

PRESS FREEDOM IN INDIA: A LEGAL STUDY

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“Freedom of Press is an Article of Faith with us, sanctioned by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation.”

: Former Prime Minister Rajiv Gandhi

ABSTRACT

Freedom of Expression has always been emphasized as an essential basis for the democratic functioning of a society. Freedom of Press has remained an issue that has led to endless number of debates across the democratic world in the past few decades. The democratic credentials of a state are judged today by the extent of the freedom press enjoys in that state. The Press provides comprehensive and objective Information of all aspects of the country's Social, Political, Economic and Cultural life.

Key Words: *press, freedom ,democracy, Constitution, legislative privilege*

INTRODUCTION

A free press is very important and essential for the effective functioning of a democracy. A free press has also been described as the oxygen of democracy; one cannot survive without the other.. Our actual experience since Independence, and especially in the last decade or so, also suggests that a free and vigilant Press is vital to restrain corruption and injustice at least to the extent that public opinion can be roused as a result of press investigations and comments.

The press serves as a powerful antidote to any abuse of power by government officials and as a means for keeping the elected officials responsible to the people whom they were elected to serve. The democratic credentials of a state are judged today by the extent of the freedom press enjoys in that state. At this present juncture of time, as we approached the sixth decade of our freedom, it is essential to keep in mind, the pertinence of freedom of press, which is regarded as the fourth pillar of democracy

A further dimensions to the freedom of expression is added by the existence of mass society in which communication among citizen can take place only through the use of media like the Press and broadcasting and not directly which prevails both technical and in the Indian context, financial, the importance of the Press is even more crucial.

WHAT IS FREEDOM OF PRESS?

‘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. But this, Freedom, like other freedoms, cannot be absolute but is subject to well known exceptions acknowledge in the public interests, which in India are enumerate in Article 19(2) of the constitution.

The prime purpose of the free press guarantee is regarded as creating a fourth institution outside the government as an additional check on the three official branches:-

- Executive.
- Legislative.
- Judiciary

SIGNIFICANCE OF FREEDOM OF PRESS

Press plays an educative and mobilizing role in moulding public opinion and can be instrument of social change, for the freedom of Press is regarded as “the mother of all other liberties in a democratic society. The press serves as a powerful solution of power by government officials and as a mean for keeping the elected officials responsible to the people whom they were elected to serve. A Free press stands as one of the great interpreters between the Government and the people. So, the freedom of Press has to be protected and at the same time, the freedom of individual even in the press should also be protected, preserved and any attempt to encroach the freedom of press has to be prevented.

HISTORY OF FREEDOM OF PRESS IN INDIA

The beginnings of the struggle for free speech in India date back to 18th century British India. The history of the freedom of press in India is inseparable from the history of the nationalist movement. The nationalist movement for a free India was fought with repression of the freedom of speech and expression through a series of legislations aimed at stifling the possibility of a consolidated outcry against colonial subjugation. That the press played an invaluable role in generating political consciousness is evident from the fact that the British government found it necessary to introduce repressive enactments from time to time to neutralise the power of the print medium.

Press and Registration of Books Act, 1867

The earliest surviving enactment specially directed against the press was passed in 1867, the Press and Registration of Books Act. The object was however to establish government control over the Freedom of press. It was a regulatory law which enabled Government to regulate printing presses and newspapers by a system of registration and to preserve copies of Books and other matter printed in India.

Official Secrets Act, 1923

A general Act which has a greater impact on the press, in particular is the Official Secrets Act, 1923, which is aimed at maintaining the security of State against leakage of secret information sabotage and the like. The Indian Press (Emergency) Powers Act 1931 imposed on the press an obligation to furnish security at the call of the Executive. The Act, (as amended by the Criminal Law Amendment Act, 1932) empowered a provincial Government to direct a printing press to deposit a security which was liable to be forfeited if the press published any matter by which any of the mischievous acts enumerated in S.4 of the Act were furthered, e.g., bringing the Government into hatred or contempt or inciting disaffection towards the Government; inciting feelings of hatred and enmity between different classes of subjects including a public servant to resign or neglect his duty.

Press (Objectionable Matter) Act, 1951

The preamble of the Press (Objectionable Matter) Act, 1951, looked innocuous as it was “to provide against the printing and publication of incitement to crime and other objectionable matter”. The other

improvements were as follows: While the Act of 1931 was a permanent statute, the Act of 1951 was a temporary one to remain in force for a period of two years; the new Act provided for a judicial inquiry by a sessions Judge before security could be demanded from a printing press or forfeited to Government; and the person against whom a complaint had been made could demand the matter to be determined with the aid of a jury and had a right of appeal from the order of the sessions Judge to the high Court.

