

FREEDOM OF PRESS UNDER THE CONSTITUTION OF INDIA

Author Details:



Bikash Sen Deka

Advocate

Gauhati High Court

Email:

bikashsendeka@gmail.com

Abstract

India is known as the world's largest democracy and after the cessation of the first ever National Emergency in India, Smt. Indira Gandhi, the then Prime Minister of India held the press to the fourth pillar of democracy after the Legislative, Executive, and the Judiciary. It highlighted the importance of press and media in protecting the democracy of the land and maintaining the Rule of Law enshrined in the Constitution of India. However, surprisingly Freedom of Press was not expressly provided under the Indian Constitution, unlike the American Constitution, but Dr. BR Ambedkar did mention that Freedom of Press as is inherent within the scope of Freedom of Speech and Expression which has been guaranteed as a Fundamental Right under Article 19(1)(a) of the said Constitution. Thus, Freedom of Press exists in India in the form of a Fundamental Right. However, there have been several controversies regarding the promotion of this Right, for which a study in this field becomes important. Considering the importance of press in maintaining the democracy in India at the contemporary times, this paper will attempt to analyse the legal status of the Freedom of Press in India.

Keywords:

Article 19(1)(a); Constitution; Democracy; Freedom of Speech and Expression; and Freedom of Press

Paper Details

Paper Code: RP-CLA-V2-16

Category: Research Paper

Date of Submission for First Review: March 28, 2022

Date of Acceptance: July 6, 2022

Citation: Bikash Sen Deka, "Freedom of Press under the Constitution of India", 2, AIJACLA, 171, 171-190 (2022).

INTRODUCTION

The freedom of the speech is the capability to express ones thoughts and feelings without government sanctions and is considered as a democratic principle that has ancient Greek origin. The people of Greece recognised liberty to speak as a democratic principle. Leaders, philosophers, dramatists and average Athenians were free to openly discuss politics and religion and to criticize the government in some settings.¹ The United Nations' Universal Declaration of Human Rights (UDHR) gives recognition to Freedom of expressing oneself and of the press under Art. 19.² The International Covenant on Civil and Political Rights (ICCPR) under Article 19 also deals with the right to freedom of expression.³ Under the United States Constitution, the First Amendment protects freedom of speech. It reads as follows "Congress shall make no law....abridging the freedom of speech or of the press...." Therefore, the freedom of speech as well as the press is protected in the United States.⁴

In India, the Framers of the Constitution understood the importance of the principles of freedom of speech in a democracy and therefore this freedom received constitutional recognition. The Constitution of India under Article 19 provides six freedoms; one of those freedoms deals with

free speech and expression. Article 19(1)(a) of the Constitution states that "all citizens shall have the right to freedom of speech and expression". This right thus guarantees each and every citizen to express his mind, his views and opinions as well as criticise the government. This article also lays down reasonable restrictions on the freedom of speech and expression on certain grounds.⁵ The principle of freedom of speech and expression has been expanded by the Indian judiciary and this freedom also includes the liberty of press. Thus, press freedom is enshrined in the Constitution.⁶ The Constitution makers did not consider it necessary to make a separate provision dealing with the rights of the press because this right is already present in the guarantee of 'freedom of expression.'⁷ "Freedom of the press is the right to publish newspapers, magazines, books, etc. without government interference or prior censorship."⁸ While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other protections.

The press in India, however, is not a creation of the Constitution. History of press dates back to the time of imperial rulers. In those times, the British imposed various censorships upon the press and therefore, press freedom in the true sense of the term

¹ Freedom of Speech, A&E Television Networks (Nov. 28, 2018, 5:40 PM), <https://www.history.com/freedom-of-speech>

² Universal Declaration of Human Rights, 1948, art. 19,

³ International Covenant on Civil and Political Rights, art. 19 cl. 2.

⁴ U.S. CONST. amend. I

⁵ INDIA CONST. art. 19(2)

⁶ INDIA CONST. art. 19(1)(a)

⁷ Express Newspapers v Union Of India, (1959) 1 SCR 12

⁸ Freedom of the press, Collins Dictionary (Nov. 28, 2018, 6:50 PM), <https://www.collinsdictionary.com/dictionary/english/freedom-of-the-press>



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.



ISSN (Online): 2583-1437
Volume 2, 2022

did not exist under the British regime. The role of press during the Indian freedom struggle is commendable as it played a significant role in garnering public support and backing against the British.

After independence, the constitutional recognition of the freedom of press resurrected the press and media in a new dynamic and responsible organ of the India society. The Indian government has passed various legislations providing protection and promotion to the free exercise of the press. The liberty of the press and media denotes the right to openly and fearlessly broadcast, publish, express and communicate news and information as well as make criticisms through various platforms such as newspapers, radio, television and other forms of print and electronic media. However, this liberty is curtailed by the state by laying down some reasonable restrictions.⁹ The exercise of free press is further influenced by politics and bureaucracy for political gain and power grabbing. This research is concerned with the freedom of press as a right instilled in our Constitution, its history and how this right is being restricted by the state and political influences.

THE FREEDOM OF THE PRESS: A CONCEPTUAL STUDY AND INTERNATIONAL PERSPECTIVE

General Concept:

The expression of freedom of press is generally associated and belongs to the broader concept of free speech. “Freedom of speech and expression” literally means “the liberty of a person to speak, communicate, criticise and express one’s views, opinions and feelings.” The Freedom of speech and expression is exercised either by way of spoken words, written words, or in any printed manner or made known by any gesture, representation or signs. The freedom of speech and expression impliedly includes in itself the freedom of the press and media.

