



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

The freedom of speech and privacy in the press and media: When should the Journalist's right to freedom of expression be restricted?

Ritika Srivastava^a

^aThe ICFAI University, Dehradun, India

Received 21 June 2021; *Accepted* 05 July 2021; *Published* 08 July 2021

The Freedom guaranteed to media and press under Article 19(1) (a) of the Indian Constitution is the concept that includes communication and expression by the way of various media, printed and electronic media. The right encompasses the freedom of the press. The press and media are considered as the fourth pillar of democracy. It tries to make an individual of the nation aware of the activity ongoing in a country along with the whole world. If media is honest and exercises its duty with absolute responsibility, democracy could function even more efficiently and every loophole present in the democratic system can be filled up to the fullest satisfaction of the people. On the contrary, if the media is failed to perform its duty and becomes biased, corrupted it would result in a dictatorship or it can prove to be an extremely threatful situation to the democracy. But occasionally, media delivered such offensive and goes beyond its limit by violating someone's privacy which created a lot of chaos. So for the efficient functioning of democracy, it is important that media should bound in certain reasonable restrictions, prevent them from delivering such offensive statement which destroys the sovereignty, integrity, and security of the nation. Article 19 (2) of the Indian Constitution put forth certain limitations to maintain the security of the nation. This paper is an attempt to recognise the freedom of speech and privacy of the press and media in the democracy and also focus on the reasonable restrictions of journalists on freedom of expression.

Keywords: *freedom, press, media, democracy, reasonable restrictions.*

INTRODUCTION

Media is an extremely powerful tool to express an opinion, views of one another; it is behind the thinking ability of millions of people. It used to form a base of opinion on distinct concepts like national, international, and regional concepts. The executive, legislative, and judiciary are the three influential pillars of Indian and in the present era, Indian has four pillars in the nation. Article 19 (1) (a) guaranteed “freedom of speech and expression” and it gave birth to the fourth pillar which is Media. It works as a watchdog not just against corruption but also against disaster¹. It always tries to make an individual aware of the wrong that exists in society with an intention to correct it.

Freedom of the press which comes with the right to privacy occasionally gets infringed. It is the truth that media and press have plenty of responsibility, but it is necessary for them to realize its boundaries. The media is obliged to exercise its act with the respect of an individual by acknowledging the privacy of others. An individual has a “right to privacy” provided under Article 21 of the Indian Constitution.

CONSTITUTIONAL VALIDITY OF FREEDOM OF SPEECH AND RIGHT TO PRIVACY

Article 19(1) (a) and 21 of the Indian Constitution deal with Freedom of Speech and the Right to Privacy, respectively.

Article 19 provides for the protection of certain rights regarding freedom of speech, etc. (i) all citizen shall have the right ----

“to freedom of speech and expression,

It guarantees every citizen that he/she has the right to precise his views, behalf, opinion, and conviction. He/she is free to express his views through or by word of mouth, writing, printing,

¹ Anuj Kumar, ‘Role of media in democracy’ (*Legal Desire*, 25 July 2016) <<https://legaldesire.com/role-of-media-in-democracy/>> accessed 03 June 2021

picture, or in another way. India's Apex Court held that the freedom of speech and expression consists of the following.

- Right to propagate one's views as well as the view of others.
- Freedom of the Press.
- Freedom of commercial advertisement.
- Right against tapping of telephonic conversation.
- Right to telecast, the government has no monopoly on electronic media.
- Right against bundh called by a political party of organization
- Right to know about the government policies.
- Freedom of silence.
- Right against the imposition of pre-censorship on a newspaper.
- Right to demonstration or picketing but not right to strike.

The state is free to impose reasonable restrictions on the practice of the freedom of speech and expression on the basis of Integrity and sovereignty of India, security of the state, friendly relations with foreign states. Public order, decency or morality, contempt of the west, defamation, and incitement of an offence².