Press Council Act, 1965

Following the British precedent, a Press Council was constituted in 1965 under the Press Council Act 1965, which was enacted to implement the recommendations of the Press Commission. The object of establishing the Council was to preserve the freedom of the press to maintain and improve the standards of newspapers in India. It was to form a code of conduct to present writings which were not legally punishable but were objectionable.

FREEDOM OF PRESS: CONSTITUTIONAL PERSPECTIVE

“Where it is left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.”¹ The Preamble to the Indian Constitution resolves to secure for all the citizens of India, liberty of thought, expression and belief.² From Article 19(1)(a) of the Indian Constitution, i.e. ‘Freedom of Speech and Expression’, the media derives its rights. It is a fundamental right.³ Freedom of Press is not specifically mentioned under the Indian Constitution, but it is included under Article 19(1)(a) of the Constitution of India. Article 19(1)(a) of the Constitution from which the media derives its rights guarantees to every citizen of India, Article 19(1)(a) reads:

19. (1) All citizens shall have the right
(a) to freedom of speech and expression;

The exceptions to the right guaranteed under Article 19(1)(a) are contained in Article 19(2) which reads: Nothing in sub-clause (a) of Clause (1) shall 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 Sub-Clause in the interests 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.

The media derives its rights from the right to freedom of Speech and expression available to the citizen. Thus, the media has the same rights --- no more and no less than any individual to write, publish, circulate or broadcast.

¹Thomas Jefferson in a letter to Edward Carrington, January 16,1787

² Constitution of India,Preamble

³ Fundamental rights under the Constitution of India (Part III of the Constitution) are those basic rights that are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country. These rights cannot be infringed or taken away from the citizen by governmental action or statute except to the extent permitted by the 'reasonable restrictions' enumerated in Clauses (2) to (6) of Article 19. While statutory rights other than fundamental rights can be taken away by legislation, fundamental rights cannot be taken away by legislation, can only impose reasonable restrictions on the exercise of the right. *Dharam Dutta v. Union of India*, (2004) 1 SCC 712, para 36,pp 738-39.

COMPARISONS WITH THE AMERICAN CONSTITUTION

Article 19(1)(a) finds its roots in the First Amendment to the Constitution of the United States of America. The First Amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievance.⁴

Unlike the First Amendment to the American Constitution, the Indian Constitution does not make a specific or separate provision for the freedom of the press. Further, while the restriction on the right to freedom of speech and expression are expressly spelt out in Article 19(2), this is not so under the First Amendment. The US Supreme Court has read into the rights of the press certain implicit restrictions which are, in principal, no different from Article 19(2). However, generally, from a judicial and social standpoint the freedom of the press in America is far more robust than the corresponding Indian guarantee.

The question of whether or not to insert in the Indian Constitution a separate right for the press as distinct from that of the ordinary citizen was extensively debated by members of the Constituent Assembly. The Constituent Assembly came to the conclusion that such a provision was not necessary. Dr. B.R. Ambedkar, Chairman of the Constituent Assembly's Drafting Committee argued:

The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual Capacity. The editor of a press or the manager is all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression and in my judgment therefore no special mention is necessary of the freedom of the press at all).

Although no special provision was made to safeguard the rights of the press, the courts have time and again confirmed that the rights of the press are implicit in the guarantee of freedom of speech and expression under Article 19(1)(a) of the Constitution.⁵ In fact, successive judgments of the Supreme Court of India have struck down laws that abridge the freedom of the press and have echoed the sentiment expressed in the First Amendment.

Ramesh Thappar v. State of Madras,⁶ amongst the earliest cases to be decided by the Supreme Court, involved a challenge against an order issued by the Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the entry and circulation of the journal, *Cross Roads*, printed and published by the petitioner. The Court struck down Section 9(1-A) holding that the right to freedom of speech and expression was paramount and that nothing short of a danger to the foundations of the State or a threat to its overthrow could justify a curtailment of the right to freedom of speech and expression. The impugned provision which authorized the imposition of restrictions for the wide purpose of securing public safety and public order fell outside the scope of the reasonable restrictions permitted under Article 19(2) and was held to be unconstitutional.

⁴ US Constitution, First Amendment, Article 1

⁵ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129; *Express Newspapers Ltd. V. Union of India*, AIR 1958 SC 578; *Sakal Papers v. Union of India*, AIR 1962 SC 305; *Bennett Coleman & Co. v. Union of India* (1972) 2 SCC 788; AIR 1973 SC 106;; *Maneka Gandhi v. Union of India*, (1978)1 SCC 248

⁶ AIR 1950 SC 124

In *Brij Bhushan v. State of Delhi*,⁷ the Supreme Court quashed a precensorship order passed against the publishers of the *Organiser*. The order was passed by the authorities under Section 7(i)(c) of the East Punjab Safety Act, 1949. The Court held that Section 7 (i)(c) which authorized such a restriction on the ground that it was necessary for the purpose of preventing or combating any activity prejudicial to the public safety or the maintenance of public order' did not fall within the purview of Article 19 (2).

