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Freedom of Press in Indian Constitution: A Brief Analysis

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Abstract

The Constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1) (a) of the Constitution. However this right is subject to restrictions under sub-clause (2), whereby this freedom can be restricted for reasons of "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt, court, defamation, or incitement to an offense". Before Independence, there was no constitutional or statutory provision to protect the freedom of press. As observed by the Privy Council the freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as and no wider than that of any other subject. The Preamble of the Indian Constitution ensures to all its citizens the liberty of expression. Freedom of the press has been included as part of freedom of speech and expression under the Article 19 of the UDHR. The heart of the Article 19 says that 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. In view of the above, this paper is a critical analysis of the Indian concept of Freedom of Press and how it is related to the concept of expression in Constitution of India. The judicial view in this context has also been analysed.

Keywords: Constitution of India, Freedom of press, Concept of Expression, Preamble

"The press [is] the only tocsin of a nation. [When it] is completely silenced... all means of a general effort [are] taken away." - **Thomas Jefferson**

1. Introduction

The existence of a free, independent and powerful press is the cornerstone of a democracy, especially in a welfare state like India. It is not only a medium to express one's opinions and views, but also it is an effective instrument for building opinions and views on various regional, national and international issues. Thus the crucial role of the press is its ability to mobilize the thinking process of millions. It is the means by which people receive free flow of information and ideas, which is essential to intelligent self-governance, that is, democracy [1]. Besides the press plays an important role in not only mobilizing public opinion but also bringing to light injustices which would have most likely gone unnoticed. A free press stands as one of the great interpreters between the government and the people. The strength and importance of press in a democracy is well recognized. The framers of the Constitution provided the press with broad freedom. This freedom was considered necessary to the establishment of a strong, independent press sometimes referred to as the "Fourth Estate" [2]. An independent press can provide citizens with a variety of information and opinions on matters of public importance.

Literally 'freedom' means absence of control, interference or restrictions. Hence, the expression 'freedom of press' means the right to print and publish without any interference from the state or any other public authority. In other words, freedom of the press or freedom of the media is the freedom of communication and expression through mediums including various electronic media and published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections [3]. Freedom of press applies to all types of printed

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and broadcast material, including books, newspapers, magazines, pamphlets, films and radio and television programs.

Constitutional Mandate

The Indian Press has a long history right from the times of British rule in the country. The British Government passed a number of legislations to regulate the activities of the press, like the Indian Press Act, 1910, then in 1931-32 the Indian Press (Emergency) Act etc. During the IInd World War (1939-45), the executive exercised exhaustive powers under the Defence of India Act & enforced censorship on press. At the same time the publication of all news relating to the Congress activities declared illegal.

But there was a change in the outlook with the commencement of the Constitution in 1950. The makers of our Constitution believed that freedom of expression and the freedom of press are indispensable to the operation of a democratic system. In this connection Pandit Jawahar Lal Nehru ^[4] said:

“I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press.”

Of course freedom of the press was one of the constitutional guarantees persistently demanded by the leaders of the Indian national movement during British rule. Therefore during the framing of India's Constitution after independence in the Constituent Assembly, the founding fathers gave emphasis on the Freedom of Press. But surprisingly freedom of press was not specifically incorporated in the list of Fundamental Rights in the Constitution. The omission was noticed and criticised in the Constituent Assembly. Dr. B. R. Ambedkar, who is said to be the chief architect of the Indian Constitution, assured the members that freedom of the press was included in the guarantee of freedom of speech and expression and it was hardly necessary to provide for it specifically.

This view has been justified by the Supreme Court of India. In a series of decisions from 1950 onwards the Supreme Court has ruled that Freedom of the Press is implicit in the guarantee of freedom of speech and expression guaranteed by Article 19(1) (a) of the Constitution ^[5]. Thus freedom of the press by judicial interpretation has been accorded constitutional status even if there is no specific provision in the Constitution ensuring freedom of press as such. The ‘freedom of the press’ is regarded as a species of which ‘freedom of expression’ is a genus ^[6].

