



Freedom of the Press and the Human Rights Discourse

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Abstract:

If a critical test of free speech is the extent to which ideas and concepts that shock and dissenting views far out of the mainstream are allowed free expression, the country seems to be slipping into more illiberal times. Freedom of expression cannot be suppressed on account of threat of demonstration and processions or threat of violence. That would tantamount to negation of the rule of law and surrender to blackmail and intimidation. It is the duty of the state to protect the freedom of expression since it is a liberty guaranteed against the state.

Keywords: Human Rights, Press, Freedom, Restriction, Convention, Universal Declaration

1. Introduction

While international human rights documents emphasize the intrinsic value of a free media, the human rights discourse has over the years tended to relegate it to the background because of tensions arising from divergent value systems, privacy protection and hate speech issues. While the most serious source of tension, the balance that needs to be struck between protection of minority groups from hate speech on the one hand and freedom of expression on the other, is difficult to reconcile at the level of abstract concepts or universal values, most nations have struck a proper balance suited to their own experience and specific circumstances. A free media with its impact on public opinion and institutions in a democratic system can be of great instrumental value in promoting human rights observance. Its effectiveness, however, varies depending on the nature of the human rights violations, with the remedial impact being the greatest in routine cases of custodial violence and the like and the least in insurgency type of situations where state policy seeks to suppress a terrorist or secessionist group, The greatest challenge before the human rights community and the media is to get the democratic system to respond sensitively and safeguard human rights in difficult situations when national security concerns come to the fore.

2. Freedom of the Press in International Human Rights Documents

Freedom of the press and the media, which forms part of the larger right of freedom of speech, is an important, though over the years somewhat diminishing, component of international human rights documents starting from the Universal Declaration of Human Rights and through the International Covenant on Civil and Political Rights (ICCPR) and the regional covenants. The Universal Declaration elevates it to the preamble that states, 'The advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people. Article 19 specifies, 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers'.¹

¹ Adam Hochschild, King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa, Houghton Mifflin (1999)

The ICCPR in Article 19 elaborates: '(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice,' In Article 19(3), it also allows limits to be imposed on the right: 'The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public) or of public health or morals.

Apart from allowing states to impose restrictions on specific grounds, the ICCPR also requires states to ban certain types of speech and Article 20 enjoins: '(1) Any propaganda for war shall be prohibited by law: (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law:'

In the European convention for the Protection of Human Rights and Fundamental Freedoms and in the American Convention on Human Rights, the basic right of freedom of expression is guaranteed in a way similar to Article 19 of the ICCPR. The European Convention in Article 10 is somewhat more elaborate on the grounds on which restrictions may be imposed: '(2) 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 the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'²

The American Convention (in Article 13) seeks also to protect freedom of the press and the media from indirect controls: '(3) The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.' It allows censorship of certain categories of expression: '(4) Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.' Like the ICCPR, it enjoins on the parties to ban propaganda of hate and incitement: '(5) Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law.'³

3. Freedom of the Press in the Human Rights Discourse

The growing body of what may be regarded as the human rights discourse comprising books, journals, papers, theses and other publications, material on Internet websites, conferences and seminars, and generally the work and delineation of issues by human rights organizations tends to focus on groups such as children, women, victims of torture, conflict and crime, dissidents, prisoners of conscience, and others whose liberty is curtailed, and refugees. Organizations such as the Committee to Protect Journalists focus specifically on the issue of freedom of expression and report on the state of human

² Sen, 'Freedom and Needs', The New Republic, 10 January 1994

³ 'Encounters: National Human Rights Commission to issue notice', The Hindu, 6 August 1997; 'Punjab resorted to secret cremations', The Hindu, 23 July 1999

rights. The US State Department's annual reports generally contain an assessment of press freedom in different countries.