The concept of freedom of press mainly refers to the ability to print and publish information without governmental restrictions. Freedom of press is the liberty which is practiced through newspapers, magazines and other forms of print media to express and communicate various matters to the people without any kind of censorship. With the development of technology, new means of news and information broadcasting have emerged in the form of electronic media; as a result the concept of freedom of press has been widened to include not only the print media but also electronic forms of media such as television, radio, internet, etc.

Etymologically, the term ‘press’ originates from the Latin word ‘premere’ which means to press. ‘Press’ is a variation of the Middle English word ‘presse’ meaning a machine for printing. ‘Press’ is used to collectively mean the print media, which includes both

⁹ INDIA CONST. art. 19, cl. 2.



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.



ISSN (Online): 2583-1437
Volume 2, 2022

the journalists and newspapers.¹⁰The term ‘media’ etymologically derives its origin from the Latin word ‘medius’ meaning middle.

Thus, the expression “freedom of media and press” can be described as a liberty and a right of the people of a state to express, communicate, publish and broadcast various news, statements, information and other matters to the people either in printed form like newspapers, circulars, books, magazines or by electronic means such as televisions, radios, internet or in any other form, without any restrictions or censorship laid down by the government.

The liberty extended to the print and electronic media is generally seen in democracies. In almost all democratic countries, the constitution guarantees to the people the press and media liberty. In countries like India and USA, freedom of press is a constitutional right enshrined in the constitution. However, freedom of the press and media is not a universal right present all over the world. In countries like North Korea, China, Syria freedom of press is heavily restricted and censored. In these countries, press and media are institutions which are under the total control of the state. Anyone who defames or criticizes the government is often subjected to legal sanctions.

Freedom of press and media is based upon democratic principles of open and good governance. The principles of democracy can only exist and sustain in a state where the people are given the freedom to express their views, criticise the government and liberty extended to the media to publish and broadcast news without repercussions. The importance of press and media is such that many have regarded it as the 4th pillar of democratic setup along with the judicial, legislative, executive institutions. Thus, press and media are vital institutions in democracies as they help to make the voice of the people known to all and operate as the people’s watchdog, guardian of their rights as well as educate and entertain the public.¹¹

In democratic countries the press and media are required to be separate institutions free from the governmental and state. The news media is required to be independent and free and must exercise its functions without government influence. However, the liberty extended to the media cannot be considered to be unlimited and absolute. The press and media do not have the right to publish anything and everything as is desires. Most states have laid down certain rational limitations and controls on the freedom of the media in the name of public interest and interest of the state. While publishing or broadcasting news and information, the print and electronic media are required to obey and respect the laws of the state relating

¹⁰ Press, Oxford University Press (Dec. 1, 2018, 12:40 PM),
<https://en.oxforddictionaries.com/definition/press>

¹¹ Press Freedom, News Media Association (Dec. 1, 2018, 2:40 PM),
<http://www.newsmediauk.org/Current-Topics/Press-Freedom>

libel, contempt obscenity copyright, sedition, etc.

adopt the principles of freedom of speech and of press in their national laws.

International Perspective and Freedom of Press in other countries

In today's time, the principles of free media and press are universally recognised concept. Freedom to speak and liberty of the print and electronic media are considered to be basic and fundamental rights of man, which are considered to have been the outcome of the inherent dignity of man as a member of the community of human kind.¹² In almost all countries, press and media are in existence which either operate independently or are used as medium to promote governmental propaganda.

The principle of freedom of speech and press as a basic human right has been recognised at the international sphere by the United Nations Organisation. The United Nations' Universal Declaration of Human Rights (UDHR) gives recognition to the freedom and liberty of expression and the liberty of press under Art. 19, which reads as follows "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."¹³ Thus, the United Nations urges its member states to

Furthermore, the International Covenant on Civil and Political Rights (ICCPR) gives recognition to various civil and political rights including free press. Art. 19(2) of the Covenant state as follows, "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."¹⁴

In consequence of the provisions of the UDHR and ICCPR, many countries like India adopted constitutional provisions and other legislations relating to the freedom of press. However, press laws were not of recent origin and existed from the times of introduction of printing press. One of the very first countries to have introduced laws protecting the liberty of the press is Sweden, which passed the Freedom of the Press Act in 1766.

In the United States of America, press freedom is a constitutionally safeguarded right under the 1st Amendment. It pronounces that, "*Congress shall make no law....abridging the freedom of speech, or of the press....*"¹⁵ By virtue of this amendment, the American citizens are given the fundamental right to express their idea,

¹² Đặng Dũng Chí, International Law on the Right to Freedom of the Press (Dec. 1, 2018, 2:50 PM), <http://siteresources.worldbank.org/INTVIETNAM/Resources/3-INTERNATIONAL-LAW-ON-THE-RIGHT-TO-FREEDOM-OF-THE-PRESS.pdf>

¹³ Article 19, Universal Declaration of Human Rights, 1948

¹⁴ Article 19(2), International Covenant on Civil and Political Rights

¹⁵ U.S. CONST. amend. I



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.



ISSN (Online): 2583-1437
Volume 2, 2022

opinions or publish and broadcast news and information and the government is prevented from restricting or interfering with the said right. In the case of *Near v. Minnesota*¹⁶, the court ruled that any prior restraints or censorship on publication infringes the freedom of press guaranteed by the American Constitution under the First Amendment. In *N.Y. Times v. Sullivan*,¹⁷ the U.S. Supreme Court formulated the standard for determining whether a press publication against public officers can be considered as defamation.

