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Freedom of the Press and Democracy in India

Rachana. D^aTrishaa R Sharana^b

^aRV Institute of Legal Studies, Bengaluru, India ^bRV Institute of Legal Studies, Bengaluru, India

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*The Freedom of the Press is universally acknowledged as the fourth pillar of democracy, playing a pivotal role in disseminating information, shaping public opinion, and fostering transparency between the State and its citizens. In the Indian constitutional framework, this freedom is implicitly protected under Article 19(1)(a).¹ The Constitution of India guarantees the right to freedom of speech and expression. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2)² to safeguard sovereignty, public order, decency, and the security of the State. This research paper critically examines the contours of press freedom in India, tracing its evolution through landmark judicial pronouncements such as *Romesh Thappar v State of Madras*³ and *Sakal Papers v Union of India*.⁴ Furthermore, the paper analyses the complex interplay between the right to privacy, recently elevated to the status of a fundamental right in *Justice K.S. Puttaswamy v Union of India* and the public's right to know, underscoring the delicate balance that media must maintain. The study also explores ethical obligations of the press in the digital age, where sensationalism and misinformation pose serious challenges to responsible journalism. Ultimately, the research argues for a press that is not only constitutionally protected but also ethically grounded, contributing to the preservation of democratic values, social harmony, and informed citizenry.*

¹ Constitution of India 1950, art 19 (1)(a)

² Constitution of India, art 19(2)

³ *Romesh Thappar v State of Madras* (1950) 1 SCR 594

⁴ *Sakal Papers v Union of India* (1962) 3 SCR 842

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INTRODUCTION

The Freedom of the Press is an important right that helps the nation and its people be aware of the ongoing in their country and get necessary information on various fields such as government, local news, laws, sports, business, cinema, etc. However, the Freedom of the Press is not an absolute right; it is restricted to a certain limit. The media is the mainstream source of information; any miscommunication in the delivery of information by the media may create a ruckus and spoil the nation's tranquillity. Hence, the rights conferred to the media are subject to reasonable restrictions. The Press has the right to pronounce news, purvey ideas, opinions, ideologies, debate and rebut, criticise and also appreciate notions regarding whatever is put forth. However, the responsibility lies with them to safeguard public interest by adopting ethical methods in exercising their rights.

The media is said to be the backbone of democracy; hence, they should effectively criticise and expose the misdeeds, failings and lapses of the government and other bodies in governmental power.⁵ The freedom of the press is not exempt from being held liable under the law for any misconduct or mishaps caused due to their reporting. Article 19(1)(a)⁶ of the Constitution guarantees the Right to Freedom of Speech and Expression. However, this freedom is not absolute. Any person or institution shall be held liable for promoting misinformation or defamation caused by them. Thus, the Constitution imposes reasonable restrictions on these rights.

FREEDOM OF SPEECH AND EXPRESSION

One of the main objectives of the Indian Constitution, as envisaged in the Preamble, is to secure the Liberty of Thought and Expression to all citizens. This right does not take the form of a positive right; it is a negative liberty to communicate with others or an immunity from inference by others.⁷ The Internet is a very important tool for trade and commerce. The globalisation of

⁵ *Printers Mysore Ltd v Assistant Commercial Law Officer* (1994) 2 SCC 434

⁶ Constitution of India 1950, art 19(1)(a)

⁷ *Wheeler v Leicester City Council* [1985] AC 1054

the Indian economy and the rapid advances in information and technology have opened up vast business avenues and transformed India into a global IT hub. Hence, the freedom of trade and commerce through the internet is protected under Article 19(1)(g),⁸ subject to the reasonable restrictions under Article 19(2).⁹

In modern day, expression thrives through the internet. The internet brings communities together, helps in advertising, promoting and reaching out to the target audience. Earlier, communication was through word of mouth or group discussions or meetings; now, the same is just at one's fingertips.

Globalisation has supported the advancement of media and the press. The media creates both horizontal and vertical networking, which helps in engaging with the audience. As we discuss below, the very principle of democracy is 'Of the People, for the People, to the People'; the Article shall include the citizens of India as subjects. However, this can be risky as there is no statutory body to manage the flow and sharing of information on the internet. This does not imply there is no power to take cognisance of violations committed through social media or the internet. The same restrictions also apply to digital platforms and the Press.¹⁰ The Supreme Court has held that broadcasting is a means of communication and a medium of speech and expression within the framework of Article 19(1)(a). Therefore, the right to entertain and be entertained through broadcasting media is an integral part of the freedom under Article 19(1)(a).¹¹

CONCEPT OF REASONABLE RESTRICTION

All the state actions are subject to the reasonableness test since it is deeply rooted in the idea of law and our Constitution. If a government action fails to satisfy this test, then it is determined to be lacking in the quality of reasonableness.¹² The freedom of speech and expression does not confer on the citizens the right to speak or publish without responsibility; it is an unchecked license immune from legal consequences.¹³

