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Freedom Of Press And Right To Privacy- An Analysis For Balancing Of Interest[i]

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1.INTRODUCTION: -

Today science and technology is increasing day by day. In the context of rapid change, horizons of freedom of speech and expression is widened. Fundamental Human Rights are recognized as*sacrosanct.* Freedom of Press[ii] and freedom of privacy[iii] both are acknowledged as fundamental human rights not only at International level but at National level. Freedom of Press is exercised by Media and every person are entitled to enjoy freedom of privacy. Both freedom of press and privacy are valuable and cherished rights. Constitution of India is one of the significant law of the law which provided various fundamental rights under Part III. Freedom of Press and Privacy are constitutionally recognized fundamental rights. Such fundamental right cannot be seized. It is also one of the recognized principle that one cannot exercised fundamental rights in such a manner so that it will suppress the fundamental right of others. In this perspective, Present Authors has made its endeavor to discuss various aspect regarding freedom of Press, right to privacy and role & contribution of the Judiciary vis-à-vis preserving these fundamental rights. Necessary efforts are taken by the Judiciary from time to time in various cases for maintain the balance between freedom of Press and Right to Privacy exercised by the person. In this backdrop, freedom of speech and right to privacy are to be discussed from the perspective of Constitutional gamut and judicial approach.

2. OBJECTIVES OF PAPER:-

- To understand the scope and ambit of freedom of press and right to privacy
- To analyze the role of the Judiciary relating to freedom of press and right to privacy
- To discuss how it is necessary to balance between freedom of Press and right to privacy
- To recommend concrete suggestion

3. FREEDOM OF PRESS:-

Under Article 19 (1) of the Indian Constitution provides that all citizens shall have the right to freedom of speech and expression subject to reasonable restrictions.

All citizens of India can exercise freedom of speech and expression:-Freedom of speech and expression is one of the golden freedom enshrined under the ambit of Indian Constitution. Contextual interpretation has been given by the Court from time to time vis-à-vis freedom of speech.

At present scenario, Media either electronic or print media, have assumed significance due to Constitutional recognition of freedom of Press. It is having great potential to serve to the society. It can discuss and distribute innovative knowledge to the society. But such freedom should be subject to reasonable restriction laid down under Constitutional[iv] ambit as well under other statutory[v] laws. It is also ethical obligation on the part of Media to exercise freedom of Press and they have to comply with the norms provided by Press Council. It is evident in many of the cases that Media by exercising the freedom of press, have encroached on the right to privacy. Both i.e. freedom of press and right to privacy are constitutionally recognised fundamental right and such fundamental cannot be curtailed until and unless there is reasonable justification to prevent to it. Many of the time, it has become disputable issues regarding balancing of freedom of press exercised by Media and right to privacy exercised by individual person. Therefore, it is expected that there should be proper and justifiable balance between these two rights. No fundamental right can be enjoyed in an unlimited and uncontrolled manner in a manner which will cross the constitutional and legal boundaries. Simply, everyone should exercise their fundamental right subject to reasonable restriction.

In a famous case Khushwant Singh and Another v. Maneka Gandhi[vi] In this case, Hon'ble Supreme Court of India was of the view that freedom of the Press extends to engaging in uninhibited debate about the participation of public figures in public issues and events. The Supreme Court felt

that a proper balancing of the freedom of press as well as the right of privacy and defamation had to be done in terms of the democratic spiritplaced by our constitution. Further it is analysed that freedom of press and right to privacy are not inconsistent to each other. These rights are complementary and supplementary to each other.

Reasonable restrictions on freedom of speech and expression[vii]

Following are the restriction on freedom of speech and expression.

