

# Historical Understanding and Constitutional Development of Freedom of Speech and Expression Under the Indian Constitution

Khalid Ali Khan Afridi<sup>1</sup>, Dr. Praveen Kumar Mall<sup>2</sup>

<sup>1</sup>Advocate & Postgraduate Student, LL.M., Faculty of Juridical Sciences, Rama University, Kanpur

<sup>2</sup>Dean, Faculty of Juridical Sciences, Rama University, Kanpur

## ABSTRACT

Media plays a very important role in the society. As the society changes with the passage of time, the role of media has been changing with it. For the better understanding of the freedom, rights and role of media in the society we need to understand the historical background and role of media. Hence, this research paper consists of historical background of freedom of Media in India. Media has been bestowed with fundamental right of freedom of the press guaranteed under freedom of speech and expression<sup>3</sup> for effectively playing its role. Media role has been growing with changing time as it is a source of information of all aspects of the country including social, political, economic and cultural aspects. India is a democratic country and hence, right of freedom of speech and expression<sup>4</sup> is considered as one of the most important rights guaranteed under Indian Constitution. The freedom of the press also holds importance to ensure democratic characteristics of India as it by providing information to the masses helps in shaping their views and opinions and at the same time media also draws attention of public on various policies of government. The media also helps in restraining arbitrary actions of the government and bringing forward data useful to measure the performance of the government.

**KEYWORDS:** Media, Democracy, Press, Freedom of Speech.

## INTRODUCTION

The right of freedom of speech and expression is enshrined under Article 19 (1) (a)<sup>5</sup> of part III of the Indian Constitution. Freedom of the press is not separately guaranteed under Indian Constitution and hence, it is included in right to freedom of speech and expression. Right to freedom of speech and expression finds place in Article 19 of the Universal Declaration of the Human Rights, 1948. Right to freedom of speech and expression is a very wide right and its ambit include other rights in it like, right to opinion and right of receiving and giving information through any medium oral or print by various forms of media. Article 19 of the International Covenants on Civil and Political Rights, 1976 also speaks about the right of freedom to speech and expression. Right to freedom of speech and expression is a

<sup>1</sup> Advocate and Postgraduate Student, LL.M. (Constitutional and Administrative Law), Faculty of Juridical Sciences, Rama University, Kanpur

<sup>2</sup> Dean, Faculty of Juridical Sciences, Rama University, Kanpur

<sup>3</sup> India Const. art. 19, cl. 1 (a).

<sup>5</sup> India Const. art. 19, cl. 1 (a).

fundamental right under Indian Constitution which makes right of the press as a fundamental right being part of it. The media is considered as the fourth pillar of democracy of the country due to its crucial role in society.<sup>6</sup>

It doesn't just ensure the democracy in the country by providing information useful to form opinions of the public but also helps in proper functioning of the agencies responsible to the public. The media provides information which is useful in cases which would otherwise be ignored if not reported on time, like scams, high profile cases, white collar crimes, etc. The freedom of speech and expression of media means freedom to print, publish and inform in a free way without any check or authority or scrutiny. Freedom means free from all the hindrances but Article 19 (1) (a)<sup>7</sup> of Constitution of India, which is right to freedom of speech and expression and includes right to freedom of the press is not an absolute right and are subjected to various restrictions which are rational and reasonable. These restrictions are equally important as right guaranteed; it ensures proper use of the right. There should be balancing of interests according to Roscoe Pound's principle of sociological jurisprudence, therefore, freedom of the press cannot be absolute. So, now the question is if the freedom of the press is to be allowed with certain restrictions, then what the extent of this freedom is, how far media can exercise its right, what is the point at which the media surpasses its freedom and how much area to be given to media for free exercise of this right.

