



MEDIA, CIVIL SOCIETY AND FREEDOM OF INFORMATION: AN EXPLORATION

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Abstract

The media play a vital role in a democratic society. The media institutions are identified as the informal universities and extra-opposition leader in democracy. The media also bridge the communication gap between the government bodies and civil society through regular information, education, guidance and allied services. Adequate studies are not carried out in India on the role of media in civil society. The present paper amplifies the role of media in civil society and freedom of information with special reference to India in the new millennium.

CONCEPT OF CIVIL SOCIETY

Aristotle defined civil society as a 'community', commensurate with the Greek city-state characterized by a shared set of norms and ethos, in which free citizens on an equal footing lived under the rule of law. The Roman scholar Cicero added a new dimension to civil society and stated that civil society was a system which ensured peaceful co-existence of people without any discrimination. The civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Scholars have identified different elements of civil society namely public charities, foundations, development non-governmental organizations, community and grassroots organizations, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.

Civil society is the aggregate of non-governmental organizations and institutions that manifest interests and will of citizens. Civil society includes the family and the private sphere, referred to as the third sector of society, distinct from government and business. The 21st Century Lexicon defines civil society as 1) the aggregate of non-governmental organizations and institutions that manifest interests and will of citizens or 2) individuals and organizations in a society which are independent of the government. The civil society also represents the basic elements such as freedom of speech, an independent judiciary, etc, that make up a democratic society according to Collins English Dictionary. The French Revolution provided a new dimension to civil society based on liberty, equality, fraternity and collective welfare.

Marxist theorists and practitioners have generally been divided on the question of the relation of civil society and the state. The Russian, Chinese, East German, North Korean, Vietnamese and other communist states all banned private associations. The civil society organizations are indeed part of an ideological state apparatus. The civil society organizations function as intermediate social institutions whose function was to 'mediate' between citizens and government, or the political state. In the 1980s, scholars gave a serious thought to the concept of civil society and International Society for Third Sector Research and Association for Research on Non-profit Organizations and Voluntary Action gave sound ideological foundation to civil society movement across the world. In a democracy, the concept of civil society is widely recognized and opportunities are created for the sustainable progress of the civil society.



Media in Civil Society

Media institutions are regarded as the fourth estate of a democracy. The legislature makes the policies, executive implements the programmes, the judiciary examines the constitutional validity of the policies and programmes and media bridge the communication gap between the government and society. The scholars and statesmen have noted that media institutions strengthen the foundations of democracy. The media also function as the watch dog of public interest in a democracy. The media are also called upon by the statesmen to function as the extra-opposition leader outside the parliament. In reality, the media plays an important role in the creation and success of a strong civil society structure. The media sways public opinion and helps influence and even create the direction of social change. Scholars have explored the role of media in civil society in their writings and speeches. A.K. Shivakumar (2011:04), a noted development economist states that media assume great significance in a civil society since they provide several services which sensitize the various stakeholders of civil society movement. The media are definitely driven by the need for financial sustainability. They cannot do what a lot of civil society groups and NGOs can, or try to do, of managing on low budgets, according to the scholar. He has identified the limitations of media in civil society.

Syeda Hameed (2012:01), former Member, Planning Commission of India, examined the role of media in civil society and stated that civil society is an entity that articulates concerns that affect the entire community. She called upon the media to help in articulating the social concerns and provide relevant solutions for the sustainable development of India. She explored new possibilities for the meaningful intervention of media in civil society movement.

Tarun Tejpal (2014:05), Editor-in-Chief of the news magazine Tehelka, carried out certain sting investigations which emphasized the role of media in civil society. He called upon the media to articulate the concerns of civil society. He observed that the Indian media constantly focused on soft targets and completely steers clear of hard targets. The need for understanding the framework of Indian democracy and obligations of media towards civil society were also addressed by the media personality. He called upon the media professionals to understand the ideas of public space and public good in India. Tejpal observes “The best thing that can happen is for the media to amplify civil society’s battles and understand how very crucial they are. But the challenge really is that there are not enough people in both journalism and civil society who are able to articulate arguments in a manner that forces both money and power to be accountable”.

