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FREEDOM OF PRESS IN INDIA: A LEGAL ANALYSIS- Preksha R Lalwani¹**ABSTRACT**

In the last few decades, the topic of press freedom has sparked a never-ending debate across the democratic globe. Today, a country's democratic credentials are determined by the level of press freedom it enjoys. Three solid pillars make up this system. However, because India's three pillars: executive, legislature, and judiciary, have proven somewhat unstable in recent years, the guarantee of Article 19 (1)(a) has given rise to a fourth pillar, the press. The purpose of this research paper is to acknowledge the importance of the press in our society and to emphasize the areas in which legal rules are required.

INTRODUCTION

One of the most important interpreters between the government and the people is the freedom of the press. So, the freedom of the press has to be secured, and at the same time, the freedom of individuals even in the press should also be protected, preserved and any attempt to intrude the freedom of the press has to be prevented. The Indian Constitution gives freedom of speech and expression to the press, just as it does to individuals.² A free press that reports on events across the world and has the courage to question the government and its actions is a boon to democracy. A free press is referred to as the oxygen of democracy, without which it would perish.³

The level of press freedom has been a contentious topic in many countries, with several governments enacting their laws to restrict it. However, there is widespread agreement and general premises that press freedom in a society impact the overall absorption of democratic

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² INDIA CONST. art 19 (1) (a).

³ Hadiya Khan & Pankaj Joshi, Freedom of Press: Pillar Of Democracy, INTL J L, 07 (2018).

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values in that country.⁴ Aside from the constitutional guarantee, the Universal Declaration of Human Rights⁵ requires states to protect their citizens' freedom of speech and expression.

WHAT IS FREEDOM OF PRESS?

The right to freely express oneself by words, writing, printing, photography, or other means is freedom of speech and expression. It thus encompasses the communication of one's thoughts through any medium or visible representation, such as gestures, signs, and the like.⁶ The freedom now encompasses the right to write and publish whatever the writer deems appropriate and the freedom to conduct business so that knowledge may be shared and excessive and prohibitive barriers to circulation can be avoided.⁷ The freedom of the press does not just apply to newspapers and magazines. It also includes booklets, circulars, and any other type of publication that serves as a vehicle for information and opinion.⁸

A citizen of India has the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution. There is no explicit protection of press freedom in the Constitution, nor does article 19(1) (a) directly reference the press.⁹

Thus, freedom of the press includes:

- a. Access to all sources of information (one's own views borrowed from someone else or printed under the direction of a person)¹⁰;
- b. Publication freedom;
- c. Circulation freedom.¹¹

Thus, in *Romesh Thappar v. State of Madras*¹², a law authorising a state government to impose a ban on the entry and circulation of a journal within the state was found to be restrictive of the freedom of speech and expression guaranteed by Article 19 (1) (a), and thus could only be valid if it met the requirements of Article 19 (1) (a) (2). The court determined that freedom of speech

⁴ B. Mugundhan, C. Renuga, A Study On Freedom Of Press In India: With Reference To Article 19, IJPAM, 3957 (2018).

⁵ Article 19 of the Universal Declaration of Human Rights, 1948.

⁶ *Lowell v. Griffin*, (1939) 303 US 444.

⁷ *Virendra v. State of Punjab*, AIR 1957 SC 896.

⁸ *Sakal Papers Ltd v. Union of India*, AIR 1962 SC 305.

⁹ M.P. Jain, Article 19 (1) (a): Freedom Of The Press: *Bennett Coleman & Co. v. Union of India*, 15, JILL, 154 (1973) <https://www.jstor.org/stable/43950191>.

¹⁰ *M.S.M Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395.

¹¹ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

¹² *Id* at 10.

and expression included freedom of idea dissemination, guaranteed by a publication's freedom of circulation because a publication is nothing without circulation.

The Supreme Court stated in the *Express Newspapers case*,¹³ that there is no dispute that press freedom is an integral aspect of the freedom of speech and expression guaranteed by Article 19 (1)(a).

In *Bennett Coleman v. Union of India*¹⁴, the Supreme Court reiterated its position, stating that freedom of speech and expression is measured not only by the level of circulation, but also by the volume of news and viewpoints. The press has the freedom to free dissemination and circulation without restriction.

ROLE OF PRESS IN A DEMOCRATIC COUNTRY

Any democratic society's cornerstone is freedom of expression.¹⁵ The right to freedom of the press, which is implied in the right to freedom of speech and expression, is essential for political liberty and the proper functioning of democracy. As a result, among the liberties, free expression is unique.¹⁶

The Supreme Court ruled in *Mahesh Bhatt v. Union of India & Anr*,¹⁷ that freedom of speech and expression is one of the cornerstones of India's Constitution and essential to the country's democratic framework.