Restrictions on Freedom of Press in India

As already stated it is necessary to maintain and preserve press in a democracy. But at the same time it is also necessary to place some restrictions on this freedom for the maintenance of social order, because no freedom can be absolute or completely unrestricted. Accordingly, under Article 19(2) of the Constitution of India, the State may make a law imposing reasonable restrictions on the exercise of the right to freedom of press in the interest of the public on the following grounds:

1. Sovereignty & Integrity of India
2. Security of the State
3. Friendly relations with Foreign States
4. Public Order
5. Decency or Morality
6. Contempt of Court

7. Defamation

8. Incitement to an Offence

The grounds mentioned above reveal that they are all concerned with either the national interest or in the interest of the society. The first set of grounds, namely, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest. Whereas the second set of grounds, namely, decency or morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society. However it is the constitutional obligation of the judiciary to ensure that the restrictions imposed by a law on the media are reasonable and relate to the purposes specified in Article 19(2). Because reasonable restrictions contemplated under the Indian Constitution brings the matter in the domain of the court as the question of reasonableness is a question primarily for the Court to decide ^[7].

Thus, in *Prabhu Dutt vs. Union of India* ^[8] the Supreme Court has held that the right to know news and information regarding administration of the Government is included in the freedom of press. But this right is not absolute and restrictions can be imposed on it in the interest of the society and the individual from which the press obtains information. They can obtain information from an individual when he voluntarily agrees to give such information.

In *Papnasam Labour Union vs. Madura Coats Ltd.* ^[9] the Hon'ble Supreme Court has laid down some principles and guidelines to be kept in account while considering the constitutionality of a statutory provision imposing restriction on fundamental rights guaranteed by Articles 19(1) (a) to (g) when challenged on the grounds of unreasonableness of the restriction imposed by it. In *re Arundhati Roy* ^[10], the Supreme Court of India followed the view taken in the American Supreme Court (Frankfurter, J.) in *Pennkamp vs. Florida* ^[11] in which the United States Supreme Court observed:

“If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise”.

In *Rajendra Sail vs. M.P. High Court Bar Assn.* ^[12] the editor, printer and publisher and a reporter of a newspaper, along with the petitioner who was a labour union activist, were summarily punished and sent to suffer a six months imprisonment by the High Court. Their fault was that on the basis of a report filed by a trainee correspondent, they published disparaging remarks against the judges of a High Court made by a union activist at a rally of workers. The remarks were to the effect that the decision given by the High Court was rubbish and fit to be thrown into a dustbin. In appeal the Supreme Court upheld the contempt against them, but modified and reduced the sentence.

In *D.C. Saxena (Dr.) vs. Chief Justice of India* ^[13] the Apex Court has held that no one else has the power to accuse a judge of his misbehavior, partiality or incapacity. The purpose of such a protection is to ensure independence of judiciary so that the judges could decide cases without fear

or favour as the courts are created constitutionally for the dispensation of justice.

Censorship

There is no provision in the Indian Constitution permitting or proscribing censorship. The sting of censorship lies in prior restraint which affects the heart and soul of the freedom of press. Expression is snuffed out before its birth. Suppression by a stroke of the pen is more likely to be applied by the censoring authorities than by suppression through a criminal process, and thus there is far less scope for public appraisal and discussion of the matter. This is the real vice of the prior censor. In *Express Newspapers vs. Union of India* ^[14] the Supreme Court held that a law which imposes pre-censorship or curtails the circulation or prevents newspapers from being started or require the Government to seek Government aid in order to survive was violative of Art 19(1) (a). The Bombay High Court in its landmark judgment in *Binod Rao vs. Masani* ^[15] declared that- “merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication”

The Guwahati High court in a path breaking judgment laid down that the representation to any Government was not adequate because censorship was often invoked against its own policies and in such a situation an appeal to the government would be nothing short of an appeal from Caesar to Caesar.

By these above observations and pronouncements we can say that restrictions imposed by Article 19(2) upon the freedom of speech and expression guaranteed by Article 19(1) (a) including the freedom of press serve a two-fold purpose - on the one hand, they specify that this freedom is not absolute but are subject to regulation and on the other hand, they put a limitation on the power of a legislature to restrict this freedom of press/media. But the legislature cannot restrict this freedom beyond the requirements of Article 19(2) and each of the restrictions must be reasonable and can be imposed only by or under the authority of a law, not by executive action alone. Thus by way of judicial verdicts over the years there had been a paradigm shift in the application of this article and it became somewhat press friendly although imposing restrictions by way of amendments.

