of new technologies.

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