## **HISTORICAL STRUCTURE OF MEDIA**

### **POSITION OF MEDIA IN ANCIENT INDIAN HISTORY:**

Right of freedom of speech and expression is a right which is basic right and when a child is born, he possesses this right of expressing himself with him. Expression is not a right which needs legal enforcement for its existence as it can be traced back in ancient era in Magadh period, there were Ashoka's edicts and many stone engraved with the information showing the activities and culture of that period. Freedom of Press was alien concept by that time as it found relevance after the growth of newspaper and media. Earlier, people use to send informative messages via various hidden modes and through several persons handed over with letters that was also a source of information. So, these exchanges of letters were considered to be the earliest known newspaper as they include news in it.<sup>8</sup>

### **POSITION OF MEDIA IN MEDIEVAL INDIAN HISTORY:**

During the Mughal period there was no proper existence of the Media as we witness in the modern era. During medieval era there were persons designated for exchange of information which were beneficial for the management of the reign. King used to designate persons for communication and information who were reliable sources of that era. There were no newspapers or media to know about the surrounding happenings so these messengers were best communicators of information. These informants were not like media as we see in today's era as their job was restricted to provide information to the private individual i.e., King and not to the public in general. Earlier, there was king who ruled the kingdom and there was no concept of democracy. The public was not active as there was one monarch. Informants who were considered major source of information during Mughal era though, not to the

<sup>6</sup> Sindhu V. "Historical background of freedom of press in India." International Journal of Advanced Educational Research, Volume 3, Issue 1, 2018, Pages 255-261 (lastly visited on 03<sup>rd</sup> February, 2026)

<sup>7</sup> India Const. art. 19, cl. 1 (a).

<sup>8</sup> Soli Sorabjee, Freedom of Expression: Problems and Perspectives, in Journal Commemorating Fifty Years of Indian Constitution 311 (2000)

public, but the head who govern the kingdom can be compared to the informants of the public of today's era which means media or press. These informants of that era functions like media and helps in proper management and administration of the kingdom.

### **POSITION OF MEDIA IN MODERN INDIAN HISTORY:**

The above discussion has made it clear that media is not new concept in modern era rather its roots can be traced in ancient times as well. In modern era after arrival of British, the growth of media can be seen. In 1776, a step towards starting a newspaper was made by William Bolts, who before starting newspaper made an announcement that he is possession of various important documents which holds historical relevance and are concern of public. After this William Bolts had to face criticism and he was forced to leave the country. First printing press was established in Calcutta around 1777 - 1778, and soon after in 1780, James Augustus Hickey started first newspaper. This newspaper in 1982 was closed by governor general Warren Hastings as James Hickey wrote against the policy of the governor general who immediately took action against him.

This newspaper though couldn't run for larger period but it being the start of conflicts between the press and government holds much relevance. Madras gazette is famous for the first censorship concept introduced by British in 1795. In this case, British asked to submit to military general for censorship test before publication. Here the British government started to regulate the freedom of media and they in the name of censorship used various methods like: pre-publication censorship, refusal of privileges, expulsion of the reporters and publishers. Lord Wellesley passed first regulation of censorship which was later abolished by Warren Hastings in 1799. The scope of regulations was to regulate media as it prescribed the condition of printing the names of printers, publishers and editors with the news in newspapers. It also made mandatory reporting of pre-publication to secretary of government of India. Bengali newspaper Samachar Darpan came in 1818. In 1822, Bombay Samachar came and it is a milestone as this newspaper is still functional and considered as most ancient newspaper of Asia. Earlier, these newspapers were medium to fight against British government and main motto behind the publication was to provoke Indians for independent India. Newspapers were main source of providing information about the British policies which were arbitrary. Newspaper played vital role in freedom struggle and it was basically to awaken the people of India and unite them as one.

A newspaper publishes news which aims to spread thought of freedom in masses and it was part of freedom movement. Newspapers like Indian Mirror and Hindi Patriot, started by Manmohan Ghosh and Debendra Nath Tagore, and Girish Chandra Ghosh respectively which brought a wave where the demands had been made by Indians against British government. Many newspapers editors and publishers were meanwhile arrested and punished for the sedition charges as they opposed the policies made by the government. British government in order to regulate the freedom struggle put various restrictions on press which were rigid.

