



RIGHT TO FREEDOM OF PRESS AND ARTICLE 19

Simmi Tiwana

Abstract- This paper focuses on the right to freedom of press, its historical background in India, its scope and current position in India. Article 19(1)(a) of the Constitution mentions only freedom of speech and expression; it makes no specific reference to freedom of the press. Dr. Ambedkar, the Chairman of the Drafting Committee, made it clear during the debates in the Constituent Assembly that there was no need for any special mention of freedom of the press because the press and a person or a citizen are equal in terms of their right to freedom of expression. Attacks and deaths on journalists has threatened this freedom.

Keywords- Censorship, Propagation, Publication, Broadcasting, Dissemination, Freedom of Press, Freedom of Expression

I INTRODUCTION

Freedom of expression and freedom of the press form the basis of all democratic organisations, and the press has an important and special role to play in providing a forum for the political discussion necessary for the smooth functioning of the processes of popular rule. In order to preserve the democratic way of life envisaged in the Indian Constitution, it is essential that people should be free to express their feelings and that they should be able to make their views known and disseminate them to the public at large. The widest possible dissemination and sharing of information is important to ensure that citizens are properly informed. The right to express honest and reasonable criticism of matters of public interest is a source of strength for the community. Denial of the right to freedom of the press would necessarily undermine the ability to influence public opinion.

II History of Freedom of the Press in India

The British government introduced journalism to India. India's first newspaper, the Bengal Gazette, also known as the "Calcutta General Advertiser," was founded in 1780 by James Augustus Hickey. It was eventually discontinued because it contained articles critical of business. Before independence, the British government issued various rules and regulations to regulate the press, and the emergence of the Wahabi movement in India also forced the British to enact many laws, as the press was one of the most important media, which contributed to its expansion.

The Censorship of Press Act, 1799

This law was enacted by Governor General Richard Wellesley to prevent the French from publishing anything critical of the British. By this measure, all newspapers were subject to government scrutiny before publication. The scope of this law was eventually extended in 1807 to all forms of press publications, including books, magazines, pamphlets, and newspapers. In 1818, after Francis Hastings (1813–1823) took office, the regulations were relaxed.

Licensing Regulation Ordinance, 1823

Acting Governor General John Adams published the Licensing Regulation Ordinance. This law prohibited publishing without a licence. The ban mainly affected newspapers published in India or edited by Indians. This prompted Raja Ram Mohan Roy to revoke the 1822 revocation of his Persian journal *Mirat-ul-Akhbar*. Raja Ram Mohan Roy opposed the restrictions on journalistic freedom.

The Metcalfe Act, 1835

The licensing ordinances of 1823 were abolished by the Press Act or Metcalfe Act. In India, Governor General Metcalfe became known as the "Liberator of the Press" Under the Act, a printer or publisher was required to

accurately state the location of a publication and cease operations if a similar statement was made. The permissive press policy led to a rapid proliferation of newspapers.

However, towards the end of the 19th century, the national movement began to steam, and newspapers, especially the popular press, played an important role. During this period, the intellectual class became associated with the advent of the printing press, and in 1778 the first book was printed in India. One of the most important figures who championed the ideas of freedom of speech and press was Raja Ram Mohan Roy (1772-1833), who is also known as the father of modern India. He was the one who established a newspaper in Bengali, the first newspaper in an Indian language. Soon newspapers were printed and distributed in many local languages, and nationalists like Tilak, M. K. Gandhi, and Dr. Ambedkar established many newsletters and used them to communicate with their followers. Thus, freedom of the press, and with it freedom of speech, became an important issue for the emerging Indian intelligentsia and played a very important role in the freedom struggle. Therefore, the British government enacted a series of laws to suppress the press. The Licensing Act of 1857, the Vernacular Press Act of 1878, the Newspaper Act of 1908, and the Indian Press Act of 1910 are examples of laws before and after censorship.¹

Registration Act, 1867

The Metcalfe Statute of 1835 was replaced by the Registration Act. Under this law, freedom of the press is not restricted. The name of the printer, the publisher, and the place of publication had to be indicated in the printed media, and a copy had to be sent to the government.

The Press and Regulation Act, 1876

On March 22, 1867, an Act was passed to register printers and newspapers to keep copies of books and newspapers printed in India and to register such books and newspapers, entitled The Press and Registration of Books Act, 1867. This Act was the first step in the regulation of printing presses and registration of books and newspapers, which is still in force today, albeit in an amended form. In fact, this law has been amended several times by amending acts.