The delineation of free press and freedom of expression issues in the human rights discourse shows that the concern is largely over aggravated forms of assault on freedom of expression including killing and imprisonment of journalists and writers and physical attacks on newspaper premises. Heroic defiance of censorship and restrictions that entail penalties and suffering is highlighted while silent compliance is hardly noticed. It would seem that restrictions on the freedom of expression coupled with restrictions on liberty or violations of physical security are taken seriously, not just restrictions on freedom of expression per se. When marking World Press Freedom Day on 3 May 2000, the Committee to Protect Journalists compiled a list of ten 'worst enemies of the press' ranging from Foday Sankoh of Sierra Leone to Slobodan Milosevic of Yugoslavia to Fidel Castro of Cuba and Mahathir Mahamad of Malaysia. They had all resorted to aggravated forms of assault on freedom of expression and were rightly condemned. At the same time, those who resort to more subtle measures to muzzle the press hardly come under such scrutiny.

This may be in part because of rights touching on life, physical wellbeing, and freedom being accorded a higher priority. Also, the press and the media are not seen as disadvantaged, needing as much support as other groups do. In an interesting paper on the debate on a new broadcasting bill in India,⁴ Mark N. Templeton notes that there was no discussion from the human rights perspective in terms of the fundamental freedoms and the right to seek, receive, and impart information. He suggests, 'Perhaps they (human rights activists) think that the satellite broadcasters and cable operators will fight for media freedoms and that the human rights community can spend its limited time and energy elsewhere.' The fact that substantial sections of the press and the electronic media are associated with large and profitable groups would only go to reinforce this attitude.⁵

4. Tensions between Free Press and Human Rights

There are, however, sources of tension as well between a free press and human rights advocates. In the first place, human rights advocacy demands a certain commitment and a passionate espousal of good causes that cannot be found in the disembodied, neutral voices of journalists. Journalism tends to be value-neutral, with its insistence on getting all sides of a story and while there is still plenty of room to write with a great deal of sensitivity and feeling and make a deep impact on public opinion, the demands of objectivity need to be kept in mind.

It is not uncommon for human rights advocates to express their disappointment over the media which they see as reflecting human rights concerns inadequately or not at all. Justice Rajinder Sachar, a noted civil liberties proponent in India has this to say of the role of the Indian press in relation to its coverage of human rights abuses: "This attitude (of the media) was disappointingly reflected in the passive, even negative, role the media played when dealing with the working of the Terrorists and Disruptive Activities (Prevention) Act. Governments conveniently invoke the sensitive ground of national security to silence the media from reporting human rights violations in affected areas. Unfortunately, the media, by and large, has a tendency to accept this gratuitous advice without much demur.

Secondly, human rights advocacy leans towards greater privacy protection, especially in the case of victims of rape, violence and accidents, and children. Some of the more blatant cases of violations of privacy by the media that have been brought up before the courts include the case of reporters entering the hospital room and photographing the nine-year-old son of a famous French actor who had been injured in an accident. a story with photographs in Time magazine of a woman with a severe eating

⁴ Cardozo Journal of International and Comparative Law, Fall 1997

⁵ Ibid

disorder (under captions such as 'She eats for ten. and photographing and interviewing in the hospital room an English actor who was semi-conscious after having suffered a severe head injury?)

The biggest source of tension, however, arises from the third category, namely the abuse of the press and the media in aid of some of the worst human rights abuses that has at times tended to set press freedom in opposition to human rights advocacy. In such cases, the media has served as a vehicle for propaganda, for fanning hatred and for inciting some groups to violence against others. Such propaganda has ranged from direct attacks and calls for the elimination of some groups considered undesirable or inimical to the dominant group to more subtle forms that seek to create insecurity among the dominant group and spur it to violent attack against some minority group. The use of the media for hate propaganda by the Nazi regime is one of the earliest modern instances. In Bosnia, the antagonists used radio to incite ethnic hatred against one another.

