

# ROLE OF PRESS IN DEVELOPMENT OF INDIAN DEMOCRACY

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Right to speech and expression gives us a right which is freedom of press. Indian democracy depends on four pillars, fourth and strongest pillar is press. No doubt there is avital role of press to develop Indian democracy. Before independence and after independence press has played an important role to establish a good governance and transparency. Democracy can not survive without this right.

In the case of *sankal* news papers it was observed that “species of which freedom of expression is a genus.”<sup>1</sup> Freedom of the press is the freedom of communication and expression through vehicles including various electronic media and published materials.

The Universal Declaration of Human Rights states:<sup>2</sup>

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and impart information and ideas through any media regardless of frontiers”.*

And again in the Indian constitution we have fundamental rights. The fundamental right of the freedom of the press implicit in the freedom of speech and expression is essential for political liberty and proper functioning of democracy. Freedom of Press has perpetually been a cherished right in all democracies. “Growth and development of representative democracy is so much intertwined with growth of press that the press has come to be recognized as an *institutional limb of modern democracy*”. In India before Independence, there was no constitutional or statutory guarantee of freedom of an individual or media/press. At most, some common law freedom could be claimed by the press, as observed by the Privy Council in *Channing Arnold v. King Emperor*<sup>3</sup> “The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject.”

<sup>1</sup> Sakal papers v. Union of India, AIR 1962 SC 305: (1962) 3 SCR 842.

<sup>2</sup> Article 19 of Universal Declaration of Human Right

<sup>3</sup> (1914) 16 BOMLR 544

## FOUNDATION OF THE RIGHT

The Indian Press has a long history right from the times of British rule in the country. The British Government enacted a number of legislations to control the press, like the Indian Press Act, 1910, then in 1931-32 the Indian Press (Emergency) Act etc. During the framing of the Constitution the founding fathers bestowed enormous significance to Freedom of the Press. B. N. Rao, the Constitutional Advisor to the Constituent Assembly assured that freedom of the press was included in the guarantee of freedom of speech and expression and it was hardly necessary to provide for it specifically.

Dr. Ambedkar said that we don't want to give absolute rights to the press because it has two aspects. The right could be given to the first aspect of the press and not to the second aspect. The press is a right of expression. The Constitution of India in Article 19(1) (a) lays down that "*All citizens shall have the right, to freedom of speech & expression and it include the right to press also.*" This concept has been warranted by the Supreme Court of India. In numerous judgements the Supreme Court has ruled that Freedom of the Press is contained in the guarantee of freedom of speech and expression in Article 19(1) (a) of the Constitution. The freedom of press means freedom from interference from authority which would have the effect of interference with the content & circulation of newspapers.<sup>4</sup>

In the view of democracy, it only means that people or the citizens can enjoy full freedom of speech and expression and can be only restricted within the reasonable subject. During the era when the press council in India felt anxiety, the birth of the Media Law is implemented and followed by the Press Regulations that significantly had an impact on the publishing industry. Next is the introduction of the compulsory licensing for owning and running the printing presses which is typically empowered by the government. This action simply means to prohibit the publication or circulation of any newspaper, book, or other printed material. The banning of the publication or dissemination created a commotion against the government that effectively weakened the power of authority. This process continued and through the years brought a significant change and created a fundamental right in the constitution. The entire developed article in the institution of the country speaks about the freedom to express and expression and the birth of the Press Council in India.