As J. Natarajan says, "the first two decades of the 19th century saw the imposition of a rigid control of the press by Lord Wellesley and Warren Hastings". The regulations promulgated by the British government were very strict, as they not only regulate the circulation and publication of the news but also check on the content of the news. Later, crown rule also imposed restrictions on media.<sup>9</sup>

---

<sup>9</sup> Ivana Tucak, An Analysis of Freedom of Speech, 2011 JURA 132 (2011)

## **FREEDOM OF SPEECH AND EXPRESSION AND FREEDOM OF PRESS UNDER CONSTITUTION OF INDIA:**

Constitutional law is considered as the basic law of the country. All laws derive its power from the constitutional principles and so is the case with the Indian legal system. Therefore, every right claimed, duties asserted, liability or immunity finds its source from the Constitution and until it finds its roots in the Constitution, it cannot be enforced. So, when we talk about right to press or media, we imply its roots are found in the Constitution and therefore, right to freedom of press can be enforced by the citizens of the country. Under Indian Constitution, there is no express provision which declares right to freedom of press but it is implicit in right to freedom of speech and expression under Article 19 (1) (a)<sup>10</sup> and also it is mentioned in our preamble.

### **PREAMBLE OF THE INDIAN CONSTITUTION:**

The preamble of the Constitution is considered as the identity card of the essence and the spirit of the Constitution and therefore, it is very important part of the Constitution. Our preamble consist words citizens have the liberty of thoughts, expression, belief, faith and worship which means that every citizen of India has freedom or liberty of expression and when we say citizen it includes press as well. Liberty is very wide and vital right for the human existence and hence, it finds an important place in the Indian Constitution. Liberty means freedom, and attaching it to expression means freedom of speech, thought, opinion, etc., where person can speak and express without any interference. Right to freedom of expression is certainly an important right and so does our Constitution framers think as they put this right in main parts of the Constitution like Preamble and part III of the Constitution as well. Both Preamble and Part III of Constitution are considered basic structure of the Constitution. Hence, right to freedom of press is one of the most important rights under the Constitution.<sup>11</sup>

### **SIGNIFICANCE OF FREEDOM OF SPEECH AND EXPRESSION OF PRESS:**

Freedom of speech and expression is a fundamental right and hence it is placed under Part III of the Constitution of India. Constitution drafting committee must have thought this right to be very important that's why they mentioned it in preamble as well. The right to freedom of speech and expression is a right that is very basic and essential for human being. By virtue of our birth, we as humans are the species that can communicate and make others understand our feelings, views or opinion and this right give us freedom to speak and express our thoughts and expression as they are. This right give meaning to human existence.

The right to freedom of speech and expression like any individual is guaranteed to press as well. The press is a huge network which imparts information worldwide. The press means basically the news channels, news reporters and the newspaper, they provide information of world happening and make people aware of their surroundings. The media is a biggest source of information and hence it should be free from interferences which are unreasonable. It gives shape to the human views. Media is an important agency of communicating thoughts and expression and hence, it is necessary to have a freedom of press. Freedom of press ensures democracy. Press is considered as fourth pillar of the society

---

<sup>10</sup> India Const. art. 19, cl. 1 (a).

<sup>11</sup> David K. Berlo, *The Process of Communication: An Introduction to Theory and Practice* (Rinehart & Winston, New York, 1960).

because of its informative character. Media brings news and information which are useful for the public at large. It helps in proper governance of the country.

When we talk about democracy, we imply privilege to people of the country as it means dedicated to people and the media draws attention of public in areas which might get unnoticed for e.g., government policies and measures. The press plays a vital role in the society as it covers the news which is helpful to reveal real incidents. The press also helps in ensuring the transparency between the government and the public. Freedom of press is important as it connects us from the worldwide news and its areas are very wide. These days, media also helps in educating the people. The press also helps in framing a rational opinion of the public as it produces information useful for making a view. Press and media are the effective medium which makes public aware of the happenings and reveal truths as they collect data and information which are real. It also brings information which makes public vigilant regarding the malpractices and corruption of the individuals and government like scams, white collar crimes, etc. Press and media are the vigilant agency of the public. Press also helps in bringing unity among the public and ensure the integrity of the nation. It is a medium by which people feels connected with the whole nation. It helps in strengthening the bond between the wide ranges of the society.<sup>12</sup>