It was in Rwanda, however, that radio was used most insidiously and blatantly in the service of genocide. The official government station, Radio Rwanda, initially 'played a pernicious role in instigating several massacres', according to the Special Rapporteur to the UN Commission on Human Rights, B.W Ndiaye.⁶ When Radio Rwanda was brought under the control of moderates as part of the reforms aimed at reconciliation, the extremists among the officials in the military and in business started the Radio-Television Libre des Milles Collines (RTL) which gained a large audience for its popular talk show format. It operated in conjunction with the ruling party's private militia, Interhamwe, and typically it would name and criticize an individual and immediately Interhamwe groups would find and attack him. It became even more active in instigating genocide after April 1994 when it started organizing roadblocks ('RTL radio is with the people manning the roadblocks'. was a constant announcement) and naming 'enemies' who were then stopped and killed by militias. Typical of its propaganda was a broadcast on 15 April 1994, when an announcer exhorted the listeners: 'If you do not want to have Rwandians exterminated ... stand up, take action ... without worrying about international opinion.'⁷

The response under international law to such extreme forms of hate speech is still evolving and has not so far proved to be effective. In times of war jamming of radio broadcasts has been resorted to routinely. During the Cold War, Radio Liberty and Radio Free Europe were the voices of Western propaganda aimed at the people in the Soviet Union and Eastern Europe, and were extensively jammed by the governments. In internal conflicts, however, the international community did not generally consider jamming or other preventive means to stop incitement, though in the case of the RTL, there was a debate on whether jamming would be justified.⁸ The US Committee for Refugees (USCR), which along with Human Rights Watch-Mrica was pushing for the jamming of the RTL broadcasts, had this to say midway during the crisis:⁹ 'The USCR urges the US to use immediately its technical capability to 'jam' the radio broadcasts of Radio Milles Collines, which Rwandan extremists have used to disseminate their racist, hate-filled violence. In recent days this radio station has broadcast messages to the militias and to the public exhorting them to accelerate the slaughter. 96 days after his transfer to its custody. In March 2000, the chamber reversed its decision and decided that the Tribunal should try him. It still found that his rights had been violated but on a considerably smaller scale than had been found in its November 1999 decision. It ruled that the violations would be taken into account in his trial. If found not guilty by the trial chamber, he would be entitled to financial compensation; if, on the other hand, the trial chamber found him guilty, the violations would be taken into account in

⁶ UN Doc. FICNA/1994I7/Add.1 at 10-12

⁷ Article 19, Broadcasting Genocide: Censorship, Propaganda and State Sponsored Violence in Rwanda 1990-4 (1996)

⁸ Jamie Frederic Metzler, 'Rwandan Genocide and the International Law of Radio Jamming', 91. AJIL 68

⁹ US Committee for Refugees, Responding to the Rwanda Crisis (3 May 1994) cited by Metzler

determining his sentence.¹⁰ He has since been indicted on nine counts including crime against humanity and violations of the Geneva Conventions.

5. Conclusion

The convention notes the conflict between prohibition of hate speech and the right to freedom of expression and calls for 'due regard' for rights enumerated in the Universal Declaration including the rights of freedom of speech, association, and conscience. The actual balance that is struck between the need to protect vulnerable ethnic or religious minority groups and the right to free speech varies widely among nations.¹¹ The United States' approach tends to be the most tolerant of free speech. Europe, Germany, France, Austria, and the Netherlands maintain broad restrictions on racist speech including Holocaust denial while the United Kingdom generally emphasizes the public order aspect. Some other countries, including India, prohibit the wounding of religious or ethnic sentiments and impose wide restrictions in this area. Broadly, the extent of freedom of speech allowed and the degree of protection for vulnerable groups against hate speech reflect the experience and the specific circumstances in the individual countries. Countries that have seen the impact of hate propaganda have put in place a regime more restrictive-of free speech and more protective of minority groups.

A detailed discussion of hate speech laws is beyond the scope of this paper but it is clear enough that one could lean towards greater protection of ethnic and religious groups from hate propaganda or towards allowing a greater latitude for free speech.

¹⁰ Ibid

¹¹ Dominic McGoldrick and Therese O'Donnell, 'Hate-Speech Laws: Consistency with National and International Human Rights Law' (Legal Studies, Vol. 18, Issue 4, pp. 453-85, Dec. 1998)