In Britain, press has a long history and tradition. A system of licensing existed in Britain by which any publication made required the prior approval and licence granted by the government. In 1965, such laws relating to press licence and limitations were abolished and thus, the foundations of free press were established.¹⁸ British Constitution does not provide any express protection of freedom of press. However, Britain provides a positive and open environment for the press to function freely without any such fear of sanctions or limitations. Although, there are several laws in existence which limit the press freedom, nevertheless, the legal framework and the government upholds the press liberty and rights in general practice.¹⁹

As per the Freedom of the Press Report²⁰, only 13% of the countries of the world has free press, where reporting of political news is open, journalists are considered safe, government interference in media affairs is marginal, and the press is free from any legal or economic influences. These countries include most of Europe, United States, Canada, Australia, Japan, etc. Countries like India, Italy, South Korea, South Africa, and Brazil have been classified as state having partially free press. Other states like Russia, Pakistan, China, North Korea, etc. have been classified as states where press is not considered to be free. The report suggests that almost 3.4 billion people of the world live in countries where freedom of press is non-existent. North Korea, Turkmenistan, Uzbekistan, Syria, Iran and a few other countries have been described as Worst of the worst.

HISTORICAL AND CONTEMPORARY STUDY OF PRESS AND MEDIA LAWS AND REGULATIONS IN INDIA

Press Laws during the British Period:

Before the East India Company came to power in India, no laws regarding the press was in existence. In 1776, an ex-British employee was expelled from India for

¹⁶ *Near v. Minnesota*, 283 U.S. 697 (1931)

¹⁷ *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)

¹⁸ Press, freedom of the: History, Sandbox Networks, (Dec. 1, 2018, 8:10 PM), <https://www.infoplease.com/encyclopedia/social-sciences-and-the-law/political-science-and-government/political-science-terms-and-concepts/press-freedom-of-the/history>

¹⁹ United Kingdom, Freedom of the Press 2017, Freedom House (Dec. 1, 2018, 8:10 PM), <https://freedomhouse.org/report/freedom-press/2017/united-kingdom>

²⁰ Freedom of the Press 2017, Freedom House (Dec. 1, 2018, 5:10 PM), <https://freedomhouse.org/report/freedom-press/freedom-press-2017>



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.

AIJACLA 
ISSN (Online): 2583-1437
Volume 2, 2022

attempting to start a newspaper of his own. James A. Hicky was the first person to publish a newspaper in India called the “Bengal Gazette” in the year 1780. But soon after, he had to stop publishing the newspaper due to provocations by the British. In those times, the British were no in favour of allowing press to operate in a free manner and severe constraints and scrutiny was placed by them. The scheme of pre-censorship was put into effect for the first time in 1795 when the ‘Madras Gazette’, a local newspaper, was directed to present its content before the Military Secretary for scrutiny before making publications. Thus, imposition of prior censorship, denying postal services and expulsion from the country were some of the devices used by the British to curb the press in India. This system continued to operate for some time and in 1799 a press regulation was introduced which was first of its kind. The regulation made it compulsory to present all content for scrutiny before the Secretary of the Company Government and specify the names and address of the editors, owners and publishers of the paper. However, these press regulations were eradicated by Warren Hastings.²¹

John Adams, the Governor General of India, presented the press licence system in India similar to the system in the Home Government. This system required all printers and publishers to obtain licence before printing or making any publication. But, this system was repealed soon by the

Metcalf’s Press Act. The Act required the publisher of newspapers only to declare their names and addresses. But in 1957, after the events of the Sepoy Munity, Lord Canning re-introduced the system of licences and such licences were applicable upon newspapers, books and any other printed materials by virtue of the Gagging Act.²²

With the enactment of the India Penal Code in 1860, liberty of press was further curtailed as penal provisions were introduced by the code on grounds of defamation, publication of obscene materials, sedition, etc. Later on, the Press and Registration of Books Act, 1867 was enacted to watch over the workings of the newspapers and printing presses. However, the most momentous press control law was the Vernacular Press Act, 1878 which regulated and restricted the publication of newspapers in Indian languages. The Act empowered the British Government with discretionary powers to regulate the content of Indian language newspapers. The Act was heavily criticised and hence was annulled in the year 1881.

As the freedom struggle movement against the British started to take shape with passing time, many people took the medium of the press to raise their voices against the colonial rulers and generate awareness and sense of nationalism in the hearts of the Indians. People such as Bal Gangadhar Tilak and others played instrumental role during the freedom movement. Newspapers and journals like Kesari, Yugantur, Bande

²¹ SAMIR KUMAR SINGH & PUSHPENDRA P. SINGH, MEDIA LEGISLATION AND LAWS (Jnanda Prakashan, 2009)

²²*Ibid.*

Mataram, Gyan Prakash, Indu Prakash, Daccan Star, etc. published aggressively against the British Government and its oppressive policies.

In the early part of the 20th century, the Newspapers (Incitement to Offences) Act, 1908 was introduced by which the government was empowered to punish or seize any publication, newspaper or press which has published any material which might lead to incitement of offences like uprising. In 1910, the Press Act was enacted to authorize the security to enforce security upon the newspapers and prohibit the transmission of newspapers containing offensive content. The Official Secret Act, which was introduced in the year 1923, forbids the printing of top-secret government information.

Present laws and regulations of the Press and Media:

As India gained independence from the British, a new sense of light dawned in the liberty of the press. In March 1947, the Press Laws Enquiry Committee was given the duty to inspect and make recommendations on press regulation by the interim Government. The report submitted by the Committee resulted in the introduction of the Press (Objectionable Matter) Act, 1951. The Act of 1951 was adopted with the goal of penalising those persons who misused freedom of press by publishing objectionable material which could incite commission of crimes and offences. The Committee also suggested ways of achieving the principles of free press. The

Constitution of India preached for free press based upon the principles of free speech expressly granted under Art. 19(1)(a). The Constitution also specified certain limitations under Article 19(2) upon the press. The constitutional recognition of the freedom of press under Art 19(1)(a) led to the basis of press liberty in the country. The severe forms of censorship and restriction set by the British found no place in free India. Several laws were passed to promote and develop the system of press and media in country.