In *Hariraj Singh re*,¹⁸ the Hon'ble Supreme Court explained the role of the press and journalists, stating that a free and healthy press is essential to functioning a true democracy. People must participate actively and intelligently in all aspects and affairs of their society and the State in a democratic system.¹⁹ People require a clear and accurate explanation of events in order to form their own opinions, express their own thoughts and viewpoints on such things and issues, and

¹³ *Express Newspapers v. Union of India*, A.I.R. 1958 S.C.

¹⁴ AIR 1973 SC 106.

¹⁵ V. Govindu, *Contradictions In Freedom Of Speech And Expression*, 72, IPJA, 641 (2011), <https://www.jstor.org/stable/41858840>.

¹⁶ *Brij Bhusan v. State of Delhi*, AIR 1950 SC 129.

¹⁷ 2008 (147) DLT 561.

¹⁸ AIR 1997 SC 73.

¹⁹ Aqa Raza, *Freedom of Speech and Expression' as a Fundamental Right in India and the Test of Constitutional Regulations: The Constitutional Perspective*, 43 IBR 87, (2016).

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choose their next course of action. It has a role to play in terms of education and mobilisation. It has a significant influence on public opinion and can be used to effect social change.²⁰

REASONABLE LIMITATIONS ON FREEDOM OF THE PRESS

The Indian Constitution's Part III²¹ guarantees a broad range of judicially enforceable fundamental rights. Article 19(1)(a) of the Constitution guarantees freedom of speech and expression as a basic right. Like other fundamental rights guaranteed by the Indian Constitution, freedom of expression is not absolute. It is possible to limit it if three unique and independent requirements are met.

(i) The restriction must be backed up by legal authority.²² Executive orders or administrative actions that are not backed by the law cannot limit freedom of expression.²³

(ii) The law must fall squarely within one or more of the Article 19 limits (2). Restraints on freedom of expression cannot be imposed on broad grounds like "in the public interest," which is permitted in the case of fundamental rights like freedom of trade and commerce.

(iii) The limitation has to be reasonable. It must not be unreasonable or excessive. The approach and manner in which the restriction is imposed must also be equitable, fair, and reasonable.²⁴

In the case of this fundamental right, reasonable restrictions can be imposed by law in the interests of public order, decency, and morality, Indian sovereignty and integrity, state security, friendly relations with foreign countries, or in the case of contempt of court, defamation, or incitement to an offence, as defined by Article 19(2).²⁵ Article 19 (2) of the Indian Constitution applies to the press and media outlets in the same way they do to persons. In the case of *Madhu Limaye v. Sub Divisional Magistrate Monghyr*²⁶, the Supreme Court found that the term public order can be interpreted to include no insurrections, riots, or disturbances to public places.

²⁰ Ayushi Singhal, *Freedom Of Press : Fourth Pillar Of Democracy*, 13, JXUAT, 387 (2021).

²¹ Part III of the Constitution of India deals with the Fundamental Rights.

²² Vaibhav Chakraborty, *Role of Media in Indian Democracy*, Maps of India (Nov. 14, 2021) <https://www.mapsofindia.com/my-india/government/medias-role-in-indian-democracy>.

²³ *Supra note* at 14.

²⁴ *Chintamani Rao v. State of Madhya Pradesh*, AIR 1951 SC 118.

²⁵ MP Jain, *Indian Constitutional Law* (8th ed. 2018).

²⁶ 1971 SCR (2) 711.

Therefore, the right to freedom of the press is not absolute; if a newspaper publishes something indecent, maliciously false, or unlawful, it must be penalised by a court of law.²⁷

CONSTITUTIONAL PROTECTION OF FREEDOM OF SPEECH

Though the term "freedom of the press" does not appear in Article 19 of the Indian Constitution, it is incorporated in one of the protections in Article 19(1). (a). This has been accomplished because of the country's capable judiciary's broad interpretation of this freedom.²⁸

The freedom of the press has long been seen as a necessary component of a democratic government. However, this journalistic freedom is not superior to that of an individual. An individual's freedom is essential to their survival.²⁹

In the case of *Publisher Sportstar Magazine Chennai v. Girish Sharma*³⁰, it was determined that the term "freedom of the press" refers to freedom from government interference with the content and circulation of newspapers. In *R. Rajagopal v. Tamil Nadu*³¹, Justice Jeevan Reddy reaffirmed the importance of press freedom.

LEGISLATIONS GOVERNING FREEDOM OF PRESS IN INDIA

Various laws have been passed in the past to control and censor the activity of the press and media. While some of the acts had a good reason for being enacted, most of them, which date back to the pre-independence era, were enacted to restrict press freedom and slow down the independence struggle.

1. The Official Secrets Act, 1923.

The main goal was to ban the press from reporting and disseminating data and information linked to national security to maintain national security.

2. The Indian Press (Emergency) Powers Act, 1931

Required the press to provide a sum of money as security. Later, the Criminal Law Amendment Act of 1932 amended the Act, giving the provincial government the authority to require the press to deposit a security deposit, which was subject to forfeiture if the press published any

²⁷ Mamta Roa, *Constitutional Law* (Eastern Book Company, 1st ed. 2013).

