

Limitations on the freedom of press law constitutional administrative essay

Law



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2. 0 Introduction

Undoubtedly freedom of the press in a country is partly good and partly bad. Although each citizen in Mauritius or another country holds the power to say or express whatever he or she feels, it is preferable for some thoughts or views to be unuttered. In the previous chapter, we explained that the press is such a proper or more or less, an essential tool for knowledge and exchange of ideas and opinions in a modern democracy. However, a question arises on why should there be any need for supervising this freedom by law? In this present chapter, we will deal mainly with the need for limitations on freedom of the press and then the abuses of freedom of the press. Afterwards, the different categories of limitations will be discussed where it will be divided in two main parts namely, prior restraints and post-publication restraints.

2. 1 The Need for Limitations

Nowadays, freedom of the press is becoming important for development, democracy and dialog. According to many studies conducted by researchers, it has been devised that there is a connection between the three D's and a free press. If ideas cannot be flourished in a free space, societies will not ameliorate whether in human, social and economic development. However, freedom of the press has been universally accepted that it is not a right without limit, and some classifications of limitations on freedom of press have been devised by almost every liberal government. Lord Denning stated:" The freedom of the press is extolled as one of the great bulwarks of liberty. It is entrenched in the constitutions of the world... It can publish

whatever it chooses to publish. But it does so at its own risk... Afterwards, after the publication, if the press has done anything unlawful they can be dealt with by the courts... If they should damage the reputation of innocent people... they may be made liable in damages.... The press is not above the law.[1]" For the press, it is the same as any other individual, i. e., it is not authorised to any freedom concerning unlawful conduct. The freedom of the press is limited by certain factors. These factors can be internal such as codes of ethics, the power of the editorial and the press councils. As for the external ones, they are public interest, rulings of the court, libel actions, subscriber demands and pressures from powerful groups. In U. S. A., the First Amendment took some extraordinary protections concerning the " protected rights" in order for them to be exercised in a fiduciary manner.

Unfortunately, even if the duty is recognised, editors and publishers do not always comply with it. However compared to some other countries, the American press is freer. Even in the United Kingdom and Sweden the press system is not so restricted. In any given country, the restrictions on freedom of the press are derived from its civil and criminal law and also from the implementation guidelines of Article 19 of the UDHR[2]. In Mauritius, the same restrictions that are applied to freedom of expression are also imposed on freedom of the press. So, press freedom is subjected to the limitations set out in section 12 of the Constitution. Rights and maintenance of order in a country exist due to the State and it's upon the latter to safeguard and implement those rights. Hence when a right or a freedom is being exercised, it should be done in such a manner that it does not cause harm to the State. Freedom of the press can be controlled by the government if it countervails

with public interest. It the same in case of war emergency where, the State has the power to safeguard itself from any broadcast which may cause obstruction to the nation's defense or the " prosecution of war against a national enemy." [3] " When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by ant constitutional right." [4] In most countries, it is the court which maintains a balance between the public interest and other competing interests. It should be pointed out that freedom of the press must be reconciled with public security. For example, in U. S. A., the court will poke its nose only when the danger is consequential and clear and present to the public interest. As compared to India, its constitution clearly mentioned the role of the court in balancing competing public interest under the clauses (2)-(6) of Article 19. It is true that in today's world there is no absolute freedom. The press industry has to face various limitations imposed by the State. However, there are some questions that are left unanswered like to what extent do citizen have to draw a line? What part of any speech should and should not be covered by the law?

2. 2 Abuse of Freedom of the Press

Nowadays, in every conversation, the words " Press Freedom" are mentioned. It shows how important that freedom is. However, the same significance is not given to the responsibilities linked to it. This makes it liable to be abused. As we know, any institution or freedom if left ungoverned has the tendency to be abused. This created the need for freedom of the press to be controlled. In 1789, the French Declaration of the

Rights of Man in France declared that " free communication of thoughts and ideas is one of the most precious rights of man" and at the same time mentioned that press freedom is " subject to responsibility for abuse of this liberty in cases considered by law"[5]. In U. S. A., even if the federal Constitution guarantees freedom of the press to be unrestricted, every citizen should be responsible for the abuse of that freedom. West Germany's Constitution lays emphasis on what is meant by " abuse" of a freedom and what would be the penalty if there is abuse under the Article 18[6]. For India, abuses are mentioned in clauses (2) and (6) of Article 19." A truly free press would be free not just of state intervention but also of market forces and ownership ties and a host of other material bonds"[7]. Many powerful bodies use the press for their private interests in order to make propoganda which can be harmful to the public. In some newspapers we can noticed stories which are published just to denigrate someone (like politician). The press become a monopolistic control rather that a free institution. There is abuse of freedom of expression and of speech at the same time. The main aim of freedom of the press is to offer to the public a wide range of information and if false information is disseminated, this will have a detrimental effect on society. This is often seen where a political party control a newspaper. This may influence a reader way of thinking. This contributes to a form of abuse of this freedom. So, the press must check the facts before publishing in order to avoid half-true stories or unbiased information.

2. 3 Classification of Limitations

2. 3. 1 Prior Restraint

The State may find that some information if disseminated can be harmful to the public or it is too secret to disclose. In those cases, the government has adopted " Prior Restraint" which means restricting a message before it is published or broadcasted. In other words, there is government intervention before the publication takes place. The Supreme Court of U. S. A. held that:" prior restraints are the most serious and least tolerable infringement on First Amendment rights... A prior restraint,.. by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication " chills" speech, prior restraint " freezes" it at least for the time. The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current event"[8]. Prior restraint exists in many forms but the most common one is licensing or censorship. The second most obvious one is judicial injunction or " gag order". When censorship is imposed, this means that the publication on a specific matter or even a newspaper is prohibited without " advance approval of an executive officer"[9]. As compared to the judicial injunction, even with anybody's approval, the publication of specific matter cannot be executed. If this order is violated, punishments are incurred. There are other restrictions like interdiction of entry into specified area, control over the volume of circulation, control over the sources of information and security for good behavior from persons disseminating offending publications. According to landmark cases like Near v. Minnesota[10]the Supreme Court cancelled a gag law and considered the doctrine of prior restraint as unconstitutional.

The court held that a journalist in a free press has the right to shape the opinions of the public and the interference of the State does not contribute to the phrase " free press". However, the government has continued to restrict the publications of some controversial material. In 1971, the Court in *New York Times Co. v. United States*[11] established that freedom of the press is nearly free when there is no restraint on publications before disseminating. The State was not able to prove a prior restraint of expression when it tries to prohibit *New York Times* and *Washington Post* from publishing a specific matter from a study. Prior restraints have some ups and down. Surprisingly, the doctrine of prior restraint has never been completely analysed. No comprehensive study has been carried out about the historical roots and the application in judicial decisions, of prior restraint. However, prior restraints remain important in restricting free press from abuse.

2. 3. 2 Post-Publication Restraint

Prohibition is laid on the publication of certain specific matters in all modern countries in order to protect the public interest. Often in many landmark cases, prior restraint and post restraint are mentioned. A post publication restraint is defined as a legal provision for punishment after an act occurs. In many countries prior restraint is considered unconstitutional because of government intervention. Compared to post publication restraint, the journalist is given a sentence if classified information has been published in a newspaper. According to Article 10(20) of the ECHR[12]:" 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 Mauritius

our law do provides some post publications restraints and they are namely publishing matter without description of author[13], sedition[14], defamation[15], publication of reply by newspaper[16], publishing false news[17], contempt of court[18], copyright and obscene publications. These restraints apply for both freedom of the press and freedom of expression.