The 1st Press Commission was formed with Justice J. S. Rajadhyakhsa as its Chairman. The Commission was of the view that although some newspapers adopted cheap practices and invaded people's privacy, but newspapers as a whole maintain a high etiquette. The Commission also sought to improve the conditions of the journalist and employees of the newspaper business and suggested the enactment of the Working Journalists Act, 1955. The Act dealt with the working and employment terms and conditions of the press and newspaper workers and reporters by laying down provisions relating to salaries, work-time, leave, etc. Consequently, the Working Journalist Act of 1958 was adopted for regulating salaries of the journalists.

The freedom of press was further regulated with the passing of the three acts. Firstly, Cinematograph Act of 1952, which introduced to certify films and cinema and regulate and censor the content of films; Secondly, the Young Persons (Harmful Publications) Act, 1956, which prevent the



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.

AIJACLA 
ISSN (Online): 2583-1437
Volume 2, 2022

press from printing and circulating any material which may be damage and injure the minds of young children and minors; and Thirdly, the Copyright Act of 1957 by which all literary, artistic or other works innovated by a person was the sole owner of such and other person were prevented to publish or reproduce the same without his consent.

The Government introduced the Newspaper (Prices and Pages) Act in 1956, which sought to determine the cost of newspapers depending upon its quantity of pages. However, the Act was declared unconstitutional by the judiciary in the Sakal Papers Case.²³ The Act was also criticised by Durga Das Basu of being a prime example of how the government indirectly obstructs the free liberty of the press.²⁴ Parliamentary Proceedings Act was presented in 1956 to give immunity to reporters for publishing reports and accounts of the works of the Parliamentary. The liberty of print and electronic media was further restricted on the grounds of state security and order, when the Criminal Law Amendment Act, 1961 & the Defence of India Act of 1962 & 1971 were brought into force.²⁵

In 1965, an act was framed by which the Press Council was formed in order to uphold the principles of free press, improve the standards and practices of journalism and monitoring the activities of the press. The formation of Public Council was suggested by the 1st Press Commission.

However, one of the blackest days in the history of press liberty in independent India happened during the Emergency Period of 1975-1977. The time leading up to the declaration of emergency, India-Pakistan War of 1971 had concluded, mass famine and droughts prevailed in many parts of India, fuel prices skyrocketed due to the 1973 oil crisis and mass strikes and protests broke out due to political and economic instability. Severe criticisms and corruption allegations were levelled against the then Prime Minister, Mrs. Indira Gandhi. The ruling party and the Prime Minister faced heavy backlash from the opposition and the people alike because of their incompetency in handling the prevailing situations. Furthermore, Indira Gandhi was found guilty by the Allahabad Court on grounds of electoral misconduct and abuse of political power and disqualified her from taking office for 6 years.²⁶ This decision of the Court resulted in political imbalance in the ruling party and Gandhi found no other measure except for imposing National emergency on the 25th of June, 1975. During this emergency period heavy censorship and restrictions were imposed on the press as many fundamental rights including the liberty of expression were shelved. Many acts such as the Parliamentary Proceedings Act, 1956, the Press Council Act, 1965 etc. were either repealed or suspended. The Central Censorship Order of 1975 laid down stringent imposition and restriction upon the

²³ Sakal Papers v. Union of India, 1962 AIR 305

²⁴ DURGA DAS BASU, LAW OF THE PRESS (LexisNexis, 8th ed, 2010)

²⁵ Samir Kumar Singh & Pushpendra P. Singh, media legislation and laws (Jnanda Prakashan, 2009)

²⁶ State Of UP v. Raj Narain, 1975 AIR 865



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.



ISSN (Online): 2583-1437
Volume 2, 2022

liberty of the press. Foreign reporters were deported and Indian journalists were ordered not to publish anti-government news. Successively, in 1976, an act to prevent publication of objectionable materials was framed to disallow publications against the state interest, public interest, morality, order or against the law.²⁷ The Promulgation of emergency and restriction of free press was severely criticised by the press. *Indian Express*, *The Financial Express*, *The Statesman* & other newspapers were very critical of the government. The Indian Express even printed a blank front page on the 28th June, 1975 in protest of the government's tyranny. The emergency lasted for almost 2 years and was terminated on March 1977.

Both the Prevention of Publication of Objectionable Matter Act and the Censorship Order were annulled in 1977. The Press Council Act, 1978 was enacted by the new government with the objective of upholding press and media rights and promotion of standard and quality of the print and electronic media in India.²⁸

The period of 1980s and 1990s saw huge progress in the field of science and technology such as the development of cable television, internet, wireless mobile phones etc. These developments greatly expanded the sphere of the print and electronic media. In 1990, Broadcasting Corporation of India was established by virtue of the Prasar

Bharati Act, 1990. The Act separated the All India Radio and Doordarshan from government control and gave them autonomy. This was a major step towards achieving separation of free from the state. The Government passed the Information Technology Act, 2000 to regulate matters involving computers, information and communications technology, communication and publication of messages and other material over the internet, e-commerce as well as cybercrimes. For the purpose of furthering the values of liberty of the media & press and adopt government transparency the Right to Information Act, 2005 was introduced.

All these press and media laws and regulations along with constitutional provisions make up the framework of liberty of press & media in the country.

FREEDOM OF THE PRESS AND THE CONSTITUTION

Speech and Expression: Constitutional Freedom

Under Part 3 of Indian Constitution, a variety of fundamental and basic rights are placed which are guaranteed and protected by the Constitution. These rights ensure that the Indian people live with equality, freedom and dignity. The freedom that the Part III of the Constitution provides also includes the freedom of the people to speak without the

²⁷Jhumur Ghosh, *Indira Gandhi's Call Of Emergency And Press Censorship In India: The Ethical Parameters Revisited*, Global Media Journal-Indian Edition, 2017

²⁸ Press Council Act 1978, Press Council of India (Dec. 5, 2018, 2:20 PM) <http://presscouncil.nic.in/OldWebsite/act.htm>



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.



