

TELEVISION AND FREEDOM OF SPEECH

THE GUARANTEE of freedom of speech and expression in article 19(1)(a) of the Indian Constitution is worded in wide language, as are most constitutional provisions relating to fundamental rights. It is only when some specific problem, in a concrete situation, arises that the full implication of such provisions come to be unfolded. This is a common experience, not merely in constitutional matters, but in respect of many other judicial and legal problems. Writers on the legal system often debate the question whether the Judges merely interpret the law or whether they make it. There is a view that, in defining the day to day role of the Judge in the legal system, one might approach the subject by regarding the role of a Judge as falling somewhere along a spectrum. The two poles of this spectrum reflect the two opposite functions of a Judge within the legal system. There is, in the first place, the view that would favour a quasi-legislative role for the Judge. Here, the Judge resolves particular matters, not in isolation, but rather in the context of social, economic and other considerations. He renders decisions in such a way as to permit the law to respond to changing social conditions. According to this view, responsiveness of the legal system to changing circumstances should be effected, not only by legislation, but also by the Judges. In contrast to this model of judicial liberalism, many Judges view their role as a merely interpretative one. According to this view, the role of a Judge is to strictly apply the law to the particular facts and to decide cases accordingly. Under this model, a Judge is bound by precedent and has no discretion to modify the law in response to changing social conditions or prevailing attitudes. In practice, most Judges view their roles as falling somewhere between the two extremes. A typical Judge views his role as essentially an interpretative one, but tempered by the dictates of justice and fairness and by the realisation that the law, in order to gain public acceptance and credibility, must not be applied without reference to changing social conditions.

However, when one comes to constitutional questions, certain additional observations are in order. Such questions are not approached in a purely pedantic manner. They have to be dealt with in a broad perspective. Particularly where fundamental rights are at stake, the courts take note of the fact that there may be several factors which are not expressly reflected in the text of the articles of the Constitution, which still require consideration by the court. It is for this reason that whenever a constitutional question comes before the court, the text book type of rules of interpretation may not yield a sound conclusion. One finds an interesting illustration of this aspect in a recent judgment of the Bombay High Court.¹ In the Bombay case, the petitioner, a distinguished lawyer of the High Court and of the Supreme Court, and also Editor of a Law Magazine, was invited to give an interview

¹ *Indira Jaising v. Union of India*, A I R. 1989 Bom. 25

on television on the topic of problems of law relating to women. In her interview, she referred to two types of questions. First, she dealt with some aspects of laws pertaining to women. Secondly, she expressed adverse comments on the Bill relating to Muslim women and protection of their rights, which was then pending before the Parliament. She expressed the view that the Bill was unconstitutional and violative of the right of women to equality of law and equal protection of the law. The interview was recorded in Bombay on first March, 1986. Apart from the petitioner, whose interview lasted for six minutes, several other persons were also interviewed for the programme. All these interviews were collated and "edited" for the purpose of the programme. When, on third March, 1986 the programme was telecast, the petitioner was surprised to find that though her views on the other aspects of laws relating to women were telecast, her opinion with reference to the Bill relating to Muslim women had not been telecast. She wrote to the television authorities, pointing out that not allowing her to express her views on the above Bill was a clear imposition of censorship. To this letter of protest sent by the petitioner, the Deputy Director of Doordarshan replied that as the duration of the programme was exceeding its stipulated time, and also because of the discussions going on in Parliament, the portion in question was not included in the programme.

Subsequently, the Deputy Director of Doordarshan informed the petitioner that it would not be possible to telecast the views expressed by the petitioner on the proposed Bill, but that they would get in touch with her if they plan any programme on the subject in future. The petitioner then moved the Bombay High Court for the following reliefs:

- (a) a determination of the basis on which programmes on Doordarshan would be scheduled, edited or censored;
- (b) a declaration that, by censoring or deleting her views on the Bill, the Union of India had violated her fundamental right of freedom of speech and expression without the authority of law;
- (c) a declaration that the Union of India had acted arbitrarily in censoring her views, thereby violating article 14 of the Constitution and similar other reliefs.

The main question that fell to be considered was, whether what the Doordarshan authorities had done was in exercise of the right to "edit" the programme, or whether it amounted to censorship. Dealing with this question, the court pointed out that the deleted portion was directly relevant to the subject of the programme. The Union of India, through the television authorities, had given two reasons, namely, paucity of time and the fact that the subject was being debated in Parliament. In the view of the High Court, the second reason clearly indicated the reluctance of the authorities to telecast opinion on a controversial Bill then being debated in Parliament. The deletion was, therefore, in effect, by way of censorship. Paucity of time,

cannot justify a wholesale omission of the subject, according to the High Court. Secondly, the High Court held that while editing various interviews, it was necessary to ensure that in the process of editing, the views expressed were correctly conveyed on the telecast programmes. At times, a portion of the interview may have to be deleted. But, in the process of such deletion, there should not be any gross distortion or misrepresentation of what had been said. Moreover, important points raised should not be completely omitted under the guise of "editing".

