
SPEAKING TRUTH TO POWER: THE VITALITY OF FREEDOM OF SPEECH AND EXPRESSION IN TODAY'S WORLD

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ABSTRACT

The right to freedom of speech and expression' is one of the six basic fundamental freedom guaranteed to the citizens of our country. Although freedom of Press is not specifically mentioned anywhere in the Constitution, it is inherent in the freedom of speech and expression provided under Article 19(1) (a) of the Constitution. This, the Press derives its rights from the right to freedom of speech and expression available to a citizen and it has the same right. Although no special provision was made to safeguard the rights of the Press, the courts from time to time through various decisions confirmed that the rights of the Press are implicit in the guarantee of freedom of speech and expression as provided in the Constitution. The Freedom of speech and expression implies as one of the important pillars of democracy.

The Freedom of speech and expression is guaranteed to all citizens under Article 19(1) (a) of the Indian Constitution. This freedom is considered as the bulwark of democracy and is essential for its proper functioning.

This article discusses about the development and meaning of freedom of press and the constitutional source from which media gets its freedom in India with the help of judicial decisions which has helped shaping the right to freedom of speech of press and its relevancy in today's world.

Keywords: Freedom of press, Constitution of India, Right to freedom of speech and expression, censorship.

Introduction:

The most significant day in the history of media regulation was 26 January 1950- the day on which the constitution was brought into force. The colonial experience of the Indians made them realize the crucial significance of the '*Freedom Of Press*' such freedom was therefore incorporated in the constitution; to empower the press to disseminate knowledge to the masses and the Constituent Assembly, thus decided to safeguard this '*Freedom of Press*' as a fundamental right although the Indian Constitution does not expressly mention the liberty of press, it is evident that the liberty of the press is included in the freedom of speech and expression under article 19 (1)A.

Article 19(1): The Article of Six Freedoms¹:

All citizens shall have the Right

- a) To freedom of speech and expression;
- b) To assemble peacefully and without arms;
- c) To form associations or unions;
- d) To move freely throughout the territory of India;
- e) To reside and settle in any part of the territory of India; and
- f) (omitted)
- g) To practice any profession, or to carry on any occupation, trade or business.

Sub clause (f): Right to acquire, hold and dispose of property has been omitted by the 44th Amendment, 1978 with effect from 20.06.79.

Article 19(1)(a):

This Article states that all citizens of India shall have the right to freedom of speech and

¹M. Neelamalar, Media Law and Ethics, Prentice Hall India Learning Private Ltd., ed.- 2018.

expression.

Article 19(2):

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 or 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 State in this context includes not only the legislative authorities of the Union and the State, but also other local or statutory authorities of municipalities or local boards etc. within the territory of India or under the control of the Government of India. So, all of these authorities may impose restrictions on the freedom of press provided such restrictions are reasonable and can be related to Clauses 2 and 6 of Article 19.

Development of the Free Press:-

1. Historically, the origin of the concept of the Freedom of the Press took place in England. Milton's '**Areopagitica**' was a protest addressed to the Parliament, which had taken up licensing, after the abolition of the Star Chamber. It was a result of such agitation that the Licensing Act of 1662 was eventually refused to be renewed by the House of Commons, in 1694, though the reasons were technical. The history of the Freedom of the Press in England is, thus, a triumph of the people against the power of the licensor. The Freedom of Press, democracy in England, is measured by the freedom to write anything provided the law is not infringed. It is free from prior restraint to pre-censorship².
2. In 1776, the Virginia Bill of Rights³ asserted, "Freedom of the Press is one of the greatest bulwarks of liberty, and can never be restrained by despotic Governments."
3. The Federal Bill of Rights⁴ incorporated into the Constitution of United States by the First Amendment(1791)stated that" Congress shall make no law...abridging the

²P.K. Ravindranath, Press Law and Ethics, 2018

³<http://www.archives.gov/founding-docs/virginia-declaration-of-rights>

⁴<https://billofrightsinstitute.org>

freedom...of the press.'

