
MEDIA'S POSITION UNDER INDIAN CONSTITUTION: AN ANALYSIS OF FREEDOM OF PRESS UNDER ARTICLE 19

Priyesh Pathak, Student, LL.M. (2022-2023), Hidayatullah National Law University Raipur & B.A.LL.B. (Hons.), Hidayatullah National Law University Raipur

ABSTRACT

This paper discusses the Media's position under Indian Constitution by analysing the freedom of press laid under the Article 19 of the Constitution of India. The paper consists how “freedom of speech and expression” consists “freedom of press” also. It is well recognised that press freedom provides a forum for discussion of ideas, social objectives, public issues, political issues, and news about current occurrences. The most significant basic right, freedom of speech and expression, is guaranteed by the Constitution of India. The media, which is considered as the 4th pillar in a democracy, has an effect on the social, economic, diplomatic, and political problems faced by the nation. For us to exercise our constitutionally guaranteed rights, press freedom is a crucial precondition. In accordance with Part 3 of the Constitution, Article 19(1)(a) guarantees the freedom of speech and expression. Various case laws and judicial interpretation of this right is also been discussing in this paper. Further the reasonable restriction on freedom of press under Article 19(2) is also discussed. Recent trends in freedom of press with examples and media trial’s constitutionality is also been highlighted.

“Freedom of speech and expression is that cherished right on which our democracy rests and is mean for the expression of free opinions.” As said by Justice Hidayatullah in the case of **Ranjit D. Udeshi v. State of Maharashtra**¹.

INTRODUCTION

In a democratic country like India the power and importance of media can be clearly understandable. Article 19 (1) (a) of the Constitution of India ensures freedom of speech and expression under this article freedom of press is already embodied in it. Although the Indian constitution does not use the word freedom of press expressly, the judicial interpretation has told us that it is embodied in that itself. India has a diverse population. It is necessary it must possess free and independent media. The United States Constitution has clearly mentioned about the press liberty but the Indian constitution does not expressly mention the word freedom of press but it's the value which is being possessed in our constitution and time by time it has been clearly explained by the Indian judiciary. On the context of Federal character of Indian Constitution **BR Ambedkar** said *“The chief mark of federalism as said lies in the partition of the legislative and executive authority between the Center and the units of the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it.”*² Similarly the freedom of press word expressly not mentioned in our Constitution however the interpretation of it given by judiciary is clearly stated that article 19(1) includes freedom of press also. Right to freedom of speech and expression includes the right to freedom of press as well. For example, if the editor of a newspaper will write something in newspapers or publish it it will be his right to free expression which is expressed by himself. It is a known fact that the freedom of press entrusts a platform for exchange of views, social goals, public and political topics and information about the events which are going on currently. India is considered as the world's largest democracy and the Indian Constitution gives citizens the most important fundamental right that is “freedom of speech and expression.” The media is considered as the 4th pillar of a democracy and it has an impact on the country's social ,economic, diplomatic, and political issues. Freedom of press is an essential requirement for availing our fundamental rights under the constitution.

¹ *Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881*

² Dr. B.R. Ambedkar's speech in the Constituent Assembly on 25-11-1949 reproduced in The Constitution and the Constituent Assembly; Lok Sabha Secretariat, 1990, p. 176.

ARTICLE 19 AND POSITION OF MEDIA

Article 19 (1) (a) guarantees freedom of speech and expression under part three of the Constitution. During Constitution assembly debate Dr B.R. Ambedkar while responding to a question about article 19 not including freedom of press he replied “That no special mention of the freedom of press was necessary at all as the press and an individual or a citizen were the same as far as their right of expression was concerned”.³ The word press freedom is not mentioned in the article 19 however “freedom of speech and expression” include press freedom also. The writing of any ideas, representing the views, making any opinion, Speech, expressing the thoughts on a specific topic, problem or similar things , writings published in newspapers ,journals, magazines and in any another medium clearly represents the idea of freedom of speech and expression.