#### **RIGHTS IMPLICIT IN FREEDOM OF SPEECH AND EXPRESSION OF PRESS:**

To understand the rights of the press, it is necessary to understand the meaning of the press. Press means printing media which includes newspapers, magazines, journals, books, pamphlets, documents or other printed materials. Newspapers are considered to be vital agency of the media. Newspapers are considered as vital organ of press, because since early times we have print media. In a general sense, when we say press, it means printing agencies of newspapers. From the British times, there is conflict between the media and the restrictions imposed on it due to active role of media in the society.

#### **RIGHT OF PUBLICATIONS:**

In the case of **Re Daily Zemedar**,<sup>13</sup> it was stated by the judiciary that the printing and publication of the news was the essential right of the press. Further, it was also stated by the Honourable Court that it is the right of the press to print the facts of the contemporary history.

#### **RIGHT TO COMMENT ON PUBLIC AFFAIRS:**

In **Bennett Coleman v. State of J & K**,<sup>14</sup> in this case it was held by the court that right to press includes right to comment on public affairs. In **Gravel v. United States**,<sup>15</sup> it was held that this right includes the right to comment on public affairs and to criticise public men and measures, and to criticise the government including its defence policy and the conduct of armed forces without prejudice to the national security.

#### **RIGHT OF DENIAL TO PUBLISH:**

Right to freedom of press includes the right to publish the views or news without any interference on free will and this right also includes the right not to publish the news on pressure of any individual,

---

<sup>12</sup> P.B. Sawant, Mass Media and Contemporary Society, 2(Capital Foundation Society, New Delhi, 1998).

<sup>13</sup> Re Daily Zemedar, AIR 1939 Lah 313 (Lahore High Court)

<sup>14</sup> Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788.

<sup>15</sup> Gravel v. United States, 408 U.S. 606 (1972)

authority or government. This right of press denying the publication of news according to the procedures and rules of the publication is essential right. All these above rights are very essential for the press to exercise its right of freedom of speech and expression as guaranteed under Article 19 (1) (a)<sup>16</sup> of the Constitution. These rights are implicit in right of press so that it effectively plays its role in the society and circulate information to the public in most authentic and genuine manner.

### **LIMITATIONS AND RESTRICTIONS OF FREEDOM OF SPEECH AND EXPRESSION OF PRESS:**

Limitations of the right mean the extent of the right up to which it can be exercised by a person. Every right has a corresponding duty according to jurisprudential principle of right and duty. So, if a person has a right than other person has a duty not to interfere with the right of that person. As per sociological engineering theory of the Roscoe Pound, the social interest is to be balanced with the individual interest in the society. When there is conflict between the societal or public interest and individual interest, then, in such case to protect the right of the larger number of the society, individual right can be curtailed.

Therefore, there are restrictions imposed on the freedom of speech and expression of press to protect public interest. Right of free speech and expression is a wide right and hence it needs to be restricted to protect the others interest and to avoid misuse of it.

Limitations are imposed with the object that the person should be clear about the extent of the rights and not act beyond it. The main functions of the restrictions are that the scope is defined and such extent is useful in cases of conflicts. It also functions to protect the rights of the others and restrict oneself to go beyond its exercisable limit of rights.<sup>17</sup>

### **REASONABLE RESTRICTIONS:**

Reasonable restrictions mean the restrictions imposed under Constitution, which are the imposed on ground of reasonability. Restrictions imposed on the right of free speech and expression must be subjected to reasonableness as when a freedom is curtailed, it must pass the test of reasonableness to avoid the misuse of it. The question of reasonableness is to be decided by the Honourable Court in each and every case according to circumstances of the case. Article 19 (2)<sup>18</sup> of the Constitution of India, sets out the exhaustive grounds on which right of free speech and expression of press can be reasonably restricted. Where a ground on which right of free speech and expression is restricted does not falls within the scope of Article 19 (2) of the Indian Constitution it would not be valid and struck down. Article 19 (2)<sup>19</sup> originally stated reasonable restrictions on freedom of speech and expression on the ground of government's authority to legislate on matters concerning "libel, slander, defamation, contempt of court, any matter offending public decency and morality, or which undermines the security of or tends to overthrow the state".