ISSN (Online): 2583-1437
Volume 2, 2022

fear of any sanctions. Art. 19(1)(a) of the Constitution states that the Indian people shall have the liberty to speak and express their mind. The freedom of speech & expression safeguards the people's liberty to speak their mind and express their feelings without any legal or penal consequences. This freedom enables the people to make their views and opinions as well as criticize and voice their concerns to the government, either by spoken or written words, on paper, or express in the manner of signs, gestures, representation, or in any other form. Thus, the liberty of speech & expression gives the people the ability to freely raise make their demands known, raise their concerns and show discontent on the policies adopted by the government without any fear of repercussions.

In Romesh Thapper's case,²⁹ the Court declared that right to freedom of press & speech stated by the Constitution provides the basis of democracy and is a vital requirement for the efficient operation of the principles of good governance. Therefore, in a democracy, the freedom of speech and express is an essential element. This freedom lays down the basis for democracy as it empowers the people with the ability to freely discuss politics, raise their voices, express their concerns and criticise the government for its policies. In order to uphold democratic principles of open and fair government and free elections, the state must provide and protect the people's right to make political statements and views and

criticise the government and its policies without government censorship and sanctions.

The freedom of speech and expression is a positive right vesting the people with the power of voice. The freedom ensures that citizens are not censored, limited, sanctioned or prosecuted for saying or expressing something. However, this freedom is not totally absolute. In Radha Mohan Lal v. Rajasthan High Court³⁰, the judiciary declared that the "free to speak and express" should not be mistaken as a licence permitting a person to make baseless accusations against the judiciary. The Constitution of India lays down certain restrictions on the practice of free speech under Article 19(2) which are considered as rational. Such restrictions limit the practice of freedom of speech and expression on the grounds of: the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.³¹

Liberty of the Press and Media

The freedom of speech and expression that the Constitution provides to the people is not a provision that is to be understood literally. The scope of free speech under Article 19 is very wide and embraces in itself the right of free press. Freedom of the press and media in India provides liberty to the print and

²⁹ Romesh Thapper v. State of Madras, 1950 AIR 124

³⁰ Radha Mohan Lal v. Rajasthan High Court, AIR 2003 SC 1467

³¹ INDIA CONST. art. 19(2)

electronic media to print, publish, circulate and broadcast any news or information, whether political or non-political, without fear of censorship or sanctions. The Indian Press Commission holds that ‘freedom of press’ means “freedom to hold opinions, to receive and impart information through the printed word, without any interference from any public authority.”³² Furthermore, the Commission was of the view that, ‘democracy can only sustain not only in a state where the legislature is vigilant and responsible but also where there is respect for public opinion and promotion of free press.’

Although, the freedom of press is not expressly provided by our Constitution like United States, nevertheless, this freedom is enshrined in our Constitution and impliedly exist under the broader principle of free speech under Article 19(1)(a) of our Constitution. The freedom of press is a right which is an extension of “freedom of expression.” B.R. Ambedkar considered that press do not have any special or extraordinary right which is provided by the Constitution or which is different from the rights exercised by the ordinary citizens. The print and electronic media merely exercises the rights given under freedom of expression in the name of freedom of press and therefore no express provision of freedom of press is necessary.³³

In *Sakal Papers*³⁴, the Court interpreted Article 19(1) (a) of the Constitution to

include “freedom of the press’, which is considered to be a part of broader principle of “free speech.” Thus, freedom of the press cannot be considered to be greater than the right safeguarded by the liberty of speech and expression.

In *Printers v. Asst CTO*,³⁵ the Court acknowledged that press freedom is not a direct fundamental right but is implied under the fundamental right guaranteed under Art. 19(1)(a) of the Indian Constitution.

Therefore, the press in India are impliedly provided with considerable liberties to operate freely. Indian print and electronic media are free to print, publish, broadcast, circulate and telecast all forms of news, events, information, statements, criticisms, etc. without fear from government interference. The Courts in India have recognised that the freedom of the press is implicit in our Constitution and has made many pronouncements in which this freedom has been protected and its scope has been extended.

Cases relating to Freedom of the Press

In this part, a few landmark cases shall be briefly discussed in which the Indian Courts have made pronouncements for the protection and extension of the ambit of the freedom of the press.

❖ *Brij Bhushan v. Delhi*³⁶

³² Press Commission, Report, Part I, paragraph 1453.

³³ Ambedkar, Constituent Assembly Debates, VII, 980

³⁴ *Sakal Papers v. U.O.I*, 1962 AIR 305

³⁵ *Printers (Mysore) v. Asst. CTO*, 1994 SCC 2 434

³⁶ *Brij Bhushan v. Delhi*, AIR 1950 SC 129

In this case, the imposition of pre-censorship on a newspaper was challenged. The main issue of this case was that a pre-censorship order was made against 'The Organiser', an English weekly based in Delhi, in pursuance of Section 7(1)(c) of the East Punjab Public Safety Act, 1949. The order required the newspaper to submit any communal news and other related matters for scrutiny and inspection before publication. The Court declared this order as unlawful and held that imposing pre-censorship upon newspapers and journals to publish news, information and its views and opinions on current affairs is curtailment of the freedom of the press which is an integral part of the freedom of speech and expression guaranteed by our Constitution.

- ❖ *Express Newspapers v. U.O.I*³⁷
The legality of the Working Journalists Act, 1955, was called into question. The Act was introduced to deal with various matters of the persons working in the newspaper business such as conditions of service, leave, wages, hours of work, etc. In this case, the Act was opposed on the ground that it financially affected the newspapers and curtailed the circulation and limited the broadcasting of information and thereby infringed Article 19(1)(a). The Court was of the view that the press is not protected from the ambit of ordinary laws. The legislation was formulated to improve

the condition of the persons employed in the newspaper business and hence, it is constitutionally valid and reasonable.