In the case of **Romesh Thapar v. State of Madras**, the Supreme Court held that “*the freedom of expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication, as publication is one of little value without circulation.*” Hence It can be observed that freedom of press includes- Freedom of access of information, freedom of publication and freedom of circulation. In the same case it was further held that “*A newspaper published in one state cannot be prevented to be delivered in another state, because freedom of press includes its publicity also.*”⁴

In **Sakal papers Private Limited v. Union of India**, the daily newspapers (Price and Pages) order 1960 was challenged as it set a minimum number of pages and also the size the newspaper may publish for a fee. The court overturned the order and concluded that “*the right to Freedom of expression cannot be taken away with the goal of restricting a citizen’s economic operations.*”⁵

In **Bennett Coleman V. Union of India**, the honourable Supreme Court said that “*freedom of speech and expression is measured not just by circulation but also by the amount of news and viewpoints. The press is the freedom to unrestricted dissemination and circulation without*

³ Rakesh K. Singh, “As a nation, do we care about freedom of expression?”, The Free Press Journal ,8th November 2020. <https://www.freepressjournal.in/india/as-a-nation-do-we-care-about-freedom-of-expression-2>

⁴ *Romesh Thappar v State of Madras, AIR 1950 SC 124*

⁵ *Sakal Papers (P) Ltd. v. Union of India, AIR 1962 SC 305*

*prior constraints. Prohibitive activities such as limiting the circulation, prohibiting the freedom of choice, prohibiting the publication is a violation of article 19 (1)(a)."*⁶

The interest of the public in a democracy is always upheld as a top priority and hence it is by publishing fact and opinion expresses expressive Freedom of speech. In case of **Indian express newspapers Private Limited V. Union of India**, it was held that "*freedom of the press has not been used in article 19 but it is comprehended within article 19 (1)(a). The purpose of free press is to advance the public interest by publishing facts and opinions without which a democracy cannot make responsible judgement.*"⁷

It is a known fact that the revenue generation in a press is mainly through the advertisement and the media publishes advertisement whether in newspaper newspaper, TV channels, mobile application, radio and other various means of communication the source of revenue is mainly dependant on advertising agency. Hence in the case of **Tata Press v. Mahanagar telephone Nigam Ltd**, the Supreme Court held "*right to advertise as a part of the right to freedom of speech.*"⁸

In **Saroj Iyer v. Maharashtra Medical Council of Indian medicine**, the Supreme Court held that "*the right to print with full report of the legal proceedings witnessed is available even if it is against quasi-judicial tribunal.*"⁹ Similarly in **Sahara India Real Estate Corp Ltd v. SEBI**, the Supreme Court held that "*it is the right of media to report the judicial proceedings.*"¹⁰

In today's world where technological development has been rising in boom, the power of publishing and broadcasting is very essential in gaining the information. This right to freedom of press is not only on the news channel, radio station but it also has its role wherever the publication or the broadcasting of information takes place such as the website , social media , mobile applications and various other platforms which publishes the information.

REASONABLE RESTRICTIONS ON FREEDOM OF PRESS

Article 19(2) of the constitution of India says that "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

⁶ *Bennett Coleman v. Union of India, AIR 1973 SC 106*

⁷ *Indian Express Newspapers (P) Ltd. V. Union of India, AIR 1986 SC 515*

⁸ *Tata Press v Mahanagar Telephone Nigam, 1995 SCC (5) 139*

⁹ *Saroj Iyer v Maharashtra Medical (Council) of Indian Medicine, AIR 2002 Bom 97*

¹⁰ *Sahara India Real Estate Corpn ltd v SEBI, 11 September, 2012*

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.” This article empowers the Legislature to impose reasonable restrictions in the public interest in the right to freedom of speech and expression on the following above mentioned grounds. Freedom without any restrictions sometimes dismantle the aim of the freedom and empower so much to the individual and hence sometimes it creates a chaotic situation.

The **sovereignty and integrity of the state** was included to protect individuals from different areas who with the intention of compromising with the integrity and sovereignty of our country misuses the right of freedom of speech and expression. The same right to freedom of speech and expression cannot be enjoyed if it compromised with the **security of the state**. In the case of *State of Bihar v. Shail Bala Devi*, Supreme Court of India held that “*the speeches made by any body that urge individuals to commit crimes such as equity, murder, robbery and others without a doubt of a danger to the state security. Such is beaches will be regarded as a threat to state’s security or integrity and in order to cease or restrain such communication it will be covered under article 19 (2) as a reasonable restriction.*”¹¹

The Constitution amendment of 1951 added it to the phrase **public order**. The phrase public order has its wider interpretation and hence are different types of behaviour that can compromise with the maintaining public order that comes in conflict with the security of state. In case of *Madhu Limaye v. Subdivisional Magistrate*, Supreme Court held that “*the word public order might include no insurrections, riots or disturbance to public peace*”.¹²

