

Importance of Freedom of Press Under the Ambit of Article 19(1) (A) of the Indian Constitution

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Abstract: *This research paper explores the significance of freedom of the press as enshrined under Article 19(1)(a) of the Indian Constitution. Through an examination of landmark legal cases, scholarly articles, the study highlights the crucial role played by a free press in safeguarding democracy. It examines how press acts as a watch dog, exposing corruption, promoting public debate, facilitating the exchange of diverse ideas and holding those in power accountable.*

Keywords: Freedom of Press, Indian Constitution

1. Introduction

Article 19(1)(a) of the Indian constitution states that "every citizen shall have the right" to "freedom of speech and expression". Unlike the US constitution, the Indian constitution does not explicitly guarantee freedom of the press. However, it is now widely accepted that the words "speech and articulation" in Article 19(1)(a) also include the possibility of printing.¹ Freedom of the press is a fundamental right elucidated in the Indian Constitution that guarantees all citizens the freedom of speech and expression under Article 19. India's press has a long history of being a pillar of democracy, perhaps the fourth pillar. Its freedom is crucial to the functioning of a democratic society. But, the freedom of the press in India is not without its challenges and limitations. While it's evident that the press in India enjoys a significant degree of freedom under Article 19(1) (a) of the Indian Constitution subject to certain reasonable restrictions. Some of the reasonable restrictions encompasses:²

- 1) **Defamation:** The press is prohibited from publishing content that defames or tarnishes the reputation of individuals or organizations.
- 2) **National Security:** Publication of material that threatens national security or sovereignty, or that could lead to public disorder or incite violence is not allowed.
- 3) **Public Order:** The press cannot publish material that may incite a breach of public order or disturb public tranquility.
- 4) **Morality:** Publishing obscene, vulgar, or offensive material that goes against public decency and morality is restricted.
- 5) **Contempt of Court:** The press is prohibited from publishing material that shows contempt toward any court or judge.

¹A STUDY ON FREEDOM OF PRESS IN INDIA: WITH REFERENCE TO ARTICLE 19(burnishedlawjournal.in); <http://burnishedlawjournal.in/wp-content/uploads/2022/12/A-STUDY-ON-FREEDOM-OF-PRESS-IN-INDIA-WITH-REFERENCE-TO-ARTICLE-19-by-Happy-Parashar-and-Rohit-Biswal.pdf>

²Freedom of Press in India (Finology Blog); <https://blog.finology.in/Legal-news/freedom-of-press-in-india>

2. Background/ Genesis

The concept of 'Freedom of Press' originated in England. Initially, both the church and the State used persecution and censorship to suppress opinions, even in matters of science and philosophy. With the invention of printing and the rise of newspapers, the power of the press as a medium of expression became evident. Newspapers began advocating against monarchical absolutism leading to various forms of suppression.

2.1 Position in India Before 1950

Prior to the advent of Indian present Constitution there was no constitutional or statutory enunciation of the freedom of speech of the subjects or the liberty of the press. The first set of regulations of 1799 was framed by Governor General Wellesley to counteract the assertion of the freedom of press by a section of Englishmen in the wake of the British rule in India. The regulations requires newspapers under pain of penalty to print the names of the printers, publishers and editors of newspapers and to submit all material published therein for precensorship by the Secretary to the Government of India.³ During the era of Hastings, the inception of the first Indian-owned newspaper, known as the Bengal Gazette, occurred in 1816 under the guidance of Shri Gangadhar Bhattacharjee. This newspaper is often hailed as the precursor to numerous Indian publications that followed. During this time, the Indian press began to assert itself. Raja Ram Mohan Rai, a prominent figure in Indian journalism, introduced the English 'Brahmanical Magazine' in Calcutta in 1820. In the same year, he initiated the publication of newspapers in Indian languages, including Bengali and Persian. Rai was the first Indian to utilize the press services introduced by English individuals to propagate his social reform ideas among the intellectual circles in Bengal. However, the unfettered development of an independent Indian press faced a setback in 1823 with the issuance of the Press Ordinance by Governor-General John Adam. This ordinance mandated licensing for all printed material, excluding commercial content, effectively

³Historical background of Freedom of Press in India (multidisciplinary journal); <https://www.multidisciplinaryjournals.org/assets/archives/2018/vol3issue1/3-1-151-688.pdf>

requiring prior approval from the Governor-General. Similar regulations were imposed in Bombay in 1825 and 1827. These existing rules and the 1823 Ordinance were subsequently replaced by the Press Act of 1935, often referred to as Metcalfe's Act. Under this Act, newspaper printers and publishers were obligated to declare the location of their publication premises. Any alterations in this regard necessitated a fresh declaration. Violation of these requirements could result in a fine of rupees five thousand and imprisonment for a period not exceeding two years.