Judicial Trend

The Supreme Court has shown unerring consistency in preserving and enlarging the scope of press freedom. In *Romesh Thapar vs. State of Madras*, ^[16] Patanjali Shastri, CJ, observed that “Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.” In this case ^[17], entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as “without liberty of circulation, publication would be of little value”.

The Hon'ble Supreme Court observed in *Union of India vs. Association for Democratic Reforms* ^[18], “One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions”. In *Indian Express*

Newspapers vs. Union of India ^[19], it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are: 1. Freedom of access to all sources of information ^[20], 2. Freedom of publication and 3. Freedom of circulation ^[21]. In the above case the Supreme Court observed the importance of press very aptly and Justice Bhagwati said ^[22]:

“In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

The above statement of the Apex Court explains that the freedom of press is essential for the proper functioning of the democratic process. It clearly illustrates the constitutional viewpoint of the freedom of press in India.

There are many instances when the freedom of press has been suppressed by the authority of the government. In such a situation the act of the authority is subject to judicial scrutiny. In *Sakal Papers vs. Union of India* ^[23], the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price, was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in *Bennett Coleman and Co. vs. Union of India* ^[24], the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19(1) (a) and not to be reasonable restriction under Article 19(2). The Court also rejected the plea of the Government that it would help small newspapers to grow.

The observations of the Supreme Court in *Rajendra Sail vs. Madhya Pradesh High Court Bar Association and Others* ^[25] provide the proper guideline: “For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected”.

An analysis of the judicial decisions reveals that the Indian judiciary has always placed a broad and liberal interpretation on the value of freedom of press which is implied in Article 19(1) (a), making it subjective only to the restrictions permissible under Article 19(2). The courts have firmly repelled the efforts by intolerant authorities to curb or suffocate this freedom, more so when public authorities have betrayed autocratic tendencies. A survey of the pronouncements of the Supreme Court shows that the Court has turned every attempt of the state to abridge the scope of the guarantee into an opportunity to enlarge its sweep to make the press more potent and effective ^[26].

Freedom of Press vs. Social Responsibility

The press is not just the fourth pillar but also the backbone of any democratic society. Because the fact is that the

legislature makes the laws, the executive implements it and the judiciary interprets it. But it is the press which acts as the watchdog of the three pillars, in order to ensure that they are performing their duties in accordance with the constitutional requirements. Though, the press has played significant roles for public welfare but at times it act irresponsibly. In recent times there have been incidents where the press has taken advantage of its role – may be fake sting operations or paid news especially during elections. There has been increasing concern about extremely aggressive journalism, including stories about people's sexual lives and photographs of people when they were in a private setting. Also sometimes freedom of press collides with other rights, such as right to a fair trial or right to privacy. In view of this the Law Commission has recommended a law to debar the media from reporting anything prejudicial to the rights of the accused in criminal cases, from the time of arrest to investigation and trial. The Commission has said ^[27]:

"Today there is feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice".

In this context the Chairman of the Press Council of India Justice Markandey Katju on 3rd May 2012 on the occasion of the World Press Freedom Day accusing Indian media of promoting superstitions and backward ideas to divert people's attention from real issues alleged that the media houses are often looked upon by their owners as the means of making money. He said ^[28]:

"In India, the recent tendencies show the media playing a reactionary role. Instead of promoting scientific thinking, it promotes superstitions and backward ideas and diverts attention from real issues which are socio-economic, to non-issues like lives of film stars, cricket, astrology, etc."

He further stated ^[29]:

"The media persons are also citizens of India, and hence it is their fundamental duty under the Constitution to promote the scientific temper and work for humanism and encourage the spirit of inquiry and reform so as to benefit society. I regret to say that while media persons lay great emphasis on their fundamental right under Article 19 (1) (a), they usually forget their fundamental duty under Article 51A (h) mentioned above".

He remarked ^[30]:

"Freedom of the media (press) is thus a double edged weapon; it can both help society, and also damage society. It is like a knife, which can be used for cutting things, and also stabbing people. Hence freedom of the media cannot be regarded as always good; it depends for what purpose it is being used".