On the freedom of speech and expression exercised by the Citizen, State can make reasonable restriction in case if such freedom exceeds. Following are the reasonable grounds

a) **In the interests of the sovereignty and integrity of India:-**

Freedom of Press on the part of Media cannot be exercised in an unlimited and uncontrolled manner so that it will threatens to the sovereignty and integrity of Nation. Maximum endeavour should be taken by Media to preserve and maintain the sovereignty and integrity of India.

b) **The security of the State:-**

Security of the Nation is significant aspect. Due exercise of freedom of speech and expression or freedom of Press, if the security of the State is came into danger, then such freedom should be prevented on the ground of the Security of the State. Because the security of the State will prevail over the freedom of the State. One cannot enjoy fundamental right by threatening to the security of the Nation. Hence, no citizen or media can exercise such right in case if such freedom threatening to the security of the Nation.

c) **Friendly relations with foreign States: -**

It is one of the important principle recognised under International law[viii] that every State should maintain the friendly relations with foreign State. It is accountability on the part of every nation to establish friendly and harmonious relationship with the neighbouring country. Whenever freedom of speech and expression or freedom of press goes or likely to goes towards disturbing the friendly and harmonious relationship with other nation, then such freedom can be curtailed by the State. Even Media cannot exercise such freedom which will violate the reasonable restriction.

d) Public order, decency or morality:-

Media can enjoy freedom of Press subject to public order, decency or morality. Public order, decency ormorality are the reasonable grounds. Freedom of speech and expression or freedom of press can be curtailed on this ground.

e) In relation to contempt of court, defamation or incitement to an offence:-

It is the prime responsibility shouldered on Media to respect verdict of the Court at the time of discharging its functioning. It means Media without contempt of Court, can exercise freedom of Press, it can create public opinion, and it can discuss any issues or problem at public platform. Any type of unreasonable or irrelevant publication or discussion on the part of Media can be prevented. Therefore, Media should exercise freedom of Press in a manner so that it will not result into contempt of Court, defamation or incitement to an offence.

Firstly, on the basis of above mentioned ground, Media can perform its functioning. Positively it can be stated that Media's power and functioning in the society are really fruitful in the best interest of society and for maintain the true spirit of democratic principle and Constitutional principle. Even it would be inappropriate to claim that all type of Media are exercising freedom of Press by keeping in mind the reasonable restrictions laid down under Article 19 (2) of the Indian Constitution.

Secondly, it is alleged many of the time that, to some extent, the activities and role of the Media in the society came into controversy because they are not performing its functioning in accordance with the Constitutional and statutory norms. Therefore, it is legitimate and ethical expectation on behalf of Media that they should act within the watertight compartment.

4.RIGHT TO PRIVACY:-

One of the significant Constitutional provisions reflected under Article 21 which reads that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Right to life and personal liberty is recognized as life blood of the democratic nation. Article 21 of the Indian Constitution is not changed textually but contextual undergone a radical change. Therefore, there are various facets of right to life and personal liberty which is stated by the Judiciary

from time to time in various cases. Therefore, right to privacy is one of the part and parcel of right to life and personal liberty.

The right to privacy is vital and necessary in this democratic nation. It is impossible for an individual to enjoy the privileges and rights which is recognized to him as a citizen of Nation. It is a precious right. There must be strong and legally justifiable reasons for law enforcement agencies to place restrictions on this right. It is crucial that appropriate procedure is always accepted because invasion into aindividual's home, professional or family life on the ground of investigation without any justifiable and appropriate reason is not permitted.[ix]

5. FREEDOM OF PRESS AND RIGHT TO PRIVACY IN THE CONTEXT OF JUDICIARY:-

Freedom of press and right to privacy both are fundamental right under the Constitution of India. Both are necessary for maintain the true spirit of the Indian Constitution and democratic norms. These rights are essential and indispensable which cannot be denied without any reasonable cause. Judiciary is one of the significant organ of the Government which is bestowed with delivering justice and interpretation of the law. It is responsibility placed on the shoulder of the Judiciary for effective implementation of the principle of the administration of Justice. In this connection, present Judiciary have become guardian and protector of the Fundamental Right. In this perspective, it is required to analysis freedom of Press and right to Privacy in the context of Judiciary. Present Judiciary is performing its active role vis-à-vis providing social justice to the people. Therefore, higher judiciary i.e. High Courts and Supreme Court are discharging its pro-active role. In this way, Judicial Activism is increasing day by day.