²⁸ *Supra* at 14.

²⁹ Justice Palok Basu, *Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws*, 589 (Modern Law Publications, 2nd ed. 2011).

³⁰ 2001 Cri. L. J. 1863.

³¹ AIR 1995 SC 264.

matter that was likely to incite hatred against the government or incite feelings of hatred and hostility between different classes of citizens.³²

3. Press (Objectionable Matter) Act, 1951.

This law was enacted to restrict the publication and printing of materials that could incite criminal activity or contain unpleasant material. Even though the Act was implemented with high expectations, it was eventually abolished in 1957.

4. The Sedition Law (Section 124A, Indian Penal Code 1860)

Section 124A of the Indian Penal Code prohibits any indications, gestures, or visual representations of hatred toward the government, as well as any written or spoken utterances that threaten the nation's sovereignty and integrity.

As a result, we can observe that several laws exist that impose some censorship or control over the publication of the press and media. The problem, however, is that the language of some of these laws is overly broad and unclear, which is a cause for concern because it may be used to put arbitrary limits on them.³³

COMPARISON WITH THE AMERICAN CONSTITUTION

Unlike the United States Constitution, which specifies 'the liberty of the press,'³⁴ that is, the ability to publish whatever one wants without prior authorization, the Indian Constitution does not use the word "freedom of the press."

The United States of America's First Amendment Constitution is the source of Article 19(1)(a). The First Amendment states that Congress shall make no law respecting an establishment of religion, prohibiting its free exercise, abridging the freedom of speech or the press, or the people's right to peacefully assemble and petition the government for a redress of grievances.³⁵

Unlike the American Constitution's First Amendment, the Indian Constitution does not provide a distinct or separate provision for press freedom. Furthermore, while Article 19(2) states

³² The Official Secrets Act 1923, S. 4 (India).

³³ Tauseef Jawed, Freedom Of Press In India: A Fundamental Right? 2, BIJ 2582 (2021) <http://Burnishedlawjournal.in/Wp-Content/Uploads/2021/04/Freedom-Of-Press-In-India-A-Fundamental-Right-By-Tauseef-Jawed-1.Pdf>.

³⁴ K. D. Gaur, Constitutional Rights And Freedom Of Media In India, 36, IIL, 429 (1994) <https://www.jstor.org/stable/43952367>.

³⁵ US Constitution , First Amendment , Article 1.

explicitly that the right to freedom of speech and expression is limited, the First Amendment does not. The US Supreme Court has inserted some implied constraints into press freedom that are essentially the same as Article 19 of the Constitution (2). However, from a judicial and social standpoint, the American press freedom guarantee is significantly more robust than the Indian equivalent.³⁶

Members of the Constituent Assembly argued whether or not a special right for the press should be included in the Indian Constitution, separate from regular citizens. The Constituent Assembly decided that a measure like this was unnecessary. Even though no explicit provision was established to protect the press's rights, the courts have repeatedly held that the press's rights are implicit in protecting freedom of speech and expression under Article 19(1)(a) of the Constitution.³⁷

CONCLUSIONS AND SUGGESTIONS

A free press is a crucial tool for maintaining a healthy democracy. If the people's will cannot be freely expressed, it cannot be respected, and a democracy without the people's free will is not a democracy. The Court has indicated a preference for press freedom, keeping with its declaration that freedom of expression is one of the vital underpinnings of a democratic society. We live in a democratic system where the citizen is supreme, and the government must be subject to checks and balances, with the media playing an essential role in these checks and balances. Finally, it must be emphasized that press and information freedom are critical to the proper functioning of a democracy and must therefore coexist with freedom of speech and expression. There are a few suggestions that can implement to promote reasonable press freedom.

1. Examine existing legislation to see if they impose unjustified restrictions and censorship on the press.
2. Enact legislation to combat the spread of false news and hate speech on the internet.
3. Enact legislation to protect the lives and property of journalists and media organisations.
4. Suppose newspapers and electronic media can freely express diverse points of view, including those of the opposition, without government supervision. In that case, people will have complete freedom of thought and discussion on public problems.

³⁶ Rahesha Sehgal and Udit Malik, Press Freedom In India: A Legal Study, 4 IJARIIE 2395 (2018) http://ijariie.com/AdminUploadPdf/Press_Freedom_in_India_ijariie9081.pdf.

³⁷ Brij Bhushan v. State of Delhi , AIR 1950 SC 129; Express Newspapers Ltd. V. Union of India , AIR 1958 SC 578 ; Sakal Papers v. Union of India , AIR 1962 SC 305; Bennett Coleman & Co. v. Union of India (1972) 2 SCC 788 ; AIR 1973 SC 106; Maneka Gandhi v. Union of India, (1978)1 SCC 248.

5. At the same time, proactive actions must ensure that independent newspapers can survive and thrive.



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