2.2 Landmark Cases on Freedom of Press in India

There have been several landmark cases in India that have upheld the freedom of the press & are now important precedents for the safeguard of this fundamental right. These are:⁴

- 1) **Romesh Thapar v. State of Madaras (1950)**: This marked the initial test of press freedom in India, with the Supreme Court determining that the State's ban on the publication of 'Cross Roads' magazine violated the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution.
- 2) **Brij Bhushan v/s State of Delhi (1950)**: In this case, the Supreme Court affirmed the press's right to critique government actions and public officials, as long as it avoids defamation or incitement to violence.
- 3) **Bennett Coleman & Co. v/s Union of India (1972)**: This case set the precedent that the government cannot impose prior restraints on the press unless there is a clear and present threat to national security or public order.
- 4) **Indian Express Newspaper v/s Union of India (1985)**: The Supreme Court, in this instance, confirmed that the freedom of the press includes the right to withhold information that may be detrimental to national security or public interest, provided there is a reasonable basis for such withholding. Venkataramiah J. of the Supreme Court of India in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India has stated: "In today's free world, freedom of the 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 on 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."⁵
- 5) **Sahara India Real Estate Corporation Ltd. v/s SEBI (2012)**: In this case, the Supreme Court held that the press has the right to report on matters of public interest,

event if it may harm individuals or corporations reputation.

3. Present Situation of Freedom of Press in India

The latest Press Freedom Index prepared by the Paris based non profit organisation 'Reporters Without Borders' (RSF) places India at 150 out of 180 countries. The index indicated a steady decline in press freedom in India in the past few years⁶. This significant decline signifies a concerning state of affairs within the media and democratic functioning in India. The status of the press in India is frequently linked to the vulnerabilities of the Indian democracy and the stance of the political leadership. The renowned diversity in India's media landscape, unfortunately, hasn't translated into an unrestricted and autonomous media environment. RSF has identified three key factors, including politically controlled media, the safety of journalists, and the concentration of media ownership, as contributors to the deteriorating state of press freedom in India. Nevertheless, this stark decline in press freedom has failed to stimulate any substantial public discourse in the country. The absence of engagement from civil society organizations is particularly troubling in this context. Notably, political parties, academia, social activists, and major media entities have refrained from scrutinizing or debating the factors responsible for the erosion of press freedom in India. Similarly, democratically elected governments in India have largely disregarded the declining state of press freedom. Instead of fostering an environment conducive to free and independent media, the government has consistently been suspicious of international organizations that monitor press freedom. More recently, government officials have sought to discredit the credibility of press freedom indices. The Indian government has consistently taken the stance that questions the reliability of these indexes. In 2021, the Ministry of Information and Broadcasting informed the Loksabha that the methodology used to calculate the index is questionable and lacks transparency.

According to RSF, politically partisan media is one of the reasons behind the sharp decline of the index in recent years. Changes in the ownership patterns and political affiliation of media is the most significant transformation which took place in India in the past few decades. Mainstream media's affiliation with political parties, vested interest groups, and their inability to act as independent media in a democracy are the biggest challenges faced by the media ecosystem in India.

The safety of journalists is a grave concern in the Indian media landscape. The Global Impunity Index, prepared committee to Protect Journalists (CPJ), positions India as 12th on their index where journalists are murdered and their killers go free. In 2021, six journalists lost their lives due to their work, and India ranks among the top four countries with the highest recorded journalist deaths. These fatalities occurred both while journalists were on the job and off-duty, reflecting a pattern of targeted attacks against them.

⁴Finology Blog; <https://blog.finology.in/Legal-news/freedom-of-press-in-india>

⁵Drishti IAS Blog; <https://www.drishtiiias.com/blog/freedom-of-press-in-india>

⁶Outlook; <https://www.outlookindia.com/national/why-declining-press-freedom-is-nobody-s-concern-in-india--news-205243>

Over the past five years (2017-2021), there were 138 reported cases of physical assaults and attacks on journalists. Uttar Pradesh, in particular, witnessed a grim situation, with 12 journalists killed, 48 attacked, and 66 facing various charges and legal actions.