The word **decency or morality** is also mention under the restriction clause which limits the person's freedom of speech and expression in maintaining the state’s decency or morality. Obscenity, immorality, indecency these all are not defined under the clause but it has been interpreted by the judiciary from time to time. These words are very ambiguous in nature and the integration of it changes with the advancement of the society. These things and also interpreted differently by different juries or by the court these are based on perceptions and in what context the things are decent or moral or vice versa. In the case of *Ranjit Udeshi v. State of Maharashtra*, The Supreme Court held that “*the section 292 of IPC is constitutional as it*

¹¹ *State Of Bihar vs Shailabala Devi, 1952 AIR 329*

¹² *Madhu Limaye v Sub Divisional Magistrate, 1971 AIR 2486*

prohibits obscenity in public places and promulgates public decency and morality."¹³ In case of **Chandrakant Kalyan Das v. State of Maharashtra**, the Supreme Court held that "*The issue of decency and morality, here the court must consider whether the indecent or immoral acts were sufficient to pollute the minds of the young individuals or whether there was a risk of their minds becoming depraved*".¹⁴ In another case of **Bobby Art international v. Om pal Singh Hoon**, It is famously known as the Bandit Queen case here the court held that "*the nudity and vulgarity are not always equated with obscenity.*"¹⁵ The decency or morality is a very sensitive issue and recently we have seen that the magazine name paper magazine which has carried a very famous Bollywood actor in its cover page and in Calcutta High Court the PIL regarding that has been filed claiming that the page is obscene.¹⁶ The obscenity differs from its interpretation considering different situations. For example artistic work or stone works which represents the ancient cultural history cannot be treated as obscene. In the evolving society it is very difficult to observe that in what perspective any act or thing will be not decent and hurts the morality and what things will come under freedom of speech which will not interfere with morality. In **Ajay Gautam vs. Union of India**, the movie "*'PK'* was sought to be banned on the grounds that it hurt the religious sentiments of the Hindus and violated the rights of the Hindus under Article 19(2) of the Constitution of India. Holding that no one is captive audience and it is a conscious choice of a viewer, who is free to avoid watching the film, the case was dismissed."¹⁷ In a recent case of **TJ Gnanavel and another v. The State and another**, the Madras High Court held, "*Merely assuming that the name given to a character in the movie resembles that of the leader of a community, it cannot be presumed that in fact such projection was made or directed against a particular community. Merely referring the same name, one cannot assume that the said name is related to a particular community.*"¹⁸ The court had quashed thr FIR against the actor and the director.

Freedom of speech and expression is very important for the growth of society, there is no doubt in it. However, to Make sure that justice and fairness must prevail and hence the freedom of speech and expression must not be misused to search extent that it violates the court's decision.

¹³ *Ranjit Udeshi v State of Maharashtra, 1965 AIR 881*

¹⁴ *Chandrakant Kalyandas Kakodkar v State of Maharashtra, 1970 AIR 139*

¹⁵ *Bobby Art International v Om Pal Singh Hoon , (1996) 4 SCC 1*

¹⁶ Sparsh Upadhyay, "*Ranveer Singh 'Nude' Photoshoot | Plea In Calcutta High Court Seeks Forfeiture Of Magazine's Printed Copies, Blocking Of Its Website*", Live Law, 8 Aug 2022 4:33 PM. <https://www.livelaw.in/news-updates/ranveer-singh-nude-photoshoot-plea-calcutta-high-court-forfeiture-magazine-printed-copy-blocking-website-206031>

¹⁷ *Ajay Gautam vs. Union of India, reported in 2015 S.C.C. Online Del 6479*

¹⁸ *TJ Gnanavel and another v. The State and another, 2022 LiveLaw (Mad) 347*

In a case of *CK Daphtary v. OP Gupta*, it was held that “Section 228 of IPC and article 129 of the Constitution are legitimate and fall within the scope of article 19 (2) of the Constitution reasonable limits”.¹⁹ In another case of *Rao Harnarain v. Gumori Ram* , Punjab High Court concluded that “press freedom is secondary to the effective administration of justice, a journalist primary responsibility is to report not to decide cases”²⁰. This sounds similar to the media trial that part we will discuss in the later section.