Vernacular Press Act, 1878

Viceroy Lytton enacted the Vernacular Press Act to restrict the freedom of newspapers published in Indian languages (English-language publications were exempt from the restrictions of this act). This was the result of growing racial animosity between Indians and Europeans at the time following the events of 1857.

The District Magistrate was given the power to require printers and publishers of any vernacular newspaper to sign a bond to the government pledging not to use the published content to incite hatred between people of different faiths, castes or races.

In addition, the printer and publisher may be required to pay a deposit, which may be collected in the event of a repetition of the above offences. The magistrate's decision was final, and an appellate court would not hear an appeal. The magistrate's decision was final, and an appellate court could not hear an appeal. A state censorship board could grant an exemption from the application of the law to a popular publication upon the presentation of supporting documents.

Newspaper Act, 1908

The Newspaper Act of 1908 gave magistrates the power to seize press products that published unacceptable content inciting murder or other violent acts. Extremist nationalist activities during and after the 1906 Swadeshi movement served as a catalyst for this measure.

The Indian Press Act, 1931

The Indian Press Act, a revision of the Vernacular Press Act, gave local governments the power to invalidate or deregister newspapers they deemed hostile to the government, to require printers and publishers to post a substantial security deposit upon registration, and to require printers to provide two copies of each newspaper issue.

Freedom of the Press and the Constituent Assembly

The Subcommittee on Fundamental Rights was clear that freedom of the press would occupy a large space in the Constitution. The press had been a central arena of colonial nationalism since the colonial administration enacted the Press Act in 1823. It served as a platform for the dissemination of knowledge and instruction for the benefit of the general public.

The early drafts by K.M. Munshi, Dr. B.R. Ambedkar, and Harnam Singh included a separate right for the press, but the draft by K.T. Shah was the only one that didn't make this distinction. Nevertheless, on March 26, 1947, the subcommittee voted by a majority that "no separate provisions need be made for the right of the press in the

Constitution, as it's included in the right to freedom of expression." K.T. Shah stated in the Constitutional Assembly that the rights of the press should be protected by a separate clause. Damodar Swarup Seth and Professor Shibban Lala Saksena also called for a separate press right. Pointing out that freedom of the press was protected by the more general right to freedom of expression, Dr. B.R. Ambedkar later changed his mind and rejected the demand for a separate press law. B.N. Rau, who also made an important contribution to the formulation of the constitution, shared the view that freedom of speech and expression also applied to the press.²

III Freedom of the Press Implied in 19(1) (a)

The right to freedom of the press is not explicitly mentioned in Article 19(1)(a) of the Indian Constitution. Only freedom of speech and expression is mentioned there. It could be argued that freedom of speech and expression may refer to written or printed statements or to the manifestation or expression of feelings, intentions and thoughts in writings by a person, and that in this sense freedom of speech and expression does not include freedom of the press. Dr Ambedkar clarified, however, that specific mention of freedom of the press was not necessary because the Indian Constitution had adopted the British practice of including freedom of the press within the broader right to freedom of expression. But the Constitution of the United States provides specifically for the guarantee of freedom of the Press and recognises the Press as an organ of publicity and media of mass communication. In *Ramesh Thapar v. State of Madras*³ and *Brij Bhushan v. State of Delhi*,⁴ the Supreme Court accepted the fact that the Freedom of the press was an essential part of the right to freedom of speech and expression. It was observed by Patanjali Shastri J. in *Ramesh Thapar's case* that freedom of speech and expression included the propagation of ideas, and that freedom was ensured by freedom of circulation. It does become clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's idea, opinion and other views with complete freedom and by resorting to all available means of Publication. This view had been reiterated in *Sakal papers v. Union of India*⁵ It is regarded as a settled principle in *Bennett Coleman Corporation v. Union of India*⁶ As a right to freedom of speech and expression is guaranteed to citizens only so the non-citizen running a newspaper is not entitled to benefit from the freedom of the Press. Moreover, freedom of the Press in India stands no higher than the freedom of speech and expression and no privilege attached to the Press as such as distinct from the freedom of the citizen.