Sevanti Ninan (2013:03), a well known columnist and author notes: “I believe that, increasingly, the media have been forced to reach out to civil society. Take television. There is a constant seeking out of data and opinion from those in the field, whether it is for a panel discussion or simply to keep programmes going. After all, civil society groups are the people with the data; they are the ones who interact with those on the ground and understand local issues. The media have to always seek out people who have done the groundwork for them”. The civil society needs active media support in modern times.

Lysa John (2012: 02), Global Campaign Director, Global Call to Action against Poverty states: “Civil society as a concept has come into use only in the last few years. It needs to be interpreted much more broadly, in terms of citizen action for society, than is generally the case. This is not just about the contributions of traditional NGOs but encompasses any kind of citizens’ formation which looks at larger issues of social or political change -- work that is not being done through the government or private sector”. The media are controlled by the market forces which are responsible for commercialization of media services in the new millennium. They are interested in financial sustainability rather than sustainable and inclusive development of the marginalized sections of society.

The civil organizations are not able to articulate what they are thinking but they should work for the uplift of the mankind. The media are actively engaged in social and political mobilization. They should be most progressive, far-reaching and visionary ideas today come from civil society. The media are largely falling in line with the



interests of the powerful. The only people who are thinking out of the box to transform lives and existing structures are the people who constitute civil society. The social media are playing a notable role in the civil society movement in India and abroad.

FREEDOM OF SPEECH AND EXPRESSION IN INDIA

Dr.B.R.Ambedkar was the chief architect of Indian Constitution. He was a great champion of free and independent media which are the fourth estate of democracy. He laid emphasis on the freedom of speech and expression of all citizens of India including the media professionals. The Constitution of India guarantees various fundamental rights to its citizens. One such important right is - Right to Freedom under Article 19. This includes right to freedom of speech and expression, to assemble peacefully and without arms, to form associations and unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, and to practice any profession, to carry on any occupation, trade or business.

Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. This right is available only to citizens of India and not to foreign nationals. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence. There has been lot of discussions and disputes leading to Court cases on this Right to Freedom.

The pre-censorship of the press was held to be unconstitutional in the cases of Ramesh Thapar Vs. State of Madras, (1950) and Brij Bhushan Vs. State of Delhi, (1950). Similarly, there has been lot of differences of opinions regarding indecency and immorality as to what constitutes indecent literature or other expressions through media. Similarly, the law of sedition under section 124A of the I.P.C. was also subjected to dispute in Kedarnath Vs. State of Bihar, A. (1962). The Supreme Court held the validity of this provision. Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press and the same is included in the freedom of expression, which is conferred on all citizens as per the judgments' of Supreme Court in respect of Virender Vs. State of Punjab, (1958) and Sakal Papers Vs. Union of India (1962). It has also been by this judgment that freedom of the press under the Indian Constitution is not higher than the freedom of an ordinary citizen.

Further restrictions were also imposed on the freedom of speech and expression by Article 51A defining fundamental duties of a citizen (42nd Amendment in 1976). Under Article 51 A, no one should in exercise of the freedom of expression or of the press do any of the following acts: -

1. To disparage the constitution, its ideals and institutions, the National Flag or the National Anthem;
2. To undermine the sovereignty, unity and integrity of India;
3. To disrupt the spirit of common brotherhood among all the people; and
4. To insult the rich heritage of our composite culture.

It has been held by the Supreme Court that right of speech and expression includes right to acquire and import ideas and information about the matters of common interests in the case of Hamdard Dawakhana Vs. Union of India (1960) and LIC Vs. Union of India, (1993). This freedom also includes right to impart and receive information through telecasting as per the Supreme Court judgment delivered in respect of Ministry of Information Vs. Cricket Association, (1995). It also includes publication of advertisement and commercial speech in case of Tata Press Vs. MTNL (1995). It also covers right to hold telephonic conversation in privacy in case of PUCL Vs. Union of India (1997).