Several notable cases of crimes against journalists have come to light. Here are a few prominent examples⁷:

- (i) **Daniel Pearl**: Daniel Pearl, an American journalist, was the South Asia Bureau Chief of The Wall Street Journal based in Mumbai, India. He traveled to Pakistan to investigate the connections between British citizen Richard Reid (the "shoe bomber") and Qaeda-al Jihad. Tragically, he was abducted on January 23, 2002, and found dead on February 1, 2002. However, his body was only discovered on May 16, 2002.
- (ii) **Subhash Kumar Mahto**: On May 20, 2022, Subhash Kumar Mahto was returning from a family dinner in a small district in Bihar when he was shot in the head by four assailants. Saurabh Kumar, a stringer at a national channel and the general secretary of Begusarai District Journalists Association, suggested that Mahto's support for a winning ward member candidate in an election and his continuous reporting against liquor and sand mafias might have been the motives behind his murder.
- (iii) **Gauri Lankesh**: On September 5, 2017, journalist and activist Gauri Lankesh, the editor of the Kannada tabloid Gauri Lankesh Patrike, was shot dead in front of her residence in south Bengaluru. A Special Investigation Team (SIT) formed by the Karnataka government revealed that Gauri Lankesh was targeted for her vocal opposition to Hindutva in her writings and speeches. The SIT identified 18 individuals as accused in the murder, but the case has not yet concluded.

4. Findings/ Loopholes

If we have a glance at the current scenario we will find many loopholes relating to the freedom of press. These loopholes in the Indian legal framework also poses a threat to press freedom. Some of these loopholes are listed below:

- 1) **Fake News**: We often succumb to false information widely circulated to the point of accepting it as truth. The digital age has introduced new challenges, such as the spread of misinformation and the weaponisation of defamation laws in the online realm.
- 2) **Paid News**: Due to low pay in journalism, some professionals publish untrue stories in exchange for money.
- 3) **Biased Media**: Wealthy individuals, including criminals and politicians, pay media companies to showcase positive aspects of themselves, leading to biased public perceptions, especially during elections.
- 4) **Crimes against Journalists**: In 2021, six journalists were killed in the line of duty, with countries like India ranking among the top four nations with the highest recorded journalist deaths. Journalists face threats and attacks both on and off the job due to the commitment to their work.

Some of the loopholes also lies in the the manipulation of defamation laws. While defamation laws are designed to protect individuals from false and damaging statements, they can be abused to stifle investigative journalism. Powerful individuals or entities may be file defamation suits as a means of silencing journalists who expose corruption or misconduct.

Advertisers may exert influence over editorial content, leading to self-censorship to maintain lucrative partnerships. This economic pressure can undermine the media's role as a watchdog and limit its ability to hold those in power accountable.

5. Problems/ Issues

1) Paid News

Paid news is the unethical media law practice where the articles that are published under the print and electronic media are in the favor of the institutions that have paid for it. It is considered an advertisement without a tag.⁸This deceptive practice misleads citizens by withholding actual facts. Moreover, the payment methods employed in paid news violate tax and election spending laws, particularly problematic during elections due to the media's direct influence on voters. In the instance of **Smt Umlesh Yadav v Election Commission of India (2013)**⁹, the Election Commission disqualified Smt. Umlesh Yadav, a sitting MLA from Uttar Pradesh, for three years under Section 10A of the Representation of People Act, 1951. This decision was based on her failure to provide an accurate account of expenses under Section 77 of the Act. Despite her appeal to the Allahabad High Court, the court upheld the ECI's findings, resulting in her disqualification from holding office.

2) Cross Media Ownership

It refers to a scenario where a single corporate entity possesses various types of media enterprises, including print, radio, television, movies, and online platforms. In our nation, a monopoly in media ownership has significantly compromised the quality of media freedom. This unregulated monopoly lacks public scrutiny and oversight. To address this, legislation should find equilibrium between broadcast and distribution to avoid sole control and ownership. Another issue arising from this monopoly is the concentration of power within a specific geographic area by a single media entity. Additionally, there are currently no restrictions on cross-media ownership for print, television, or radio in the country.

3) Media And Individual Privacy

The expansion of media has undeniably led to a reduction in individual privacy. While the right to privacy is not explicitly outlined in the Indian Constitution, the Supreme Court, in the case of **Justice K S Puttaswamy v. Union of India (2017)**¹⁰, affirmed it as a fundamental right integral to Article 21. Despite the freedom of speech and expression granted by the Indian Constitution, allowing the press to

⁷Drishti IAS Blogs; <https://www.drishtias.com/blog/freedom-of-press-in-india>

⁸<https://blog.iplayers.in/challenges-faced-indian-media-respect-media-laws-ethics/>

⁹<https://indiankanon.org/doc/182843246/>

¹⁰<https://indiankanon.org/doc/127517806/>

disclose facts of significant public interest, this often results in privacy infringements. The recognition of the right to privacy is evident in cases such as the Nira Radia tapes.