- ❖ *Sakal Papers v. Union of India*³⁸
The case was that the fixation of minimum rate of newspapers according to number of pages was challenged. The facts of the case were that the Government introduced the Newspaper Act, 1956 and the Daily Newspaper Order, 1960, in order to determine the quantity of the newspaper pages in accordance with the price of the newspaper, the number of supplements and size, place where the advertisement were to be printed, etc. The validity of the Act and the government order was challenged as it infringed the press freedom protected by the Indian Constitution. The judiciary was of the view that the newspapers are at liberty to fix their prices and print any number of pages and any restraint on this liberty is a violation of the principles of free speech. The Court further considered that the liberty of speech and expression cannot be restricted in the interest of the public. However, the reasonable restriction under Article 19(2) may apply in certain cases. Hence, the Court ruled that the Act of 1956 and the Order of 1960, were unlawful and invalid as they infringed the press freedom implicit in the constitution.
- ❖ *Bennett Coleman & Co. v. Union of India*³⁹

³⁷ *Express Newspapers v. U.O.I*, AIR 1958 SC 578

³⁸ *Sakal Papers v. Union of India*, 1962 AIR 305

³⁹ *Bennet Coleman v. UOI*, 1973 AIR 106

The setting of upper limit of page numbers in newspapers by the administration was challenged in this case. It was argued that the Government has passed the Newsprint Control Order, 1962, by which the upper limit of pages that a daily can print was fixed at 10. This order was called into question on the ground that it violated the Art. 19(1)(a) and Article 14 of the Constitution. The judiciary adjudged that the state could adopt a policy of determining fair allocation of newsprints to newspaper agencies but the growth, circulation and content including the number of pages cannot be controlled by the state. Therefore, the judiciary held that the Order of 1962 by which the maximum number of newspaper pages were fixed was unconstitutional.

❖ *Indian Express Newspapers v. Union Of India*⁴⁰

The issue of the case was that the imposition of import duty and other auxiliary duties on imported newsprints by newspapers was questioned on the fact that it invaded the press freedom. The Court decided that the newspapers are not exempted from the purview of general laws of the land in the name of press freedom. Therefore, the imposition of tax and duty upon the newspapers is valid and constitutional, so long as such imposition is fair and reasonable. Thus, the court disallowed

the petition and held that levy of any duty upon newspaper agencies is legally valid and is subject to the review of the courts in accordance with the constitutional provisions.

❖ *R. Rajagopal v. State of T.N*⁴¹

This case mainly dealt with the prior-restriction on publication of defamatory against government officials. In this case, the Supreme Court was of the view that the government has no power to lay down prior-restrictions on the publication of materials which are considered to be defamatory to the government officials. The government and its authorities do not possess the power to restrict the press from publishing any of such material and the press are free from any prosecution if such publication was based upon public or court records.

❖ *Hindustan Times v. State of UP*⁴²

In this case, the imposition of tax upon the publication of advertisement on newspapers was challenged. The Court was of the view that the advertisements in newspapers have a direct connection with the free circulation and availability of newspapers and impacts the income of the newspapers. Thus, the Court held that any condition or executive action which imposes limitation on the free exercise of the liberty of the press shall be considered unjust.

❖ *Sahara India Real Estate Corp. v. SEBI*⁴³

⁴⁰ *Indian Express Newspapers v. UOI*, 1986 AIR 515

⁴¹ *R. Rajagopal v. State of T.N*, 1995 AIR 264

⁴² *Hindustan Times v. State of UP*, AIR 2003 SC 250

⁴³ *Sahara India Real Estate Corp. v. SEBI*, AIR 2012 SC 3829

In this case, the court was of the view that, “Finding an acceptable constitutional balance between free press and administration of justice is a difficult task in every legal system.” The Court further observed that the press and media have the liberty to report and publish the proceedings of any case and the Court has no power to postpone or delay the media from exercising its freedom to report such cases, unless any reasonable cause or interest is given.

LEGAL AND POLITICAL LIMITATIONS AND RESTRICTIONS ON THE FREEDOM OF THE PRESS AND MEDIA

Constitutional Restrictions

Indian Constitution lays down freedom of speech and expression as a fundamental right guaranteed to all Indian citizens. This freedom also extends to implicitly include in itself the freedom granted to the media and press. Therefore, all the reasonable restrictions that are applicable upon the freedom of speech and expression under Article 19(2) are also applicable upon the freedom of the press. Thus, the liberty of the print and electronic media in India may be restricted and controlled on the grounds of: the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court,

defamation or incitement to an offence. In *Shreya Singhal case*,⁴⁴ the Court was of the view that the freedom under Article 19(1)(a) has been granted to express unpleasant views, cause inconvenience or infuriation to the extent that such expression does not lead to incitement on any of the 8 grounds under Art. 19(2). In *Papnasam Labour Case*,⁴⁵ the elements to determine the restrictions to be reasonable were laid down.

These reasonable restrictions on the media and press have been briefly discussed as follows with appropriate cases:

a) Security of the State:

Restrictions may be imposed on the freedom of press on the ground of security of the state. The exercise of free press is restricted if any news, information, publication, opinions or other printed or broadcasted material is such that it may disturb the peace and security of a nation and result in the outbreak of rebellion, war, riot, breach of public order, etc.