⁸ Constitution of India 1950, art 19(1)(g)

⁹ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

¹⁰ *Ibid*

¹¹ *Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal* (1995) 2 SCC 161

¹² Purvee Malpani, *Media Law Indian and Abroad* (2nd edn, Kamal Publishers 2015)

¹³ *Romesh Thapar v State of Madras* (1950) SCR 594

The rights guaranteed under Article 19(1)¹⁴ are not absolute and are subject to reasonable restrictions under Article 19(2) to 19 (6)¹⁵. However, these limitations must be imposed by law and not through executive or departmental instructions.¹⁶ Any restriction on a fundamental right must not be arbitrary; for the restriction to be valid, there must be a rational nexus, i.e., a direct and substantial link between the restriction and the objective it aims to achieve, and therefore consistent with Article 14^{17, 18}

DOCTRINE OF PROPORTIONALITY

The authorities must follow this doctrine before passing any order intending to restrict the fundamental rights of individuals. It requires a restriction to be tailored by the territorial extent of the restriction, the stage of emergency, nature of urgency, duration of such restrictive measure and nature of such restriction. The triangulation of a restriction requires the consideration of appropriateness, necessity and the least restrictive measure before being imposed.¹⁹

The reasonable restrictions are:

Sovereignty and integrity of India and the Security of the State: Speech or expression intended to tamper with the security of the State. In the case of *Romesh Thappar v State of Madras*,²⁰ the Court clarified that the violations of public order do not fall under this category; the public order and security of the State are two different restrictions.

Friendly Relations with Foreign States: To maintain the friendship between nations, any speech or expression that tampers or tends to tamper with the same is covered under the reasonable restriction.

¹⁴ Constitution of India 1950, art 19(1)

¹⁵ Constitution of India 1950, art 19

¹⁶ *Babulal Parate v State of Maharashtra* (1961) 3 SCR 423

¹⁷ Constitution of India 1950, art 14

¹⁸ *State of West Bengal v Anwar Ali Sarkar* (1952) 1 SCR 284

¹⁹ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

²⁰ *Romesh Thapar v State of Madras* (1950) 1 SCR 594

²⁰ Constitution of India 1950, art 19(1)

Public Order: This means the speech or expression that directly or indirectly goes against public order. It was included as one of the restrictions after the landmark judgement of *Romesh Thappar*.

Decency or Morality: In the case of *Ranjit Udeshi v State of Maharashtra*,²¹ the Hicklin test was introduced to examine whether the speech tends to corrupt those who are open to immoral influences. This represents the balance between individual freedom of speech and the state's duty to protect morals.

Contempt of Court: There is a separate legislation known as the Contempt of Courts Act 1971, which specifies what all amounts to Contempt of Court.

Defamation: It is also known as hate speech, which tends to harm the reputation of any person. Section 356 of BNS²² criminalises defamation even if the statement made is true.

Incitement to an Offence: Speech or expression that directly incites or provokes others to participate in illegal or destructive activities.

RIGHT TO PRIVACY UNDER THE FREEDOM OF THE PRESS

Privacy of the Government: The public has the right to know the happenings of the nation, and it is their right to do so under the Right to Information conferred upon them by the Constitution of India. However, governmental policies need to be protected and kept confidential until they are ratified and tested. The new policies set forth by the legislature are put out for the public to advise, criticise, accept or reject; the decision is taken by the government upon studying the psychology of the public.

The government maintains its confidentiality about certain deficiencies, failures or excesses to avoid any conflict of interest in the society and because the government, the legislature and the executive have greater expertise.²³ Hence, the press is obligated to protect the interests of the

²¹ *Ranjit Udeshi v State of Maharashtra* (1965)1 SCR 65

²² Bharatiya Nyaya Sanhita 2023, s 356

²³ Malpani (n 12)

Government. Information relating to defence, military, crime bureaus, diplomatic affairs, etc, must be kept secret. The press is obligated not to publish these matters to the public.²⁴

Privacy of an Individual: A man is a person, a social being, bound by the responsibilities and cultures of society. Activities of an individual that have no role in influencing public opinion must be protected of his privacy, protected and preserved, and no attempt to encroach on the freedom of that individual should be made.²⁵

The Supreme Court's decision in *Puttaswamy* primarily addressed the issue of governmental intrusion into personal privacy; however, the rationale established in this case offers valuable insights for private litigations involving conflicts between press freedom and individual privacy. The Court affirmed that individuals possess a legitimate expectation of privacy, asserting that certain aspects of their lives should remain confidential. Furthermore, it recognised the existence of a zone of privacy in which individuals are shielded from public observation and evaluation.²⁶

Privacy of Celebrities: The celebrities get high attention from the general public, and the same is visibly abused by the general public as well as the media and press. Private details are leaked to the public by sources, thereby creating rumours that may affect their reputation in society, thereby causing prejudice to their image.