In the case of **Romesh Thappar v. State of Madras**,<sup>20</sup> the Madras government challenged the cross roads publication which suggest criticism against government policy and action which amounts to sedition according to Section 9 (1-A)<sup>21</sup> of the Madras Maintenance of Public Order Act, 1949. The

<sup>16</sup> India Const. art. 19, cl. 1 (a).

<sup>17</sup> M.C. Jain Kagzi, Constitution of India Vol. II (2001) pg.948

<sup>18</sup> India Const. art. 19, cl. 2.

<sup>19</sup> India Const. art. 19, cl. 2.

<sup>20</sup> Romesh Thappar v. State of Madras, (1950) 1 SCR 594

<sup>21</sup> Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949

Honourable Supreme Court struck down Section 9 (1-A) and held only an act which is dangerous in nature can constitute ground to restrict right to free speech and expression.

In the case of **Brij Bhushan v. State of Delhi**,<sup>22</sup> the Punjab government-imposed pre-censorship on the English weekly circulated in Punjab on the ground of public safety and public order under East Punjab Public Safety Act, 1949. The Honourable Supreme Court held that, concerned section of the said act authorising restriction on the ground of public safety and order does not fall under the ambit of Article 19 (2)<sup>23</sup>.

### **JUDICIAL APPROACH AND PRONOUNCEMENTS AND PRESS:**

Freedom of speech and expression is a fundamental right guaranteed under Article 19 (1) (a)<sup>24</sup> of the Constitution of India. The scope and ambit of the freedom of speech and expression has been evolving with the time. When Article 19 (1) (a) was made a fundamental right by our constitution framers, its scope was not interpreted in the way it was interpreted by various Honourable Courts in different cases. Our judicial system has dealing with the cases concerning press and media gave wider interpretation to free speech and expression.

The right to free speech and expression was widened and includes in it the right to press as well whereas; the restrictions were also interpreted by the courts while dealing with the cases involving media. Judiciary plays a vital role in safeguarding and limiting the scope of right of free speech and expression of press. Judiciary being the repository for protecting the fundamental and constitutional right of the citizens has to act as a guardian.

The press is the agency which is the biggest source of the information and hence its functioning is very important to ensure democracy in the country. It sometimes lays proactive role in the society making public aware of the events which are beneficial for them and act as an informant and at times it surpasses the limits defined for it and adversely affects the rights of the citizen like in criminal cases generally accused suffering the defamation charges, etc. Here, the judiciary comes into picture and it deals with the conflicts of the rights of press and rights of the public.<sup>25</sup>

### **CONCLUSION**

The researcher observed and concludes that the development of the right of freedom of speech and expression of the press can be significantly seen. This right has been interpreted in the widest term as this is one of the most basic and important right which has been inserted by the constitutional framers not just under part III of the Constitution but it is also mentioned in the preamble, which is the identity card of the constitution. This right cannot be curtailed unless there is law prescribing for it.

### **REFERENCES**

1. Hanson, A. H., & Douglas, Janet, *India's Democracy* (1972), Vikas Publishing House Pvt. Ltd., Delhi, India.
2. Rubin, Bernard, *Media Politics, and Democracy* (1977), Oxford University Press, Oxford, England.

---

<sup>22</sup> Brij Bhushan v. State of Delhi, (1950) SCR 605

<sup>23</sup> India Const. art. 19, cl. 2.

<sup>24</sup> India Const. art. 19, cl. 1 (a).

<sup>25</sup> Konvitz M.R., *Fundamental Liberties of Free People: Religion, Speech, Press, Assembly* (Cornell University Press 1957)

3. Chekki, Dan A., *Participatory Democracy in Action: International Profiles of Community Development* (1979), Vikas Publication House, New Delhi, India.
4. Dahl, Robert A., *Democracy, Liberty and Equality* (1986), Norwegian University Press, Oslo, Norway.