Freedom of speech and expression doesn't give any right to person to today's honour or harm any other persons reputation and image. **Defamation** is generally described as causing a harm to any person reputation. In *R. Rajgopal v. state of Tamil Nadu*,²¹ here the Supreme Court has followed the similar footsteps What had been followed by United States Supreme Court in the case of *New York Times v. Suvillian*, It was said that “every erroneous remark should not be liable unless it is done with an intent as false claims are in escapable in open discourse in a democracy they must be accepted if freedom of expression is to have the breathing room it requires to live”.²²

These are the areas in which the freedom of speech and expression are being restricted. Hence these restriction if they are under the ambit of article 19 (2) then they must be reasonable. Restriction may be held unreasonable either because, Firstly if it is too stringent and, therefore, unreasonable, due to some procedural flaw in the law sanctioning it, or second it does not fall within one of the area mentioned under article 19(2).²³

MEDIA TRIAL - ITS CONSTITUTIONALITY

The word media trial consists of two words media and a trial hence by simple interpretation we can understand that it is trial by media. It is a phenomena where the accused is shown as a convicted in media before his conviction before the court, the media gives its interpretation and its judgement about that accused and the image of that accused is shown as the convicted person. This image is construed before any decision given by the court of law. The sensationalism by media is created to grab attention and to gain its viewership. We all know that and the discussion made above clearly indicates about the freedom of speech and

¹⁹ *C.K. Daphtary v O.P. Gupta*, 1971 AIR 1132

²⁰ *Rao Harnarain v Gumori Ram*, AIR 1958 Punj. 273

²¹ *R.Rajagopal v State of TN*, (1994) 6 SCC 632

²² *New York Times v Suvillian*, 376 US 254

²³ N. Hunnings, *Films Censors and the Law* 226-7 (1967); Boyd, "Film Censorship in A Reasonable Restriction on Freedom of Speech and Expression", 14 J.I.LI. 501 (1972).

expression and reasonable restrictions that are provided under article 19 of the Constitution of India, the constitutionality of media trial is depending upon the effect the media possess in the society or to any law, freedom of speech and expression has been taken care by judiciary time to time if any unreasonable act done by state, media or anyone. Over the times we have observed that these media trials also create pressure on the minds of the viewers, advocates, even sometimes on the mind of judges also.

In the very famous case of *Aarushi Talwar murder*,²⁴ here it has been observed that the media was involved too much and the evidence tampering also observed, done by media and the investigating agencies also faced difficulties to the process of investigation. Such similar cases involving media trials includes the famous case, the *Priyadarshini Mattoo case of 2006*, the *Jessica Lal case of 2010*²⁵ are some of the examples.

The media trial is not a new concept which has come recently, if we trace back its history we can see the case of Roscoe fatty Arbuckle, 1921,²⁶ here the court acquitted him but The reputation and job losses due to media, the media Stated him guilty.

In case of *In re P. C. Sen, 1968*,²⁷ It was a case when some broadcast in all India radio was taken place and which has done the company of court. It was said that “*any act that is done or published to bring any judge or the court to the ambit of contempt or which tries to bring down the authority of the court or that anything tries to the interfere with the proceedings of the law will be termed as contempt of court.*”²⁸

In case of *Sushil Sharma v. The state Delhi Administration*, here the media start representing the accused as a murderer without any conviction from the court and hence the court held that “*the conviction of any person would solely be based on the facts of the case and not because the media wanted the person to be declared as guilty. The charges also have to be framed against the person accused based on the evidence available on record and not based on what the media portrays the person to be*”.²⁹

²⁴ *Dr. Rajesh Talwar And Another V. Central Bureau Of Investigation, 2013 (82) ACC 303*

²⁵ *Siddharth Vashish @ Manu Sharma V. State NCT Delhi, (2010) 6 SCC 1*

²⁶ Whitehead, Aaron T., "The "Fatty" Arbuckle Scandal, Will Hays, and Negotiated Morality in 1920s America" (2015). *Masters Theses & Specialist Projects*. Paper 1469.
<https://digitalcommons.wku.edu/theses/1469>

²⁷ *In Re: P.C. Sen, AIR 1970 SC 1821*

²⁸ *In Re: P.C. Sen, AIR 1970 SC 1821*

²⁹ *Sushil Sharma v. The State (Delhi Administration and Ors), 1996 CriLJ 3944*

In *Dr. Shashi Tharoor v. Arnab Goswami and Anr*, it was held that “*the media’s function and right to gather and convey information to the public, as well as to comment on the administration of justice, including cases before, during, and after trial, without violating the presumption of innocence, is the function and right of the media. Journalists are free to investigate, but they are not permitted to convict somebody, prejudge the problem, or affect the trial. Conducting a fair trial is advantageous to both the accused and the general public. A conviction obtained as a consequence of a sham trial is incompatible with the concept of justice.*”³⁰

