



**INTERNATIONAL JOURNAL OF NOVEL RESEARCH
AND DEVELOPMENT (IJNRD) | IJNRD.ORG**
An International Open Access, Peer-reviewed, Refereed Journal

FREEDOM OF PRESS ANALYSISICAL STUDY

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ABSTRACT

Journalism, the Fourth Pillar of democracy, serves as an enlightening force within society, shedding light on democratic and societal responsibilities. Journalists assume the crucial role of societal sentinels. Nevertheless, media autonomy does not entail unfettered authority. The conduct of the State, its institutions, and citizens is governed by laws that extend to the media. Like any vocation, journalism operates within a legal framework. The Indian Constitution stands as the primary source of legislation overseeing media practices in the nation.

Among the fundamental rights safeguarded by the Constitution, including those of the media, lies the freedom of speech and expression. This research endeavor aims to discern the extent to which journalists enjoy this freedom and explores the legal framework surrounding it through various cases and rulings. The article delves into the constitutional provisions on freedom of

speech and expression in India and examines how Indian courts have interpreted these provisions in relation to the media, drawing from diverse legal precedents and case studies. The study hinges on an analysis of eleven court cases adjudicated by Indian courts.

KEYWORDS: Journalism, Freedom, Speech and Expression, Courts, Judgements, Case Laws, Indian Constitution

INTRODUCTION

Since ancient times, stretching beyond recorded legal history, humanity has employed diverse means to convey ideas: symbols, signals, speech, writing, print, and now computer language. Recognizing the paramount importance of ideas and information for the progress and survival of a free and democratic society, it becomes imperative to ensure that every individual possesses an inherent right to express their

thoughts and opinions. This principle came to be known as the right to freedom of speech and expression. The preamble of the Indian Constitution explicitly commits to securing the liberty of thought, expression, and belief for its citizens. Anchored in the core objective of the constitution, the preamble guarantees every Indian citizen the freedom to voice their thoughts and beliefs, along with the freedom to practice the religion of their choice. The third part of the Indian Constitution encompasses the fundamental rights, within which the right to freedom is enshrined in Articles 19, 20, 21, and 22, emphasizing the significance attributed to individual rights by the framers of the constitution. Article 19 ensures the freedom of speech and expression as one of the six freedoms it encompasses.

All Indian citizens possess a constitutional right to express their views, opinions, and convictions without hindrance. They hold the right to seek, receive, and disseminate information and ideas. As the exercise of freedom of expression necessitates a medium for communication, it naturally follows that the medium itself should be free. Although our constitution does not explicitly mention the freedom of the media as the US Constitution does, the Supreme Court has unequivocally ruled, following the aforementioned logic, that freedom of the press is encompassed within the guarantee of freedom of expression, which also encompasses the liberty to publish and circulate information. Consequently, there is no requirement for a separate provision for the freedom of the press.

The concept of media freedom holds great significance in a democracy. The free media stands as a vital agency, serving as the primary vehicle for public opinion and invigorating the democratic system of governance. The freedom of media is deeply entrenched within the constitutional framework of India and is safeguarded. Dr. Ambedkar's initial draft proposed that "no law shall be enacted that curtails the freedom of speech, press, association, and assembly, except on grounds of public order and morality." The freedom of speech and expression is not only crucial to democracy but is also guaranteed by the Indian Constitution, the Universal Declaration of Human Rights, and various international agreements aimed at protecting human rights and fundamental freedoms. It follows from these guarantees that people are entitled to receive and disseminate news and views without interference, transcending borders, as it constitutes an integral part of the democratic process. In practice, it is the media that daily exercises this right.

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The Court Further Observed

In the event that the space allocated for advertisements is reduced, it would adversely impact a newspaper's earnings, potentially leading to financial losses, closure, or the necessity of raising prices. The intention behind regulating advertisement space, as stated in the Act, is to prevent what is deemed as 'unfair' competition. However, this regulation directly interferes with the constitutional right

to freedom of speech and expression guaranteed under Article 19(1)(a).

The freedom of newspapers to determine their own pages and circulation was emphasized in the *Bennett Coleman v Union of India* case. The Supreme Court ruled that newspapers should have the liberty to decide the number of pages and the extent of their circulation. The Control Order, which imposed restrictions on the maximum number of pages a newspaper could print and the volume of newsprint it could utilize, was invalidated by the Supreme Court. The court held that the newsprint policy was not a reasonable restriction within the framework of Article 19(2) and infringed upon the fundamental rights of the petitioners under Article 19(1)(a). The court further stated that if a law specifically burdens the press with prohibitive measures, limiting circulation, impeding freedom of choice in personnel, or obstructing the establishment of new

newspapers, it would violate Article 19(1)(a) and fall outside the protection provided by Article 19(2).