The right to freedom of speech and expression is not absolute and its exercise is subject to limits, permissible under clause (2) of Article 19. These limits apply equally to the freedom of the Press. The Union Parliament or the State Legislature may validly pass a law which places restrictions on the right to the freedom of speech and expression, provided such restrictions are related to one or more purposes mentioned in Article 19(2). These restrictions have to be reasonable. In *Indian Express v. Union of India*⁷ has been held that the Press plays a very significant role in the democratic machinery. The courts have a duty to uphold the freedom of the press and invalidate all laws and administrative actions that abridge that freedom. Freedom of the Press includes freedom of publication, freedom of circulation and freedom against pre-censorship. In the case of *Janaki Ballav Patnaik v. Bennett Coleman and Co. Ltd.*⁸ the Supreme Court held that the press does not have the unfettered right to publish any material

Grounds on which freedom of speech and freedom of the Press can be restricted are

1. Integrity and Sovereignty of India
2. Public Order
3. State Security
4. Friendly associations with foreign nationals
5. Morality or decency
6. Contempt of Court

1VScope of Freedom of Press

Liberty to Disseminate Knowledge

The freedom of the press is meaningless without this freedom. This right is explicit, despite the fact that it is also implied in the freedom of expression. The primary distinction between freedom of the press and freedom of speech for an individual is that the former allows for publishing on a variety of media, including print, broadcast, electronic, etc., while the latter allows for mass communication. As a result, the freedom to disseminate knowledge is integral to journalistic freedom.⁹

Freedom of Publication

The right to freedom of speech and expression carries with it the right to propagate and circulate thoughts due and the freedom of the press means principally the right to publish without any previous licence or censorship. A law prohibiting the admission and distribution of journals in a state was declared unconstitutional in *Romesh Thapar v. State of Madras*¹⁰. The court determined that there is no question that freedom of speech and expression includes freedom of idea dissemination and that this freedom is supported by freedom of movement. Legislation that exempts itself from the permissible limits under section (2) and mandates the imposition of restrictions on the basis of "public safety" or the "maintenance of public order" is invalid and illegal. In *Bennett Coleman and Co. v. Union of India*,¹¹ the court stated that the direct involvement with regard to page restriction and other similar laws was unreasonable and not warranted and that setting quotas may simply address the issue of a scarcity of newsprint. Limiting a newspaper's page count would require it to cut back on editorial content or advertising, which would hurt its bottom line and, in turn, restrict freedom of expression. In *Sakal Papers Ltd v. Union of India*¹² the petitioner argued that the Daily Daily (Price and Control) Order, 1960—which set a minimum price and the maximum number of pages that a daily may publish—was illegal because it violated press freedom. In the case of *Punjab State v. Virendra*¹³, it was held that pre-publication restriction, even under a court order, may only be justified in the interest of justice where there is a clear and immediate threat to the delivery of proper justice, and not in any other circumstance, according to the highest court's ruling in this case.

Freedom to Advertise

Advertising for a good or service can be done in many different ways, including through flyers, circulars, direct mail, billboards, signboards, sky signs, roof signs, loudspeakers, mechanical or electric devices, newspapers and magazines, radio, television, the internet, and so on. According to the Supreme Court's ruling in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*,¹⁴ commercial advertising or commercial speech is a kind of free speech that is only constrained by Article 19(2). The Supreme Court observed "The advertisement as "commercial speech" has two facts

- 1) Even if advertising is nothing more than a business transaction, it nonetheless spreads knowledge about the marketed goods.
- 2) The information made available through ads benefits the general public.

The open flow of business information is crucial in a democratic economy. Without the general public being informed by the information spread by commercials, there cannot be ethical and cost-effective marketing to the general public. Without their right to "Commercial Speech," the economic system in a democracy would suffer. *Hamdard Dawakhana v. Union of India*¹⁵ in this case, the Supreme Court ruled that offensive advertising is not covered by Article 19(1)(a).

Right to Interview

Prabha Dutt v. Union of India,¹⁶ the Petitioner, Smt. Prabha Dutt Chief reporter of Hindustan Times, filed a petition under Article 32 of the Indian Constitution asking for a writ directing the respondent, the superintendent of Tihar Jail, to grant her access to speak with the two prisoners named Billa and Ranga who are charged with receiving the death penalty for an offence under Section 302 of the Indian Penal Code and who are reported to have petitioned the President of India for communication of the sentence. In this case, the Supreme Court ordered the Superintendent of the Tihar Jail to grant interviews with two death row inmates to reporters from a few newspapers. The right under Article 19(1)(a) is not an absolute right, nor indeed does it confer any right on the press to have unrestricted access to means of information." There are three limitations to this privilege, notwithstanding the fact that it is not absolute:

- a) Only with the interviewee's permission will an interview occur;
- b) The Interview must end at the interviewee's request;
- c) The interviewer is not permitted to compel the interviewee to answer any questions.