In the present context also the comments of the Commission on Freedom of the Press ^[31] (headed by Robert Hutchins) are noteworthy: "To protect the press is no longer automatically to protect the citizen or the community. The freedom of the press can remain a right of those who publish only if it incorporates into itself the right of the citizen and the public interest." The Commission went on to state the following requirements of a free press: that the press deliver truthful and context-rich news of the day, separate fact from opinion, explore the truth behind facts, clearly separate news content from advertisements, provide for public comment and criticism, hold up societal values and fairly represent public

issues. If it failed in these tasks, self-regulation and self-criticism, public pressure, and even governmental regulation were recommended.

In view of the discussion made above it is submitted that though the press is independent and has its functional autonomy, yet it is required to fulfill the constitutional objectives enshrined in the Preamble of the Constitution of India, namely, to secure to all its citizens 'Justice' in its full comprehensive sense, including social, economic, and political. We should not forget the observations made by the Supreme Court of India 40 years back in *C K Dapthary vs. O P Gupta* ^[32], "Freedom of press under Constitution is not higher than that of a citizen and, that there is no privilege attaching to the profession of press as distinguished from the member of public. To whatever height the subject of general may go, so also may the journalist, and if an ordinary citizen may not transgress the law, so must not the press."

Conclusions and Suggestions

From the above it can be concluded that in a democracy, the government cannot function effectively unless the citizens are well informed and free to participate in public issues by having the widest choice of alternative solutions of the problems that arise. So the fact remains that the press plays an important role in the development and stability of modern society, but at the same time the need of the hour is to impose a commitment of social responsibility on press. In other words, the press has a constitutional duty to consider the overall needs of society when making journalistic decisions in order to produce the greatest good. Facts must be reported accurately and in a meaningful manner. Responsibility, instead of freedom, should be the motto. Such thinking leads to the advocacy of a regulatory mechanism designed to keep the press "socially responsible."

"The following suggestions are offered in this connection:

- Freedom of press may be inserted as a specific fundamental right in the Constitution of India.
- The law must strengthen the conditions of freedom of press; protect the right to communicate and the right to information. The press cannot perform their role unless the law gives them enough power to do so.
- Freedom of press must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest.

It is also the essential duty of press to strike that proper balance between citizen's right to privacy and public's right to information.

Reference

1. Markandey Katju. Freedom of the Press and Journalistic Ethics, the Hindu, June 2, 2011.
2. The 'Fourth Estate' is the public press, referred to as a collective and encompassing photographers, journalists, television broadcasters, and radio announcers, among others.
3. Available at http://en.wikipedia.org/wiki/Freedom_of_the_press#India
4. Nehru's speech on 20th June 1916 in protest against the press Act, 1910.
5. Brij Bhushan & Another vs. The State of Delhi, AIR 1950 SC 129 ; Sakal Papers (P) Ltd vs. Union of India, AIR 1962 SC 305

6. Article 19(1) (a) lays down that “All citizens shall have the right to freedom of speech and expression”.
7. Babulal Parate vs. State of Maharashtra [(1961) 3 SCR 423]
8. AIR 1982 SC 6
9. (1995) 1 SCC 501
10. (2002) 3 SCC 343
11. 328 US 331 : 90 L Ed 1295 (1946)
12. AIR 2005 SC 2473 per Y.K. Sabharwal, J. (for himself and Tarun Chatterjee, J.)
13. (1996) 5 SCC 216
14. AIR 1958 SC 578
15. 1976 78 Bom. L.R. 125
16. AIR 1950 SC 124
17. Ibid
18. (2002) 5 SCC 294
19. (1985) 1 SCC 641
20. M.S.M. Sharma vs. Sri Krishna Sinha, AIR 1959 SC 395
21. Romesh Thapar vs. State of Madras, AIR 1950 SC 124
22. supra note 18
23. AIR 1962 SC 305
24. AIR 1973 SC 106; (1972) 2 SCC 788
25. supra note 12
26. Available at [http://www.cscsarchive.org:8081/MediaArchive/clippings.nsf/\(docid\)/](http://www.cscsarchive.org:8081/MediaArchive/clippings.nsf/(docid)/)
27. Recommendations of the Law Commission of India, 200th Report, Trial by Media: Free Speech versus Fair Trial under Criminal Procedure (Amendments to the Contempt of Courts Act, 1973), August 2006.
28. Available at <http://www.outlookindia.com/article.aspx?280794>
29. Ibid.
30. Ibid.
31. The Report of the Commission on Freedom of the Press titled “A Free and Responsible Press”, p.18 (1947).
32. 1971 SCR 76