In the case of Dorothy Barber, the press leaked photos of her at the hospital while she was delivering her child, despite the protests against the press not to capture the photos had been posted publicly, which was a clear infringement of privacy. She filed a case and was awarded damages.²⁷ However, the media should understand that the celebrities are in a profession to earn for their bread and living, as those who have infringed on their privacy.

However, under Article 21²⁸, provides for a citizen the right to privacy to safeguard his privacy, his family, marriage, personal life, children, residence, education or any matter that he vests interest in, no media or any persons have the right to publish the information on any media

²⁴ Atomic Energy Act 1963, s 19

²⁵ *Ibid*

²⁶ *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1

²⁷ *Barber v Times Inc.* [1942] 348 Mo. 1199

²⁸ Constitution of India 1950, art 21

without his/her consent, if not, this action would raise controversies and he shall be held liable for doing so.²⁹

INTERNET AND COMMUNICATION

Globalisation has made communication faster. An issue in India can reach the other side of the Globe in minutes, which is often beneficial but can also lead to adverse consequences. In this generation, information is often, at first instance, judged, conclusions drawn, and later researched, potentially leaving a lasting impact. The government and censor boards have limited power and resources to shut down the Media and the Press. Censorship allows for controlling and restricting the flow of harmful information on the internet.

India has reportedly shut down 84 websites, out of which 41 were related to protests and 23 to communal violence. Though shutdowns can be harmful to democracy, it is also a necessity of democracy to maintain tranquillity and not allow any violence or such information that could trigger hatred towards the nation.

RIGHT TO INFORMATION VIS-À-VIS RIGHT TO KNOW

Right to Information: As per Random House Webster's College Dictionary,³⁰ 'Information' means knowledge communicated or received concerning a particular fact or circumstance, or knowledge gained through communication, research, data, etc. The Right to Information Act, 2005 defines information as any material in any form including records, document, memos, e-mail, opinions, advice, press releases, circulars orders, logbooks, contracts, report papers, samples, models, data material, held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force.³¹

Right to Know: According to the Oxford Dictionary,³² 'Know' means to be aware of through observation, inquiry or information, have knowledge, or information concerning, be sure of

²⁹ *R. Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632

³⁰ *The Concise Oxford Dictionary* (12th edn, Oxford University Press 2011)

³¹ Right to Information Act 2005, s 2(f)

³² *The Concise Oxford Dictionary* (n 30)

something, be familiar or friendly with, have a good command of (subject of language) and have personal experience. Right to know and Right to information are two distinct concepts.

Although both pertain to knowledge access, the right to know is broader and can upend established norms and authorities, hence upending power systems. Knowledge, which is frequently seen as a kind of power, may either empower people or, when used improperly, strengthen control and authority.³³

Modern human rights frameworks prioritise the Right to Information over the Right to Know, influenced by the state's role in balancing transparency and control. The Right to Know broadly covers education and learning, while narrowing, it refers to accessing specific information for informed decisions. This applies in everyday contexts- whether with family, as a consumer, student, patient or in dealings with professionals and the state- where individuals deserve transparency and reasons for administrative decisions.³⁴

PRESS COUNCIL

The Press Council is a statutory body that governs the activities of the Press, ensures ethical journalism and facilitates the achievement of journalistic standards and objectives. The Press Council is also a grievance redressal body that accepts complaints against the press in matters regarding ethics and publication. The Council has the powers to investigate and issue summons, or any other remedies under the Code of Civil Procedure (CPC) or the Bharatiya Nagarik Suraksha Sanhita (BNSS), to impose penalties and impose injunctions. However, appeals are allowed to be made on the decisions of the Council.

CONCLUSION

The press is the voice of the people, playing a crucial role in keeping democracy alive by ensuring that information flows freely. But with great power comes great responsibility. While the media has the right to report, criticise, and hold those in power accountable, it must also respect the boundaries set by law and ethics. Freedom of speech and expression under Article 19(1)(a) is a

³³ S.P.Sathe. And N.M.Tripathi, 'The Right To Know' (1994) 36(1) Journal of The Indian Law Institute

³⁴ Purvee Malpani, *Media Law Indian and Abroad* (2nd edn, Kamal Publishers 2015)

fundamental right, but it comes with reasonable restrictions to prevent chaos, misinformation, and violations of privacy.

In today's world, where information spreads in seconds, the media must be more cautious than ever. The internet has made it easier to access and share news, but it has also increased the risk of fake news, privacy invasions, and reckless journalism. The balance between the right to know and the right to privacy is tricky—people deserve to be informed, but not at the cost of an individual's dignity or national security.

At the end of the day, press freedom is about more than just reporting facts; it's about responsible journalism. A press that respects truth, ethics, and accountability strengthens democracy. It should not just chase headlines but also uphold values that ensure society stays informed, just, and fair.