These cases clearly indicate that right to acquire and get information is a fundamental right under the Indian Constitution. But all types of information cannot be obtained by the people in the interest of the state. The information relating to matters of public or common importance affecting people in general can be obtained under



the normal circumstances. In a democratic set up, the people are the sovereign republics. The people have a right to choose and elect their representative to Parliament, State Assemblies and Local Bodies for a fixed period. The people also enjoy the right to good governance which primarily depends upon the pro-active role of media in a democracy. Without right to information, people will not be in a position to know what is happening and thus to take further steps in the direction. The Supreme Court held that right to information lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible.

In the same judgment, the Court held that the public interest in freedom of discussion of which the freedom of press is one aspect stems from the requirement that members of the democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves. The freedom of expression, as learned writers have observed, has four broad social purposes to serve: (i) it helps an individual to attain self-fulfillment; (ii) it assists in the discovery of truth; (iii) it strengthens the capacity of an individual in participating in decision-making; and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. The freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration. The right to get information in a democracy is recognized in all the countries since it is a natural right flowing from the concept of democracy.

True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organizations. This is particularly so in a country like ours where a majority of the population is illiterate and hardly 1½ per cent of the population has an access to the print media which is not subject to pie-censorship. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare. Democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant. In reality, the freedom of speech and expression includes right to collect information and to disseminate it. This freedom is necessary for self-fulfilment as it enables people to contribute to debate on social and moral issues. The right to get information in a democracy is recognized all over and it is a natural right flowing from the concept of democracy.

Freedom of Information Act 2002

The Indian Freedom of Information Act 2002 was passed by both the Houses of the Parliament in December 2002. Under this Act, it is obligatory upon every public authority to provide information and maintain records, consistent with its operational needs. These records will have to be duly catalogued and indexed and published at such intervals as may be prescribed by an appropriate government or the competent authority. The legislation seeks to promote openness, transparency and accountability in administration. Recently, one of such rights which came to limelight was right of people to know about the antecedents of a candidate contesting elections - especially about their criminal background, educational qualifications and their properties and assets.

In a public interest litigation filed by Association of Democratic Reforms Union of India Vs. Association for Democratic Reforms and Ann, JT (2002) the Supreme Court directed the Election Commission to require the persons contesting elections to give such information. It was felt that this information would help the people to choose good, sincere and honest persons to the legislatures. Even in day to day life of the people, they have right to know what is happening to their applications made to the Government Departments, how much time it will take to process them and if rejected, reasons for such a rejection. Though, internal instructions have been issued by



various Government Departments laying down a time frame for disposal of such applications, but in actual practice, it is not being adhered to. Even Departments like Passport Office which has developed a website for the purpose; it is not always possible to know where one's application is pending.

The Right to Information Act, (2005) was an important step in promoting a really transparent, vibrant and accountable government. This legislation is expected to usher an era of performance and efficiency, eliminate the scourge of corruption and bring the common man's concern to the heart of all processes of governance. The actual implementation of the Act is bound to pose a great challenge to the governments at various levels since the functionaries have to change their mindset about sharing the information that would benefit the people.

CONCLUSION

The world is witnessing remarkable growth and development of urban areas. The institutional arrangements are made to serve the urban people. The media are regarded as the fourth estate of democracy. The elected representatives set the political agenda and media agenda is set by the market forces in India and abroad. The relationship between the media and civil society is also extensively examined by the scholars. In reality, the media plays an important role in the creation and success of a strong civil society structure. The Constitution of India has guaranteed the freedom of speech and expression to the citizens including the media professionals. The media institutions are required to play a vital role in strengthening the foundations of civil society which is the basis for good governance and sustainable development in the new millennium.

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