4) Trial by Media and Right of Accused

When a crucial matter is brought to court, heightened public interest ensues, leading various media outlets to engage in investigative journalism. Termed as "Trial by Media," this phenomenon involves the media, including newspapers, television, and news websites, shaping public perception of an individual's innocence or guilt before a court verdict is reached. Excessive pre-trial media coverage can compromise a fair trial, portraying the accused as unequivocally guilty and interfering with the "administration of justice," warranting potential contempt of court actions against the media. Existing norms to regulate journalism practices fall short in preventing the violation of civil rights.

The Supreme Court, in **Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr., 1961**¹¹, asserted that newspapers delving into ongoing criminal cases and conducting independent investigations, followed by publishing the findings, are problematic. This is considered misleading as it hinders the judicial process when regular tribunals are handling trials, emphasizing the need to prohibit trials by newspapers. The rationale behind this prohibition is the belief that newspaper investigations can impede the course of justice, regardless of whether the accused or the prosecution is prejudiced.

5) Influence of Media on Judges

The impact of media on judges is noteworthy. Judges, like any individuals, face criticism, whether related to their judicial conduct or personal behavior. However, it becomes concerning when such criticism is baseless or uninformed, as it can undermine public trust in the judiciary. Judges must navigate media pressures that could inadvertently influence juries or their fellow judges, acknowledging that even they are susceptible to such indirect influences, albeit subconsciously. The Supreme Court emphasized in the 1997 case of **State of Maharashtra v. Rajendra Jawanmal Gandhi**¹² that trials influenced by electronic media, press, or public agitation contradict the rule of law and may lead to a miscarriage of justice.

6. Suggestions

- 1) **Advocating for the formalization of legislative boundaries:** An additional measure involves emphasizing the necessity for codifying legislative jurisdictions. In case of an alleged violation, legislators should solely be authorized to file a complaint. The decision, assessing the contempt and the corresponding penalty, would then be directed to the court. While historically, in England, legislators assumed dual roles as prosecutor and judge, such an inherently unjust approach finds no justification in our context.
- 2) **Prioritizing growth while preserving autonomy:** A crucial consideration for the press in the Indian context is the imperative of maintaining a free press. Only a

liberated press can contribute to cultivating an informed citizenry, addressing current events, national issues, and potential solutions. The survival and progressive development of India's democracy hinge on a free press, ensuring social justice and serving the interests of the general populace.

- 3) **Enhancing journalistic standards:** Acknowledging the shortcomings of the Indian press is essential. Many newspapers exhibit reluctance in scrutinizing private matters and those in control, influenced by the ownership structures and editorial philosophies. Editors and journalists often face constraints in gathering and disseminating information, pressured by capitalist owners. To alleviate this, there is a need to mitigate the influence of capitalist owners on editorial freedom.
- 4) **Fostering independent newspapers through positive support:** Simultaneously, proactive measures should be implemented to facilitate the survival and flourishing of independent newspapers. Support mechanisms within overarching institutions designed to nurture independent entrepreneurship, particularly smaller ventures, are essential.
- 5) **Mitigating the state as the primary threat:** Recognizing the global and post-independence Indian experience, it is imperative to resist the predominant threat to press freedom emanating from the state. Strategies should be employed to alleviate state-induced pressures, safeguarding the autonomy and freedom of the press.

7. Conclusion

Examining the contemporary landscape, existing challenges, and the trajectory of press freedom, it can be asserted that, despite the press's role as a democracy's vigilant guardian, the veracity is often disregarded in a nation paradoxically acclaimed as the world's largest democracy. Upholding its affirmation that freedom of expression stands as a "vital pillar of a democratic society," the judiciary distinctly upholds the cause of press freedom. It is crucial to highlight that press freedom coexists harmoniously with the broader spectrum of freedom of speech and expression. As we contemplate the future of press freedom, it is essential to foster an environment that encourages responsible journalism, media literacy, and safeguards against undue influence. By nurturing a culture that values accuracy, transparency, and diverse perspectives, we can fortify the foundations of a robust and resilient press, ensuring its continued role as a vital instrument in upholding democratic principles.

¹¹1961 AIR 633, 1961 SCR (3) 460

¹²<https://indiankanoon.org/doc/1454600/>