It was held in *State of Bihar v Shailabala Devi*,⁴⁶ that anything spoken or expressed by a person, which leads to the commission of crimes, shall be considered as matters amounting to damage of the state security.

b) Friendly relations with Foreign States:

The press is restricted from publishing or broadcasting any news, information or other matters which may harm and

⁴⁴ *Shreya Singhal v. U.O.I*, AIR 2015 SC 1523

⁴⁵ *Papnasam Labour Union v. Madura Coats Ltd*, AIR 1995 SC 2200

⁴⁶ *State of Bihar v Shailabala Devi*, AIR 1952 SC 329

endanger the friendly relation that India has with other foreign countries. Thus, the press is prevented to spread and circulate any hostile and hateful propaganda which may adversely affect the peaceful relations of India with other states.

c) Public Order:

The press and media are prevented from exercising their liberty on the ground of public order. Thus, the print and electronic media cannot print or telecast any news, information or views or statements which may disturb the peace and tranquillity of the society or disrupt the law and order situation. Public order as a reasonable restriction was added by the First Constitution Amendment Act in 1951.

In the case of *Romesh Thappar*,⁴⁷ the court was of the view that restricting freedom of speech and expression cannot be imposed for any ordinary violation of public order.

d) Sovereignty and integrity of the state:

The press is prohibited to make any statement or publication or broadcast of any matter if such material injures or damages the sovereignty, unity and integrity of India. Thus, the liberty of speech and expression including press freedom cannot be exercised if such freedoms negate the India's authority and integrity. The Indian Penal Code under Section 124A deals with the punishment for sedition for making any

statement which brings hatred, contempt or dissatisfaction towards the government of India. However, sedition is not considered to be a reasonable restriction by virtue of Art. 19(2).

e) Decency or morality:

The press and media enjoy the liberty to make any publication or broadcast any programme so as such material are decent and moral in character and appearance. Thus, the press is restricted to publish and telecast any information, news or other material which is regarded as obscene and immoral. The Indian Penal Code is comprised of provisions restricting the press to exercise its liberty on the grounds of decency and morality.⁴⁸ These sections limit the press from publishing, circulating, distributing any obscene or immoral material to any young person or anyone who might be corrupted by such materials.

In *Ranjit Udeshi's* case,⁴⁹ it was established that Section 292 of IPC forbids obscenity and endorses decent and moral public values and therefore is legally valid.

f) Contempt of Court:

Contempt is of 2 kinds: Civil & Criminal.⁵⁰ Contempt in civil terms refers to any wilful disobedience or breach of any court order, judgement or any undertaking. Criminal contempt refers to any publication which may scandalise, prejudice or delay the

⁴⁷ *Romesh Thappar v. State of Madras*, 1950 AIR 124

⁴⁸ Indian Penal Code, s. 292, 293, 294.

⁴⁹ *Ranjit Udeshi v State of Maharashtra*, AIR 1965 SC 881

⁵⁰ Contempt of Courts Act, Sec 2

administration of justice. Constitution also authorizes the Apex Court and High Courts to punish for its contempt. Thus, freedom of press cannot be exercised if it amounts to contempt of court.

In C.K. Daphtary's case,⁵¹ the power of contempt of the Supreme Court provided by Article 129 of the constitution has been considered as reasonable under the provision of Article 19(2) of the Constitution.

g) Defamation:

Defamation can be described as any matter which injures the dignity, reputation and image of a person in the eyes of the society and thereby exposes him to mockery, hate, disgust or contempt. Defamation may be either in the form of libel or slander; it may be a tort or a crime. The Indian Penal Code under Section 499 deals with the provision relating to defamation. Thus, the press is prevented from publishing any statement or telecasting any material which defames any person.

In Subramanian Swami's case,⁵² the judiciary interpreted Article 21 of the Constitution to include "right to reputation" as a fundamental right. It further said that liberty of speech and expression of a citizen does mean the right to defame other persons.

h) Incitement to an offence:

The press is restricted from exercising its liberty on the ground of motivating

and inciting the public to commit crime. Thus, the press cannot publish or broadcast anything which may provoke, incite or motivate any person to commit any offence.

In the case of Shailabala Devi,⁵³ the Court was of the opinion that the exercise of freedom of speech and expression shall be considered to be against the state interest if it leads to the incitement of offences like murder, etc.

Limitations by the laws and statutes

Apart from constitutional restriction on the freedom of press under Article 19(2), there are also various laws and regulations which also lay down certain limitation upon the press so that it operates within the legal limits and it does not become a fundamentally anti-government institution. A few of such laws and regulations have been described below.

The Official Secrets Act, 1923 is an act to protect the secret and confidential information from the hands of unauthorised persons and the enemy. The Act contains provision which prevents and restricts the newspapers and the media to publish any top secret or confidential matter such as espionage, defence, military, etc.

Limitation on the press and media is imposed by the Indian Penal Code through various provisions. Section 124A restricts the press on grounds of sedition. By section

⁵¹ C.K. Daphtary v. O.P. Gupta, 1971 AIR 1132

⁵² Subramanian Swami v. Union of India, AIR 2016 SC 2728

⁵³ State of Bihar v Shailabala Devi, AIR 1952 SC 329



Published by
Aquitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.



ISSN (Online): 2583-1437
Volume 2, 2022

153A, any person including the press and media may be punished for promotion of hate between various socio-cultural and religious groups and acting against preservation of public peace. Press and media are further limited on grounds of “decency and morality” under section 292, 293 and 294 and on grounds of “religious harmony” under sections 295, 295A and 298 of the Code.⁵⁴

The Indian Evidence Act extends certain limitations on the press from publishing any governmental records which are not published or any confidential communications made officially.⁵⁵

The Press Council Act, 1978 establishes the Press Council with the intention of regulating the quality and standards of journalism in the country and may warn and censure any newspaper, agency, publisher if it operates immorally and against press ethics.⁵⁶

Contempt of Courts Act, 1971 has also laid down certain limitations on the print and electronic media on grounds of printing or publishing material not in conformity with certain rules and tends to hinder and prevent justice from prevailing.⁵⁷

Political Influences and Unethical Practices of the Press

Political influence and governmental restraint are big hindrances that limit the free exercise of press in India. Often press and media are used as platforms to propagate political agendas and propagandas to garner political support. Political mudslinging between politicians is not an uncommon scene during news programmes. During elections, large amounts of money are invested for promoting political parties and candidates in newspapers and TV channels. A prime example of restriction of press freedom was during the period of emergency in 1975-77, when heavy censorship and restrictions upon the press and media.