Freedom to Report on Court Proceedings

The spirit of justice, in the words of Jeremy Bentham, is publicity. The Supreme Court ruled in *Sahara India Real Estate Corpn Ltd v. SEBI*¹⁷ that the media has a right to report on legal processes. The Supreme Court ruled in *Saroj Iyer v. Maharashtra Medical (Council) of Indian Medicine*¹⁸ that the freedom to publish accurate accounts of the court procedures one has observed exists even when doing so in opposition to quasi-judicial institutions.

Right to Attend and Report on Legislative Proceedings

The Constitution's Article 361 grants us the authority to provide a fair account of legislative proceedings. There should be no mala fide purpose behind such disclosures, which is the only restriction on this right. The freedom of speech and expression should take precedence over parliamentary privileges where the right to report on legislative proceedings, which is implicitly contemplated by the right of expression (Article 19), conflicts with such rights. Today, live telecasts of legislative sessions are required.¹⁹

Right to Broadcast and Telecast

For ensuring the right to free speech of the citizens of this country, it is necessary that citizens have the benefit of the plurality of views and a range of opinions on all public issues. A successful democracy posits an aware citizenry. The Supreme Court in *Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal*²⁰ has explained the right to freedom of speech and expression by saying that the right to freedom of speech and expression includes the right to receive and impart information. In *Bobby Art International v. Om Pal Singh Hoon*,²¹ The Supreme Court upheld the grant of an 'A' certificate to the film 'Bandit Queen' and held that the censor of nudity and rape and use of expletives exhibited in the film were in aid of the theme and were not intended to arouse prurient or lascivious thoughts but intended to arouse revulsions against the perpetrators and pity for victim. And, in *S. Raangarajan v. P. Jagjivan Ram*,²² wherein it was held that if the exhibition of the films could not be validly restricted under Article 19(2), it could not be suppressed on account of demonstrations and processions or threats of violence.

Defamation and the Right to Press

*R. Rajagopal v. State of Tamil Nadu*²³ In this case, the Supreme Court ruled that the journal had the right to publish the prisoner's memoirs without his permission or approval. It was decided that the state had no power to stop the petitioners from publishing the book but may sue the plaintiff for defamation after the piece was published. It was determined that everyone has the right to write their autobiography as a result of their fundamental rights under Article 19 of the Indian Constitution.

V Current Position of the Press

The situation currently is not very favourable, notwithstanding some development from the period when "freedom of the press" may be measured. In recent years, there have been several instances of hate crimes, false allegations, and convictions brought about by inaccurate portrayals, fake news, etc. We mistake bogus news that has been extensively disseminated for the real thing. Because journalism and news reporting are low-paying professions, some experts frequently disseminate misleading information in return for cash. Media corporations are frequently paid by well-off politicians and criminals to publicize their philanthropic and 'good' deeds. Particularly when it comes to elections, this leads to prejudice among the audience.

VI Crime against Journalists

Crimes against journalists are increasing day by day. In 2021, six journalists died as a result of their work. 20 journalists were arrested between April and September 2022, and India is among the four countries with the most deaths. They were singled out and attacked because of their work, whether or not it happened while they were working. In 2017–2021, there have been 138 attacks and violence against journalists. In Uttar Pradesh alone, 12 people were killed, 48 people were attacked, and 66 people were arrested on various charges and cases.²⁴

Over the years, a number of criminal cases have come to light. The following are some of the most notable cases. Subhash Kumar Mahto was shot in the head on May 20, 2022, by four people who left the scene as he was coming from a family dinner in a small area in Bihar. The editor of the Kannada weekly Gauri Lankesh Patrike, journalist and activist Gauri Lankesh, was murdered outside her home in South Bengaluru on September 5, 2017.

Conclusion

In conclusion, the Indian Constitution does not mention freedom of the press. Article 19 of the Indian Constitution guarantees freedom of speech and expression. Freedom of the press is referred to as part of freedom of speech and expression in Article 19 of the Constitution of India. However, the same restrictions that apply to freedom of speech and expression must also apply to freedom of the press.

The press is supposed to represent the voice of the public to the government, but in today's society the opposite is true, as some of the main media organizations support political parties while attacking those of the opposition and avoid discussing relevant issues such as public welfare, corruption, evaluation of government policies, etc. While it's also true that fully independent forums such as WhatsApp, YouTube, and Facebook are increasingly prone to Fake News that fuels lynching, fear-mongering, hate speech, propaganda, and the promotion of immorality, this underscores the need for some reasonable press restrictions. However, the journalists who are responsible for fair reporting are being attacked and assaulted. The attacks on journalists are proof that press freedom is dwindling by the day.

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