Article 21 of the constitution guaranteed for the protection of life and personal liberty----

"No person shall be deprived of his life or personal liberty except according to procedure established by law."³

In the case, Ram Jethmalani v. Union of India⁴, the Supreme Court held that the 'Right to privacy is an integral part of life. It is often possessing a constitutional value, and it's extremely essential for the people to be allowed the place of freedoms that are freed from public scrutiny unless they act unlawfully.

² M Laxmikanth, *Indian Polity* (50th edn, McGraw Hill Education, Tamil Nadu 2017)

³ *Ibid*

⁴ *Ram Jethmalani v Union of India* (2011) 8 SCC 1

In the case *R. Rajagopal v. State of Tamil Nadu*⁵, the Supreme Court held that the “right to privacy” is guaranteed by Article 21 of the Constitution. A citizen of India has a right to protect their privacy, his family, marriage, procreation, motherboard, child-bearing, and education. Name can publish anything about an individual without his consent whether laudatory or critical. Whether truthful or otherwise if he tries so, he would be violating the right of the personal citizen concerned and would be accountable in an action for damages caused. This rule of Right to Privacy is subject to an exception means if any publication relating to such matters is based on public record involving court record it will be inoffensive. If an issue turned into a matter on public record there would no existence of the right to privacy: It becomes a legitimate subject for comment by press and media among others.

ROLE OF MEDIA AND PRESS IN DEMOCRACY

“One of the objects of a newspaper is to understand the popular feelings and give expression to it, another is to arouse among the people certain desirable sentiments, and the third is the fearlessness to expose popular defects.”

- Mahatma Gandhi

In a democracy, the media and press play a very positive role, if there is an enabling environment. In the 21st century, a new democracy requires in-depth reporting, this means media and press have the requisite skill or ability to make and break the views opinion of the people. It is an extremely powerful tool that acts as a bridge between the government and individuals. It is the duty of the media and press to treat everyone on an equal footing, they should play a very neutral role in releasing their duty without being based by any individual or political party. If the media failed to perform its duty independently it would result in a dictatorship or even worse than them. Media constituted as the fourth pillory of Democracy, So it should be responsible and make the people aware about day to day activities In India along with the whole world. Media managers debate on current affairs and new enact policies.

⁵ *R Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632

In grab the views of others, it provides enable an individual through information, in short, it is a backbone of a democracy.

Freedom of speech is a feeling of intense excitement and happiness to an individual, also a special right in a democratic society. Article 19 (1) (a) of the Indian constitution guarantees freedom of speech and expression to an individual, and it is important for Press. As freedom of the Press has been included in this Article.

The media and press enjoy the freedom of speech and expression but these rights are subjected to certain restrictions. The independent media keeps a check on the judiciary, reports on the court, and ensures a legal enabling atmosphere for press freedom. The responsible media covers the other functional areas of democracy and governance such as anti-corruption, governance activities, decentralization, and free & fair elections would be conducted & so on.

“If it were left on me to make whether we should always have a government without newspapers or newspapers without a government, I shouldn't hesitate a flash to prefer the latter.”

- Thomas Jefferson

According to the First Press Commission in India, the term “freedom of the Press” means that Press holds views, receives information through the printed word which would be without interference from any public authority. Pandit Jawaharlal Nehru called the media as “*the watchdog of our democracy.*” This statement handed an extreme responsibility to media in the functioning of society. The media and press, their adequate roles, contents, and channel, are regarded to be the most influential weapon to make this achievement a reality.