Need for Freedom of the Press:-

- Ideologically, the indispensability of the Press for the proper functioning of democracy is so much embedded in the United States that Jefferson once said that if he had to choose between having 'a government without news papers' on the one hand and 'newspapers without a government' on the other, he would have no hesitation in preferring the latter. This was the view, which eventually triumphed in the adoption of the first amendment to the American Constitution in 1791.
- In the words of Blackstone, "The liberty of the press is indeed essential to the nature of a free state...the only plausible argument heretofore used for restraining the just freedom of the press," that It was necessary to prevent the daily abuse of it', will entirely lose its force, when it is shown...that the press cannot be abused to any bad purpose without incurring a suitable punishment: whereas it can never be used to any good one, when under the control of an inspector⁵."
- Public criticism is essential for the working of a democracy. Subject, of course, to the power of the state to punish for offences and incitement to commit offences through the Press, the Government should not suppress the freedom of a newspaper to publish any views or comments merely because they are critical of the Government.
- In the case, **De Jongevs.Oregon**⁶,1937 in the United States, Hughes, C.J.observed, "The very foundation of constitutional Government lies in the belief that changes, if desired, may be obtained by peaceful means..."Hence, "The greater the importance of safeguarding the community from incitements to the overthrow or our institutions by force and violence, the more imperative is the need to inviolate the constitutional rights of free assembly in order to maintain the opportunity for political discussion..,
- In the case **Whitney vs. California**⁷, 1927 in United States, Brandeis, J. quotes, "...fear breeds repression...repression breeds hate...hate the menaces stable government; path of

⁵M.V. Kamath, The journalists handbook, 2009

⁶ 299 U.S. 353 (1937)

⁷ 274 U.S. 357

safety lies in the opportunity to discuss supposed grievances and proposed remedies...”

The propositions arrived at by the American Supreme Court through the statements of Hughes, C.J. and Brandeis, J. were summarized as follows by the Supreme Court of India in the case *Express Newspapers vs. Union India*⁸ held to be applicable in the interpretation of the Freedom of the Press in India as derived from Article 19(1)(a) of the Constitution:

- a. The freedom of the press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential for the welfare of the public;
- b. Such freedom is the foundation of free Government of free people;
- c. The purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind; and
- d. Freedom of the press involves freedom of employment or non-employment of the necessary means of exercising this right or, in other words, freedom from restriction in respect of employment in the editorial force⁹.

'Freedom' means absence of control, interference or restriction. Hence, the expression 'Freedom of the Press' means the right to print and publish without any interference from the State or any public authority. But this freedom imposed is not absolute; it is subject to the exceptions acknowledged in public interest, which in India are enumerated in Article 19(2) of the Constitution. But since Constitution, and it has been held by the Supreme Court that the freedom of the Press is included in that wider guarantee, it is unnecessary to plead for freedom of the Press separately in this country¹⁰.

Freedom of Press in India: -

Mahatma Gandhi, on the role of press said, "One of the objects of a newspaper is to understand the popular feeling and give expression to it; another is to arouse among people certain

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⁹ P. M. Bakshi, *Press Law: An Introduction* (BTFRI publications 1985)

¹⁰P.K. Ravindranath, *Press Law and Ethics*, 2018

desirable sentiments; the third is to fearlessly expose popular defects¹¹.’’

In the context of freedom of press, the term 'press' is identified as the medium for dissemination of news, views and advertisements, namely radio, television, newspapers, books, periodicals, internet and others. If we consult the history of press in India, we find that there is no document to prove that there was freedom of press in India before independence. The Act 11 of 1835 made by C.T. Metcalfe, the then Governor General, was the lone exception.

Article 19(1) (a) is the foundation of freedom of press in India, although term 'press' is not directly mentioned in it.

Some people do point out that there is no statute as such to guarantee us the freedom of press in India. In contrast, they refer to the very First Amendment of the U.S. Federal Constitution, which specifically mentioned, "Congress shall of most of the State Constitutions cite that, 'The State has the right to interfere if make no law...abridging the freedom of press or of the press...’"

To counter the above argument, it may be mentioned that in the USA too, Most of the state constitution cite that, 'the state has the right to interfere if the freedom of speech or the press is abused' and 'the abuse of such freedom may be punished.

There is no mention of freedom of press in Article 19(1)(a), but in various pronouncements, such as *Express Newspapers vs. Union of India*¹²(1958), ***Bennett Coleman vs. Union of India***(1973¹³), *Indian Express Newspapers vs state of T.N.*(1987)¹⁴, the Supreme Court has upheld the freedom of press and has repeatedly and unambiguously declared that the press in India is free to collect, print, publish or circulate news and views.

The Supreme Court has maintained in various cases ***Romesh Thappar vs. the State of Madras***¹⁵, ***Bennett Coleman Co. vs Union of India***¹⁶) that the term 'freedom of expression' includes the term 'freedom of press', which includes freedom of printing, publishing, circulating and propagation.

¹¹ Supra note 9 at 21.

¹² Supra note 8 at 21.

¹³ 1973 SC 106.

¹⁴ (1987) 67 STC 474 (SC).

¹⁵ AIR 1950 SC 124.

¹⁶ *Ibid.*

In India, freedom of press has both positive and negative sides. On the positive side, Constitution allows the freedom and on the negative side, it certain reasonable restrictions in the greater interest of the public and nation at large. Thus, we can say that Indian journalists and the Supreme Court reinforced the freedom of press in India.