It further emphasized that freedom of the press encompasses both qualitative and quantitative aspects. This means that freedom extends to both the circulation of newspapers and the content they publish. However, the newsprint policy, which allows newspapers to increase circulation by reducing the number of pages, page area, and periodicity, prohibits them from increasing the number of pages, page area, and periodicity by reducing circulation. These

restrictions limit the flexibility of newspapers in adjusting their page count and circulation.

In this particular case, the Court determined that imposing limits on the number of pages not only undermined the economic viability of the petitioners but also curtailed freedom of expression by forcibly reducing the page level, leading to a decline in circulation and the coverage of news and opinions.

The law cannot suppress or violate the freedom of speech and expression. The case of *Express Newspapers v. Union of India* arose from a challenge to the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act of 1955, which was alleged to violate Article 19(1)(a) of the Constitution. The Act aimed to regulate the working conditions of journalists and other employees in newspaper establishments. It included provisions for the payment of gratuity to journalists who had served continuously for a minimum of three years, even if they voluntarily resigned.

The Act also sought to regulate working hours, leave, and provide retroactive retrenchment compensation in certain cases. Section 9(1) of the Act outlined the principles that the Wage Board should follow in determining the wages of journalists. The petitioners argued on various grounds that the provisions of the Act violated their fundamental rights under Articles 19(1)(a), 19(1)(g), 14, and 32 of the Constitution. They contended that the Wage Board's decision to fix wage rates imposed an excessive

financial burden on the industry, leading to its potential downfall.

In the specific circumstances of the case, the court determined that the legislation's effect on freedom of speech and expression was too distant and did not warrant judicial intervention. However, the court did acknowledge an important principle:

While the press cannot claim immunity from general laws, it would be inappropriate to subject it to laws that restrict or diminish freedom of speech and expression, limit the dissemination of information by curbing circulation, impede its freedom to choose how to exercise its rights, or undermine its independence by forcing it to seek government assistance. Laws that excessively burden the press, imposing restrictions on circulation, penalties on the choice of media instruments, hindering the establishment of new newspapers, and ultimately compelling the press to rely on government aid to survive, would be deemed unconstitutional and struck down.

The court concluded that the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act of 1955 was enacted to improve the conditions of those employed in the newspaper industry. It determined that any impact on the right to freedom of speech and expression, as alleged by the petitioners, was too indirect and incidental to justify invalidating the legislation.

Press as the Mother of all Other Liberties-The judgment delivered by Justice Venkataramiah in the case of *Indian Express Newspaper v The Union of India* provides a comprehensive and enlightening explanation of the press's significance as "the mother of all other liberties" in a democratic society. This case specifically raised concerns about the freedom of the press in relation to the State's power of taxation. Various newspaper companies filed writ petitions in the Supreme Court challenging the imposition of duty on newsprint under the Customs Act of 1962.

The petitioners, who extensively used newsprint for publishing newspapers, periodicals, magazines, and so on, argued that the imposition of duty directly hindered the freedom of speech and expression guaranteed by the Constitution. They contended that it led to increased newspaper prices and subsequently reduced circulation. Justice Venkataramiah acknowledged the vital role played by the press in a democratic system and emphasized the importance of freedom of speech and expression. He explained that freedom of expression serves four essential social purposes: enabling individual self-fulfillment, facilitating the discovery of truth, enhancing individual participation in decision-making, and establishing a reasonable balance between stability and social change. According to him, all members of society should be able to form their own beliefs and freely communicate them to others. In essence, the fundamental principle is the people's right to be informed.

Therefore, freedom of speech and expression should receive strong support from those who believe in people's participation in governance. While recognizing the significance of the freedom of the press, the Court ruled that there could be no exemption from taxation because the framers of the Constitution deliberately chose not to provide constitutional immunity against such taxation. However, they were cautious in protecting the press from local pressures by granting the power to levy taxes on newspapers exclusively to the Parliament, not the State Legislatures.

The newspaper industry enjoys two fundamental rights: the freedom of speech and expression guaranteed under Article 19 (1) (a) and the freedom to engage in any profession, occupation, trade, industry, or business guaranteed under Article 19 (1) (g). While the right to exercise freedom of expression cannot be taxed, taxes can be levied on professions, occupations, trades, businesses, and industries. Therefore, taxes can be imposed on the newspaper industry. However, when such taxes encroach upon the realm of freedom of expression and stifle that freedom, they become unconstitutional. As long as the taxes remain within reasonable limits and do not hinder freedom of expression, they do not contravene the limitations set by Article 19 (2).

Justice Patanjali Sastri, in the mentioned case, stated that imposing pre-censorship on a journal restricts the liberty of the press, which is an integral part of the right to freedom of speech and expression. He also quoted Blackstone's

view, which emphasized that the freedom of the press lies in the absence of prior restraints on publications, rather than immunity from criticism for criminal matters when published. Every free individual has an unquestionable right to present their sentiments to the public, and forbidding this would destroy the freedom of the press. The Supreme Court nullified the pre-censorship order issued by the Chief Commissioner against the publisher of the Organizer and deemed pre-censorship as an unjustifiable restriction on the liberty of the press. This case demonstrates how the courts have safeguarded the freedom of speech and expression of the media when required.