Recently we have observed that the impact of media trials on our society is very negative in nature. In a democracy the media is regarded as the fourth pillar, but the media trial and what all happening in the current society the nature of biasness is being reflected clearly. When incidents we have seen where the image of a person is destroyed, the career of the people got vanished, Wrongful portrayal of their image has been done by the media even though they are not held guilty by any court of law. Sushant Singh Rajput death case can be treated as media trial example. Further the Press Council of India³¹ has reminded to all media about the norms of journalism and advised all the media outlets to not carry their own trials. It also suggested that the media should not indulge in compromising with the privacy of any accused, It do not infringe with the witness and must not publicise too extensively to any case.

In an interview **Justice Dipak Gupta** said “*judges or never to be tried in media, attributing motives to Judges a dangerous trend*”.³²

The practice of media trial has been becoming a part of a regular conduct in these recent years. We know that the power comes with a responsibility also enhance the right to freedom and expression which is given to us is also comes with a responsibility to not to break any law, media should also be maintaining this dignity to not to break any law and must ensure to act in a responsible manner.

³⁰*Dr. Shashi Tharoor v. Arnab Goswami and Anr, CS(OS)--253/2017*

³¹Media Should Stop "Parallel Trial" In Sushant Rajput Case: Press Council, *NDTV*, Aug 28, 2020
<https://www.ndtv.com/india-news/media-should-stop-parallel-trial-in-sushant-singh-rajput-case-says-press-council-of-india-2287004>

³²Manu Sebastian, “*Judges Are Never To Be Tried In Media; Attributing Motives To Judges A Dangerous Trend : Justice Deepak Gupta,*” 6 July 2022 2:54 PM
<https://www.livelaw.in/interviews/judges-are-never-to-be-tried-in-media-attributing-motives-to-judges-a-dangerous-trend-justice-deepak-gupta-203093>

CONCLUSION

“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.”³³

India is the world's largest democracy and it is very important to note that the media plays a vital role in the democracy. It is however considered to be the fourth pillar of democracy. To maintain healthy practises there are constitutional provisions which are there such as article 19 (1) clause which guarantees the “freedom of speech and expression” and “freedom of press” comes under it, there is article 19 (2) also there which acts as a “reasonable restrictions” over the “freedom of speech and expression” and certain restrictions in a reasonable manner are mentioned in that clause we have discussed it above. The global media observer that is Reporters Without Borders RSF in its report of 2022, India’s rank in the World press freedom index has fallen to 150 out of 180 countries.³⁴ It is a matter of concern in our world's largest democratic country India the ranking is not considered up to the mark by certain analysers. However this ranking does not represents the accessibility to the freedom of press and the nature of work. Many reports also came with the journalist being beaten or abused while doing their job. These all are matters of concern. If you look on to the positive side of the advancement of the social media platforms that are independent in nature, we have seen the rise of the freedom of press under freedom of speech and expression however we cannot neglect the fact That fake news, propaganda, fear, threats, disinformation and misinformation are also being circulated through this platform only. Media trial and its affect are being observed in the mind of the people, it also affects the legal sector such as advocates or even sometimes the judges. The Legislature must act in a way where aggression of the media does not impact to the judicial system. In my opinion fulfilling the gap which we are having in the current legal system and stricter liability or punishment imposing to the media can help in reducing the ill will. The Legislature must also ensure that fair trial does not compromise by protecting freedom of speech and expression. It is also the duty of the people of the country to think in a rational manner and decide what things are good for the society and what are not ,and the analytical approach of the people can make things better. It can be summarised that the freedom of press with accountability helps it to function properly and in a democratic manner and hence the

³³ Thomas Jefferson in a letter to Edward Carrington, January 16,1787

³⁴ G. Sampath, “India’s position on the World Press Freedom Index” , *The Hindu* , May 05, 2022 23:03 IST https://www.thehindu.com/news/national/indias-position-on-the-world-press-freedom-index/article65382354.ece#comments_65382354

protection of freedom of speech and expression, freedom of press is the fundamental concept in the Constitution of India and it helps in developing democratic values better and better with evolution of time.