FREEDOM OF PRESS AND LEGISLATIVE PRIVILEGES

What is legislative privilege?

To enable legislators to effectively perform their functions, to discuss and debate matters of importance without fear or favour, without hindrance or obstruction, the Constitution confers special rights on Parliament and the State Legislatures.

Freedom of press and legislative privileges - conflict of :

The conflicts of freedom of press guaranteed under Art.19(1)(a) and the legislative under Art.105 and Art.194 are unavoidable.
..

The Supreme Court *M.S.M. Sharma v. Sri Krishna Sinha*⁸, held that under the scheme of the Constitution of India, the legislature have the right and privilege to prohibit absolutely the publication of the report of the debates and the proceedings in the floors of the houses and the houses are competent to impose punishment for breach of such privileges. Thus the freedom of speech and expression as contained in Art. 19(1)(a) is subjected to Art.105(3) and Art.194(3) of the Constitution. The privilege of Legislature prevails over the fundamental right to freedom of speech and expression. The reports of the proceedings in newspapers are protected under the Parliamentary Proceedings (Protection of Publication of Act. 1977. The Parliament has the power to power to the publication of its proceedings and prescribe punishment the resolution of the house of Parliament. In case of conflict between the fundamental right to freedom of speech and expression and the privilege of Legislature, the privilege of Legislature shall privilege the fundamental fight freedom of speech and expression.

In case of any conflict between the privilege of the Parliament under Art.105(3) of the Constitution and the freedom of speech and expression, the inconsistency has to be resolved by harmonious construction of the provisions. Article 19(1)(a) being general in nature must give away to the special provision under Art.105(3) of the Constitution.

RECOMMENDATIONS FOR ENSURING FREEDOM OF PRESS:**1. Codification of Legislative Privileges**

A complementary measure will be to insist upon the codification of legislative privileges, with the proviso that where a breach of privilege is alleged, the legislature should only be permitted to file a complaint, the decision regarding whether contempt is proved and, if so, the punishment to be awarded being left to a Court of Law. The idea that the legislature should itself be both the accuser and the judge might have had a historical reason in England; but there is not reason for such a fundamentally unjust approach to be accepted in our context.

⁷ AIR 1950 SC 129

⁸ AIR 1959 SC 395

2. The Main Goal - Growth with Freedom

What should never be overlooked when thinking of the Press in the Indian context is that it is only a free Press which can help develop a body of citizens who are well informed both regarding current events and also about the problems facing the country; and the alternatives available for tackling them. It is only such a Press that can enable a young democracy like India to survive, and also help its development in a manner where social justice is ensured and the interests of the common people served.

3. Importance of Constitutional Amendment

All the difficulties in the way of ensuring that the Press can have the maximum freedom to carry out its function of collecting facts about different facets of national life, analysing them and commenting upon them so as to keep the general body of citizens in our young democracy well informed show that the Press requires some special protection. Many authorities have held that the Right to Freedom of Speech conferred by Article 19(1) of the Constitution is adequate to protect the freedom of the Press. Further, due regard has to be given to the recommendations made by the National Commission to Review the Working of the Constitution (NCRWC). They have recommended the inclusion of Freedom of Press-media under Article 19(1)(a).

4. Press Needs To Improve

The inadequacies of the Indian Press need not be connived at. There is no doubt that private business and those who control it, are treated by most newspapers with kidgloves. This partly is because of the ownership of many newspapers and therefore the philosophy of those who are appointed to senior journalistic positions. It is seen that the editors and journalists cannot have adequate freedom of collecting and disseminating facts and offering comments as they are under the pressure of the capitalist owners. So, the pressure of the capitalist owners should be minimized.

5. Positive Assistance To Independent Papers

At the same time, it is important that steps are taken positively to make it possible for independent papers to survive and develop. Assistance to them should be provided through general institutions meant to help the growth of independent entrepreneurs, including small ones.

6. The State, should stop becoming the Main Threat

This resistance is necessary because experience all over the world, as well as our own experience since Independence, suggest that the State remains the source of the most potential threat to Press freedom.

CONCLUSION

On analysing the current scenario, latest issues and developments of Freedom of Press, it can be concluded that although the Press is considered the watchdog of democracy, sadly, there is scant regard for this truism in a country which is, ironically, the world's largest democracy. In keeping with its affirmation that freedom of expression is "one of the essential foundations of a democratic society", the Court has clearly shown a preference for freedom of press. In conclusion, it must be reiterated that the freedom of press and information are fundamental to healthy working of a democracy and therefore, must coexist with the freedom of speech and expression.

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