The Election Commission of India disqualified Narottam Mishra, a Madhya Pradesh minister, in 2017 for 3 years on the grounds of using funds to promote paid news and his failures to show his expenses during the elections.⁵⁸

Another limitation on the freedom of the press is due the corrupt and unethical practices carried out by news channels. Paid news, fake news, news sensationalising, media trials, etc. are some of the tactics used by the press and media houses to misuse the press liberty. News is based upon what people want to see and not what people need to see. News channels often promote certain political ideals because of their affiliations and financial backings from certain political

⁵⁴ Joydip Ghosal, *An Essay on the Expanding Trends and New Challenges to Freedom of Expression in India*, I.J.H.S.S.I.(2014)

⁵⁵ Indian Evidence Act, 1872, Section 124

⁵⁶ Rajkumar S. Adukia, *Media Laws Of India*, CAAA (Dec. 6, 2018, 4:20 PM), http://www.caaa.in/image/media_laws.pdf

⁵⁷ Contempt of Courts Act, 1971, Section 3.

⁵⁸ EC disqualifies M.P. Minister Narottam Mishra for three years, *The Hindu* (Dec. 6, 2018, 1:20 PM), <https://www.thehindu.com/ec-disqualifies-mp-minister-narottam-mishra-for-three-years/article19140125.ece>



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.



ISSN (Online): 2583-1437
Volume 2, 2022

groups. False opinion polls during elections are often undertaken to manipulate the public opinions.

According to Rajeev Dhawan, the justification that is given against banning opinion polls during election is that such polls are conducted to improve the prospects of candidates and affect the minds of the voters but do not infringe upon the restriction under Article 19(2).⁵⁹

In *Sidhartha Vashisht v. State*,⁶⁰ the Court was of the opinion that “the press and media should take every effort to maintain difference between media trail and informative journalism. Media trial should be refrained by the press.”

Other factors and challenges limiting press freedom

Press freedom is restricted and diminished for various other reasons apart from legal and political constraints. The press and media are often used as a medium to propagate religious, ethnic and communal slogans and ideologies or to spread hate against others. Press freedom has also not been fully developed in Indian due to high rates of poverty, unemployment and people’s ignorance towards the principles of free press. Also, nondisclosure of information to the press about various events and happening by the ordinary citizens, police, official, etc. hinder productive and informative news to reach the people. In

today’s age of science and technology, internet and social media have grown tremendously and is accessible by the rich and poor alike. However, such services are often being used for spreading false and fake information to fool and misguide the people and create sense of distrust and fear in people’s mind. These factors among others have either limited or posed as a challenge upon the fruitful exercise of the liberty granted to the press and media in India.

CONCLUSION AND SUGGESTIONS

In a modern globalised world, the press is considered to be a strong resilient force in spreading news and information all across the world. The role of press and media is not just concentrated with the publication and broadcast of news to the people but has extended to a more dynamic role of responsible journalism. The press and media have the power to influence the public opinion and general consciousness of the people of the society. The study of the modern history of the world tells us how press played the role of a catalyst in different rebellions and revolutions around the world including the freedom movement in India. In India, the press and media enjoy considerable liberty because of constitutional and statutory provisions upholding free press. Although, freedom of press is recognised by the Constitution, but such freedom comes with certain restriction and responsibilities upon the press. The governmental and legislative restraints are

⁵⁹ Rajeev Dhawan, *Publish and be damned-Censorship and Intolerance in India*, The Hindu, (2011)

⁶⁰ *Sidhartha Vashisht v. State*, AIR 2010 SC 2352



Published by
Aequitas Victoria Foundation



Copyright © Annual International Journal on Analysis of
Contemporary Legal Affairs (AIJACLA)
AIJACLA is an Open Access, International, Double-Blind,
Peer-Reviewed Journal published since 2021.

AIJACLA 
ISSN (Online): 2583-1437
Volume 2, 2022

sometimes placed to prevent the press from exaggerating their powers and functioning against the public and state interest. However, governmental and legislative restraints are not the real enemy of the free press in a democracy. The blending of politics and press has resulted in corrupt and shady exercises of the freedom of press and has made the print and electronic media irresponsible and untrustworthy in the eyes of the public. Hence, the arbitrary governmental actions and political intrusions in the functioning of press have reduced the quality of truth in the news and poisoned the society with political agendas and social discontent. The constructive, fearless and responsible role of the press is the need of the hour. In today's time, there is an urgent necessity for the protection of the free press and media in the country so as to ensure that the democratic principles continue to persevere in India.

In view of the study conducted upon the freedom of press and media and its restrictions, the researcher would like to put forward the following suggestions:

1. There is urgent need for enactment of proper legislations to regulate the behaviour and conduct of the press and media so as to prevent them from exercising their freedom unethically and against press morals.
2. The press and media should be given liberty and freedom by reducing statutory restrictions so that they can function freely and fearlessly and deliver the truth and facts to the people

3. The press should adopt constructive and responsible form of journalism and should publish and broadcast factual and informative news. Sensationalising the news, paid news, fake news, defamatory news, news by violating privacy and broadcasting and publishing news for viewership instead of the real news should be avoided by the press.

4. The press and media should ensure that they exercise their freedom without being influenced by politics, religion, ideologies and other biased misleading opinions and views.