Judgements that reinforces the freedom of Press :-

1. **Sakal paper (P) Ltd. vs Union of India:** The judgement mentioned, 'It is a settled law that the right to freedom of speech and expression in Article 19(1)(a) includes the liberty of the press¹⁷.'
2. **Romesh Thappar vs the State of Madras:** In this case, a notification banning the entry into or circulation, sale or distribution in Chennai of a newspaper named ' Crossroads' was held as invalid. The Court held that without liberty of circulation, the publication will be of little value.

The Chief Justice, Justice Patanjali Shastri observed, 'Freedom of speech and the press lay at the foundation of all democratic organizations, for without political discussions, no public education, so essential for the proper functioning of the process of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, that it is better to leave a few of its noxious branches to their luxuriant growth than by pruning them away, to injure the vigor of those yielding the proper fruit.'

3. **K.K. Birla vs the Press Council:** In this case ,Justice S.S.Chaddha said that the concept of freedom of press cannot be put in a narrow straightjacket. It is a living concept and cannot be confined in any narrow limits, which would restrict its growth¹⁸.
4. **Indian Express Newspapers vs Union of India:** In this case, it has been held that the press plays a very significant role in the democratic machinery. The Courts have duty to uphold

¹⁷ AIR 1962 SC 305

¹⁸ 1976 (I) Delhi 753

the freedom of press and invalidate all laws and administrative actions that abridge that freedom¹⁹.

Freedom of press has three essential elements:

- (a) Freedom of access to all sources of information;
- (b) Freedom of publication;
- (c) Freedom of circulation.

5. **Bennett Coleman Co. vs Union of India:** In this case, the validity of Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be in violation of Article 19(1)(a) and not a reasonable restriction under Article 19(2).

The Freedom of Press vs. Right to Fair Trial:-

In an article dated May 17, 2010, '**Freedom of the press and fair trial**' by the Reader's Editor of The Hindu, S. Viswanathan, said that the key concepts, such as free speech, freedom of the press, the right to life, the right to fair trial, and contempt of court have once again come to centre stage, thanks to a recent judgment and incidents of legal and judicial significance across the country. Human rights activists and progressive writers hailed the verdict when the Supreme Court of India quashed criminal proceedings against Tamil film actor 'Kushboo' for her remarks on pre-marital sex, live-in relationships, and the need for sex education in schools in a 2005 interview to a Tamil weekly²⁰.

Naturally, the judgment came as a major alleviation to the On-screen character, against whom upwards of 23 objections had been recorded in a few courts over the State under Sections 499 and 500 (criminal defamation) of the Indian Penal Code, clearly with the expectation of hassling the well known Entertainer. Several territorial gatherings sorted out a showing in which ladies took an interest with floor brushes close by. This constrained Kushboo to turn out with a statement of regret to Tamils in a transmission. A few Tamil productions considered Kushboo's to be as an attack against Tamil suppositions. What was Kushboo's supposed offense? Everything she did was remark on specific discoveries of a study that the magazine

¹⁹Supra note 15, page 22

²⁰The Hindu, Readers' Editor, Freedom of Press and Fair Trial, pub. May 17, 2010

had directed. Gotten some information about her perspectives on a conflict that there was expanding frequency of pre-marriage sex among little youngsters, she forewarned them against explicitly transmitted infections. This superbly reasonable guidance was confounded by her depreciators as a permit for unethical activity and, in all honesty, an affront to the nobility of Tamil ladies. The adjudicators dismissed the objections and maintained her entitlement to free discourse.

Another event that attracted intense media coverage was the IPL scandal that saw the ouster of a Union Minister of State and culminated in the Suspension of IPL Commissioner and Chairman, **Lalit Modi**. With high news potential provided by the presence of a 'mysterious' woman player among the stakeholders of the Kochi franchise, the TV channels had a field day, with the print media not lagging far behind. All sorts of speculative stories revolving round the relationship between the Minister, Shashi Tharoor, and Sunanda Pushkar did the rounds in air and in print. The accent was on denigrating the character and competence of the businesswoman. This kind of 'investigative journalism' has nothing to do with the truth-telling function of the news media. What it does is to prejudice the course of public judgment and eventually justice.

The 'right to fair trial' is an integral part of the Indian criminal justice system. Along with the right to privacy, the right to fair trial flows from the broader fundamental right to life guaranteed by Article 21 of the Indian Constitution. The right to fair trial comprises many other rights that include the right to be presumed innocent unless or until proved guilty. These rights are no less important than the freedom of speech and expression guaranteed by Article 19(1)(a).