This pronouncement of the High Court is directly linked with article 19(1) of the Constitution. Somewhat surprisingly, it was contended on behalf of the government that article 19 was not applicable to the telecast. This argument did not carry conviction with the High Court. In its exposition of the law, the High Court laid down several important propositions, which can be analysed as under:--

(i) The right to freedom of speech and expression had been considered by our courts as including freedom of the press. The right equally covers freedom of other media. A citizen cannot enjoy freedom of speech and expression, if he is not permitted to express his views freely through mass media even when he is invited to use this media.

(ii) Freedom to propagate one's views is an important ingredient of the right of free speech. A citizen who is interviewed over the television by invitation of the television authorities is entitled to express his or her views freely.

(iii) Censorship or deliberate distortion of these views would violate article 19(1). Any restriction of this right must be within the ambit of article 19(2) of the Constitution, that is to say, it must be for achieving one of the specified objectives as enumerated in that article.

(iv) Besides this, any restriction of this right must be by law.

It was the combined effect of all these propositions that justified the grant of a declaration in favour of the petitioner, to the effect that the deletion in question had violated her freedom of speech and expression. Of course, most of these propositions are supported by earlier rulings. Thus, for example, it was established as early as 1950, that the freedom of speech and expression includes the freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. Again, it was held in 1962 that this freedom carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject to such restrictions as could be legitimately imposed under article 19(2). In a few other decisions, it has been pointed out that a restriction cannot be imposed on the freedom of speech and expression without specific legislative authority.²

2. *Romesh Thaper v. State of Madras*, A.I.R. 1950 S.C. 124; *Edward Mills Co. v. State of Ajmer*, A.I.R. 1955 SC 25; *Sakal Papers Private Ltd. v. Union of India*, A.I.R. 1962 S.C. 305; *Kharak Singh v. State of U.P.*, A.I.R. 1963 SC 1295 and *Bennett Coleman & Co. Ltd. v. Union of India*, A.I.R. 1973 S.C. 106.

An interesting case cited by the Bombay High Court is a judgment of Supreme Court of the United States.³ In that case, the court placed emphasis on the right of business of citizens, in the context of radio and television, to hear differing views on various topics of public interest. The decision is noteworthy, because it operated even against a private licensee of radio. The Supreme Court of the United States observed:

It is the purpose of the First Amendment to preserve uninhibited market place of ideas in which truth will ultimately prevail, rather than to countenance monopolisation of that market, whether it be the Government itself or a private licensee.⁴

Referring to this pronouncement of the American Supreme Court, the Bombay High Court added that it is even more essential to preserve such uninhibited market place of ideas when a medium like television is a State monopoly. Hence, there is all the more reason why, in the light of article 19(1)(a), persons who are invited to express their opinion on television are allowed to express them openly and freely subject to reasonable restrictions as may be imposed by law. In the instant case, no such restrictions had been laid down by "law". Ultimately, the High Court declared that by deleting the views of petitioner in their entirety, the respondents had violated her right to freedom of speech and expression, without any authority of law. A suitable direction was given by the High Court to the respondents (on their own offer) that in future, if a programme on such a subject is telecast, the petitioner would be allowed comparable time to express her views as may be proper and reasonable in the circumstances.

Incidentally, it may be mentioned that in the United States, some controversy has been going on as to how far the above ruling of the Supreme Court of the United States is applicable against newspapers and how far the public can claim a right of "access to the press".⁵ But, in any case, in the Indian context, the pronouncement of the Bombay High Court is of seminal significance as regards television⁶ and is bound to lead to many more developments on the subject.

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3. *Red Lion Broadcasting Co. v. Federal Communications Commission*, (1969) 395 U.S. 367.

4. *Id.* at 389.

5. See Lee Bollinger, in 75 *Michigan Law Review* 1 at 36. (1976).

6. In *Fasih Chowdhary v. Director General Doordarshan*, A.I.R. 1989 SC 15 the Supreme Court has held that in the acceptance of television serials fair play must be observed. The Court relied upon *Ram Shyam Co. v. State of Haryana*, A.I.R. 1985 SC 1147 and *Haji TM Hassan Rawther v. Kerala Financial Corporation*, A.I.R. 1988 SC 157.

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