In *Express Newspapers (Private) Ltd v. Union*[x] in this case Bhagwati J. focused on the nature, scope and extent of the fundamental right to the freedom of speech and expression. He stated that, *"….the fundamental right to the freedom of speech and expression enshrined in….our Constitution is based on (the provisions in) Amendment I of the Constitution of the United States….and it would be therefore legitimate and proper to refer to those decisions to appreciate the true nature, scope and extent of this right in spite of the warning administered by this Court against use of |American and other cases.*"

In Supreme Court v. Union of India[xi]- in this case, Supreme Court of India held that the right to know is not directly reflected under Indian Constitution as fundamental right but it is an implicit fundamental right. Right to privacy is also indirectly included under Article 21 of the Fundamental right and recognized as Fundamental Right. It is required to make necessary balance between freedom of press and freedom of privacy reflected under Constitutional ambit.

6. CONCLUSIONS:-

Range of freedom of speech and right to privacy are exhaustive. So it is not possible to include nature of freedom of speech and right to privacy in short analysis. It is the maximum endeavor have been taken by the researcher to discuss various aspect in connection with the fundamental right. Protagonist role of the Judiciary regarding preservation of fundamental right cannot be repudiated. In this way, freedom of press and right to privacy can be exercised subject to reasonable restrictions. No fundamental right can be exercised in absolute[xii] manner.

7. SUGGESTIONS:-

In so far as concerning the title of the research paper is concerned, I would like to recommend certain suggestion which help for preserving freedom of press and right to privacy and to control on unreasonable and absolute exercising such right.

- Primarily it is Constitutional, statutory and ethical responsibility to exercise fundamental right within the limitation and to keep in mind that it should not exceed limitation. Specifically in connection with Media person, they are having freedom of press. Free flow of idea and information is inevitable and indispensable in this democratic nation. It is evident in many of the cases that freedom of press is exercised in an unlimited and uncontrolled manner. Therefore it would befruitful to suggest that Media person should act in consonance with the law.
- Media person should knowledge of Legal Education vis-à-vis fundamental human rights as well as knowledge in connection all the aspect where they are discharging power and functions.

- Judiciary should not be suppressed due unnecessary intrusion on the part of Media. In an impartial and without fear, Judiciary should discharge its power and functioning.
- Self-regulatory norms will be helpful for Media to act in accordance with the law.

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1. [i]
2. [ii]Article 19 (1) of the Indian Constitution provides Freedom of Speech and Expression. It also includes freedom of Speech indirectly.
3. [iii] Higher Judiciary from time to time interpreted in various cases that Right to life and personal liberty under Article 21 of the Indian Constitution includes right to privacy
4. [iv]Reasonable restrictions provided under Article 19 (2) of the Indian Constitution
5. [v] In connection limitation, Right to Information is one of the legislation under which Right to Information can be exercised by Media in the best interest of society. it is legal obligation on the part of Media or any other person to exercise right to information subject to keeping in mind provisions under this Act. It is obligation on the part of Public Authority to provide only those information which are permissible as per the provisions of this Right to Information Act, 2005
6. [vi]AIR 2002
7. [vii]Article 19 (2) of the Indian Constitution provides reasonable restriction on Freedom of Speech and Expression
8. [viii]Article 1 of the United Nations provides the purposes of the United Nations which states that every State should develop friendly relations with other State.
9. [ix] Fair Trial Manual- A Handbook for Judges and Magistrates, prepared by the Commonwealth Human Rights Initiative and the international Human Rights Clinic, Cornell Law School- 2010, page at 67
10. [x](1959) SCR
11. [xi] Writ Petition (Civil) no. 13 of 2015. See also https://indiankanoon.org/doc/66970168/
12. [xii] Lord Acton beautifully quoted that , “Power tends to corrupt and absolute power corrupts absolutely”