The Law Commission of India in its 200th report, released in August 2006 under the title, "Trial by Media: Free Speech and Fair Trial Under Criminal Procedure Code, 1973", elaborately deals with several aspects of the rights relating to freedom of speech, freedom of the press, and freedom of fair trial. Law Commission Chairman, Justice M. Jagannadha Rao says that the subject was taken up by the Commission suo moto, "having regard to the extensive prejudicial coverage of crime and information about suspects and accused, both in the print and electronic media²¹."

²¹@ <http://www.lawoctopus.com/academike/tag/200th-law-commission-report/>

"There is today a feeling," he explains, "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 prejudicial impact on the suspects, witnesses and even Judges and, in general, on the administration of justice." He points out that under the Indian criminal justice system, a suspect or accused is entitled to a fair procedure and is "presumed to be innocent till proved guilty in a court" and no one "can be allowed to prejudge or prejudice his case by the time it goes to trial."

The Law Commission's report expresses concern over the fact that there is very little restraint in the media insofar as the administration of criminal justice is concerned. It reminds the media that while freedom of speech and expression is an important right, it is not absolute inasmuch as the Constitution itself has placed "reasonable restrictions" on it, with the restrictions encompassing the fair administration of justice as protected by the Contempt of Courts Act, 1971²².

Explaining how media actions affect the administration of justice, the report says that "excessive publicity" about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person, who has committed the crime; and that this amounts to undue interference with the administration of justice, inviting proceedings for contempt of court against the media.

The underlying issue here is this: the media, while zealously protecting their entitlements and space, must accept social responsibility—the onerous obligation of upholding the larger interests of democracy, which means Journalists do not have a license to trample on the rights and dignity of others.

*Kaushal Kishor v the State of UP*²³: A Constitution Bench of the Supreme Court unanimously and rightly ruled out any additional curbs on free speech by ministers. The ruling came on the issue to decide if greater restrictions could be imposed on the right to free speech of ministers, MPs, MLAs and other persons holding high offices who sometimes made statements which tend to violate the fundamental rights of citizens. The apex court observed, thus while holding that a mere statement made by a Minister, inconsistent with the fundamental rights of a citizen under

²² Supra note 24 on page 23

²³ *Kaushal Kishore v The state of Uttar Pradesh Writ Petition (Crim) No 113/2016*

Part III of the Indian Constitution, the reasonable restrictions given under article 19 (2) has to be strictly adhered.

EXTRA LEGAL RESTRAINT:-

1. The Press Council :-

The requirement for an organization to guarantee an elevated requirement of obligations with respect to the Press emerges from the way that the opportunity of the Press is probably going to be mishandled by what is called 'sensationalist reporting', for example the production of issues, which degrade open taste or enjoy interruption into open lives despite the fact that such distribution may not be culpable under the arrangements of the current law. Pretty much every cutting edge nation has, in this manner, set up a body, which could fill in as a guard dog over the principles of reporting and, simultaneously, keep up the opportunity of the Press against unjustifiable government interruption.

In India, the Press Board is a statutory body. It was first settled by the Press Committee Act, 1965, on the lines prescribed by the main Press Commission (1954).Its capacities are:

- a. To help newspapers and news agencies to maintain their independence.
- b. It has to ensure a high standard of public taste and responsibility in journalism, and for the purpose, it is empowered to build up a Code of Conduct for newspapers, news agencies and journalists in accordance with high professional standards²⁴.

2. Self-censorship:-

Censorship, which, when imposed by law, operates as a restriction upon the freedom of the Press, ceases to be so when it is self-imposed. In many countries, therefore, newspapers and journals have put their heads together to formulate a code of conduct or guidelines that they would observe to prevent abuses of the freedom of the Press Though these voluntary guidelines do not operate as binding upon any, of the units, they are usually compiled in order to avert a greater evil, namely, government intervention.

²⁴ D.D. Basu, Law of the Press(5thedn., Lexis Nexis, ButterworthsWadhwa 2010)

Self-censorship imposed by voluntary restraint must be distinguished from guidelines issued by a Censor, an instance of which was seen in India during the 1975-76 Emergency.

Conclusion:

The media has been greatest proponent of freedom of information, freedom of expression and freedom of speech. However, the media has also been one of the worst violators of privacy rights through investigative journalism. In recent times, media has differently contributed to the development of the society. As the watchdog on government, as the champion of vulnerable section of society, as a whistle Blower against the perpetrator and above all as a frontier in underpinning and publishing the information of public interest, media's role is par excellence and 'above and beyond' apparition. Today, it seems that during the course of reporting and making revolution on any issue, media fails to observe sensible control which it is supposed to have and command particularly in the society which asserts and claim to the guided by the jurisprudence of rule of law.