FREEDOM OF PRESS AND MEDIA

Justice Hidayatullah said, “Freedom of speech and expression is that cherished right on which our democracy rests is mean for the expression of free opinions.⁶” The Freedom of Press consists of long history since British rule. British Government drafted a number of the act

⁶ *Ranjit D Udeshi v State of Maharashtra* AIR 1965 SC 881

regarding Press like Indian Press Act, 1910, Indian Press (Emergency) Act and then on. During that era, the censorship on the publication of any information was associated with congress. But after independence, the perspective was absolutely changed because Article 19(1)(a) came into existence, which guarantees all citizen with the right to freedom of speech and expression (include freedom of the press) which clearly means that the state cannot interfere with the content and circulation of the newspaper. The fundamental right of the liberty of press inexplicit in the right to freedom of speech and expression is important for political liberty and the proper functioning of democracy. The Indian Press Commission has expressed its view. It says that *“Democracy can thrive not only under the vigilant eye of its Legislature but also under the care and guidance of public opinion and therefore the press is par excellence, the vehicle through which opinion can become articulate.”*⁷ Though the Constitution of Indian does not specifically mention the freedom of the press, it is mentioned in one of the freedoms under Article 19(1) (a) list. The “press has not provided with specific rights. The term “Freedom of the press” means the freedom to publish and print what one pleased to publish, without any need of permission. This freedom is not only to newspapers and periodicals, but actually, it also contains pamphlets and circulars and each and every sort of publication whatever carries information and opinion.⁸

In the case, *Indian Express Newspapers v. Union of India*⁹ talks about the utility of liberty of press the court held that “The expression freedom of the press has not been used in Article 19 but it is comprehended within Article 19 (1)(a). The expression means freedom from any sort of interference from a public authority which would result in interference with the content and circulation of newspapers. There would be no interference with freedom in the name of public interest. The objective of the press is to promote the public interest by publishing facts and opinions without which the democracy unable to make fair and responsible judgments.

Freedom of the press is the heart of social and political intercourse. It is the fundamental duty of the court to maintain the freedom of the press and invalidate all laws or administrative

⁷ All Answer Ltd, ‘Freedom of Speech and Expression’ (*Lawteacher.net*, 2019) <[Freedom of Speech and Expression \(lawteacher.net\)](https://www.lawteacher.net/freedom-of-speech-and-expression/)> accessed 06 June 2021

⁸ *Lowell v Griffin* (1938) 303 US 444; *Sakal Papers Ltd v Union of India* AIR 1962 SC 305

⁹ *Express Newspapers v Union of India* (1985) 1 SCC 641

actions which interfere with it contrary to the constitutional mandate.¹⁰ In the case, *Romesh Thappar v. State of Madras*¹¹, the Supreme Court held that entry and distribution of “Red Cross”, an English Journal, printed and published in Bombay, was banned by the Madras Government. It turns into the violation of the Freedom of Speech as “without freedom of distribution, publication would be of little value”.

The freedom of the press includes:

Freedom of Publication.

Freedom of access to all sources of information¹²

Freedom of circulation¹³

LIMITATION OF FREEDOM OF EXPRESSION

“Freedom of speech is meaningless unless it means the freedom of the person who thinks differently!”

It is a fundamental right provided to each and every individual but runs with certain reasonable restrictions and protocols. Freedom is always misused in the name of law and many cases witness relating to that every day. Until which does a person enjoys its freedom of expression:

- If it would not harm the sentiments and emotions of an individual.
- If not tell any false information about an individual person or event.
- If not take the wrong advantage of the luxury of expressing their opinions.
- If it would not humiliate and abuse an individual which leads to psychological and mental distress.

IS FREEDOM OF MEDIA AND PRESS NOT UNCONTROLLED OR ABSOLUTE?

¹⁰ *In Re Harijai Singh* AIR 1997 SC 73

¹¹ *Romesh Thappar v State of Madras* [1950] AIR 124

¹² *MSM Sharma v Sri Krishna Sinha* AIR 1959 SC 395

¹³ *Romesh Thappar v State of Madras* AIR 1950 SC 124

Freedom of the Press is not unlimited, absolute at all times; it is also bound in certain reasonable restrictions. If the press guaranteed with free, unrestricted freedom of speech and expression it would result in the disorder of democracy. The freedom is not to be misapprehended as to be press, free to dismiss its duty to be responsible. If newspaper published a content that is false, illegal, and improper, and abuses its liberty, then it would be punishable under the Court of law.