It is important to note that the government does not hold a monopoly over electronic media, and every Indian citizen has the right to telecast and broadcast to viewers and listeners through the media. In the case of *Minister of Information and Broadcasting v Cricket Association of Bengal*, the Supreme Court asserted that the fundamental right to freedom of speech and expression includes the right to effectively communicate with as large a population as possible, both within and outside the country. There are no geographical barriers to communication, and therefore, every citizen has the right to utilize the best available means

for this purpose, which currently includes electronic media such as television and radio. However, electronic media faces additional restrictions compared to print media, such as the fact that airwaves are considered public property and should be

used for the benefit of society at large, and that frequencies are limited.

The Central Government shall promptly take necessary actions to establish an independent autonomous public authority that represents all sections and interests in society to oversee and regulate the use of airwaves. In this particular case, the Supreme Court significantly broadened the scope and extent of the right to freedom of speech and expression. It held that the government does not hold a monopoly over electronic media, and under Article 19 (1) (a), every citizen has the right to telecast and broadcast through electronic media, namely television and radio.

Furthermore, the Supreme Court, in a significant judgment concerning the case of *Tata Press v Mahanagar Telephone Nigam Ltd.*, interpreted that the fundamental right to freedom of speech and expression under Article 19 (1) (a) also encompasses the right to advertise, commonly known as commercial speech. The Court acknowledged that advertising, although a commercial transaction, serves the purpose of disseminating information about products to the general public, thereby benefiting society at large. In a democratic economy, the free flow of commercial information is indispensable for honest and economical marketing. Thus, the economic system in a democracy would be hampered without the freedom of commercial speech.

The right to freedom of speech and expression is not confined within national boundaries. The

Supreme Court addressed this question in the landmark case of *Maneka Gandhi v. Union of India*. The Court held that the freedom of speech and expression knows no geographical limitations and includes the right of a citizen to gather information, exchange thoughts, and communicate not only within India but also abroad. The Court emphasized that the Constitution deliberately refrained from using words restricting the right to the territory of India, recognizing the advancements in technology and communications that allow individuals in India to transmit information to foreign countries, thereby exercising their right to free expression abroad.

The freedom of the press encompasses the right to gather news and information. In the case of *Prabhu Dutt v Union of India*, the petitioner sought permission to interview condemned prisoners. The Court clarified that the press does not have an absolute or unrestricted right to information, and citizens are not legally obligated to provide information. An interview may be conducted if the convict consents to it, and in exceptional circumstances, the interview can be refused, provided that the reasons are recorded in writing.

In this case, the Court directed the Superintendent of Tihar Jail to allow the Chief Reporter of the *Hindustan Times* and representatives from other prominent news agencies to interview the death sentence convicts, Ranga and Billa, as they were willing to be interviewed. The Court recognized the right of the press to access

information through interviews, subject to the consent of the individuals involved.

CONCLUSIONS

The right to freedom of speech and expression stands as one of the paramount fundamental rights, encompassing the dissemination of one's viewpoints through spoken or written words, audio-visual means, advertisements, and any other form of communication. It also encompasses the right to access information, freedom of the media, and the liberty to publish and circulate. Thus, this fundamental right possesses a vast scope. The concept of freedom of expression signifies the act of seeking, receiving, and imparting information and ideas, irrespective of the medium employed.

The Constitution of India firmly resolves to secure liberty for all its citizens, ensuring each individual's freedom of expression. Article 19(1) of the Indian Constitution guarantees the freedom of speech and expression to every citizen of the nation. As a result, Indian citizens possess a constitutional right to freely express their views, opinions, and convictions. They have the right to seek, receive, and disseminate information and ideas. Since the exercise of freedom of expression necessitates a medium for communication, it logically follows that the medium itself should also be free.

Although the Indian Constitution does not explicitly mention the freedom of the media, the Supreme Court has consistently followed the aforementioned rationale, explicitly stating that the freedom of the press is encompassed within the guarantee of freedom of expression,

which also encompasses the liberty to publish and circulate information. Consequently, there is no need for a separate provision to safeguard the freedom of the media. The courts have repeatedly interpreted the freedom of speech and expression through various judgments and case laws, affirming that the freedom of the media is inherently included within the freedom of speech and expression.

To substantiate this conclusion, eleven case studies were examined, providing clear evidence that the freedom of the media is indeed encompassed within the freedom of speech and expression enshrined in Article 19(1)(a) of the Indian Constitution. The analysis of case laws demonstrates that the courts have consistently adopted a broad interpretation of the value and content of Article 19(1)(a), subject only to the permissible restrictions outlined in Article 19(2). Attempts by intolerant authorities to suppress or stifle this freedom have consistently been resolutely rebuffed.

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