Article 19(1) (a) guarantees freedom of speech and expression which also includes the freedom of the press, but this freedom is subjected to certain limitations as mentioned in clause (2) of Article 19(2) of the Indian Constitution which says:

“Nothing in subsection (a) of clause (1) all affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said subsection in the interest of the sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order, decency or morality or in relations to contempt court, defamation or incitement to an offence¹⁴”.

RESTRICTIONS ON FREEDOM OF PRESS IN INDIA

Media and the Press play a very vital role in the sound working of democracy. As earlier mentioned, it acts as a watchdog over the three organs of democracy. The freedom of the press is also included in Freedom of speech and expression but it is not absolute in nature. It undergoes certain reasonable restrictions mentioned under Article 19 (2) of the Indian Constitution. Article 19(2) laid down the certain ground on which the restriction is based:

- Decency or Morality
- Security of the State
- Contempt of Court
- Public Order¹⁵

¹⁴ *Ibid*

¹⁵ Constitution (First Amendment) Act 1951

- Sovereignty and Integrity of India¹⁶.
- Friendly relations with foreign states¹⁷.

The constitution has not yet drafted any specific law for media and press. It is considered that freedom of speech and expression intimate freedom of the press. *“No special mention of the freedom of the press was important at all, the press and citizen were the same as far as the right of expression was concerned”* state by Dr. B.R. Ambedkar, the chairman of the drafting committee of the constitution of India.

This freedom of expression did not provide a right to journalists to give any kind of statement in the name of freedom. It has certain limitations and no one is permitted to give an offensive statement that might cause disorder of democracy and integrity & security of India. And this thing goes with fake news, defamation, and contempt of courts, etc. An individual or journalist is not allowed under Article 19(1) (a) of the constitution to defame any person/public or private organization without genuine evidence giving the reason of freedom of expression. New Media policy came into existence with an objective to control the irresponsible activities of media houses. Such activities involve:

- Preach Violence
- Misinformation
- Fake News
- Attempts to use media to provoke communal passions
- Attempts to use media to harm sovereignty and integrity of India

If any media attempt to breach the mentioned objective of new media policy would be banned from getting any advertisements from the government. Apart from this, the media have to be penalized for their wrong doings. Media houses should hold responsibility before publishing and showing any news must be concern about the truthfulness behind that news. The new media policy is empowered to initiate trials against any media houses that seem to be

¹⁶ Constitution (Sixteenth Amendment) Act 1963

¹⁷ First Amendment (n 15)

irresponsible while exercising their duty and would be held liable under Cyber Laws and the Indian Penal Code.

New Media Policy is being criticized as it limits the freedom of speech even on matters of immense concern. It also not imposes direct restrictions on the press, giving legal power to the government to penalize anyone for their actions. In this way, an IAS or KAS (Kashmir Administrative Service) officer could decision for the job of journalist indirectly and also empowered to select what would be the news. The objective behind that is to end the local media and shows the news content which portrays government good in the eyes of the people. They try to convert it into public relations, not journalism.

CASES LAWS

Brij Bhushan v State of Delhi¹⁸

In this case, the Supreme Court held that the freedom of expression mentioned under Article 19(1) (a) of the Constitution is a fundamental right and it cannot be snatched from journalists and media houses.

Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal¹⁹

In this case, the court held that the freedom of speech and expression mentioned under Article 19(1) (a) of the Constitution involves the right to obtain information and distribute it.

CONCLUSION

Journalists should not provide with absolute freedom of speech and expression as the security and integrity of the nation stand as first priorities. And improper or offensive statements delivered by journalists must be restricted. False news, misinformation, preach violence, etc, all of them must be controlled in an extremely efficient way. Democracy in a minute could change into autocracy if the powers granted to the government are not utilized efficiently. So

¹⁸ *Brij Bhushan v State of Delhi* [1950] AIR 129

¹⁹ *Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal* 1995 (2) SCC (161)

the restrictions put forth by the journalist must be reasonable, not just an instrument for the government to cloak their shortcomings.