## THE CONSTITUTION AND FREEDOM OF PRESS

Article 19(1) (a) of the Indian Constitution states simply that '*all citizens shall have the right to freedom of speech and expression*'. The companion Article, Article 19(2) qualifies this right by providing that the State can impose reasonable restriction on its exercise

<sup>4</sup> Sakal Papers Ltd. V. UOI AIR 1962 SC 305

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

The Indian Constitution, while not mentioning the word “press”, provides for “*the right to freedom of speech and expression*” (Article 19(1)(a)). However this right is subject to restrictions under sub clause (2), whereby this freedom can be restricted for reasons of “sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt, court, defamation, or incitement to an offence”. Laws such as the Official Secrets Act and Prevention of Terrorist Activities Act<sup>5</sup> (POTA) have been used to limit press freedom.<sup>6</sup>

Article 19(1)(a) does not refer specifically to the freedom of the press as does, say, the corresponding provision in the American Constitution, but judicial decisions have repeatedly affirmed that the Article is sufficiently wide to include the freedom of the press and, by extension, the freedom of other mass media. In *Romesh Thapar’s Case*<sup>7</sup>, and in several subsequent cases strict and narrow limits have been placed on the Legislative powers to abridge the right conferred by Article 19(1) (a). Any restriction on Article 19(1) (a) can only be valid if three conditions are met – It is supported by the authority of law, The law in question is related to one or more of the permitted heads of restrictions laid down under Article 19(2); and

The restriction is reasonable. It is also necessary that the procedure and the manner in which the restriction is imposed be just, fair and reasonable. In India, freedom of the press has been treated as part of the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution, vide *Brij Bhushan and Another vs. The State of Delhi*,<sup>8</sup> and *Sakal Papers (P) Ltd vs. Union of India*,<sup>9</sup> among others. However, as mentioned in Article 19(2), reasonable restrictions can be placed on this right, in the interest of the sovereignty and integrity of India, the security of the state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Hence, freedom of the media is not an absolute freedom.

<sup>5</sup> <http://www.satp.org/satporgtp/countries/india/document/actandordinances/POTA>

<sup>6</sup> The prevention of Terrorism Act, 2002.

<sup>7</sup> *Romesh Thapar Vs. State of Madras*, AIR 1950 SC 124

<sup>8</sup> AIR 1950 SC 129

<sup>9</sup> AIR 1962 SC 305

## JUDICIARY AND FREEDOM OF PRESS

The press or media acts as a watchdog of democracy. In fact, post-independence, the India press has played a vital role in restraining corruption and injustice in the nation. The press is also instrumental in arousing the general public's interest in the government and its operations. However, like everything else, there is a flipside to this as well. Over the last few years, yellow journalism has been rampant in Indian press, which has led to widespread misconducts in the nation.

In *Romesh Thappar v. State of Madras*, the Supreme Court held that there can be, no doubt, that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Liberty of circulation is an essential to that freedom as the liberty of publication. Indeed, without circulation the publication imposed on grounds mentioned in Article 19(2) of the Constitution. A law which authorises imposition of restrictions on grounds of 'public safety' or the 'maintenance of public order' falls outside the scope of authorised restrictions under clause (2) and therefore, void and unconstitutional.

In *Indian Express Newspapers v. Union of India* the Supreme Court emphasized the importance of freedom of press in these words:

.....The expression freedom of press has not been used in Article 19 but it is comprehended within Article 19(1)(a). The expression means freedom from interference from authority, which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make a responsible judgement. Freedom of the press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions, which interfere with it contrary to the constitutional mandate.

In *Sakal Papers(Private) Limited v. Union*, Supreme Court had observed that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions, and views with complete freedom and by resorting to any available means of publication, subject to the restrictions imposed under Art. 19(2). The Indian Constitution does not expressly provide for the freedom of the press but this freedom is included in "Freedom of speech and expression" guaranteed by Article 19(1)(a).

Blackstone said that the essence of freedom of expression is that every person should be able to lay his sentiment before the public without previous restraint, that to forbid this, is to destroy the freedom of the

press; but if publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity.

In *Bennet Coleman Company v. UOI*, the Court held that Freedom of press is both quantitative and qualitative. Freedom lies both in circulation and in content. The fixation of page limit will not only deprive the petitioners of their economic viability but also restrict the freedom of expression by compulsive reduction of page level entailing reduction of circulation and the area of coverage for news and views.

In *Hamdard Dawakhana v. UOI*, the Supreme Court has held that an advertisement is no doubt a form of speech and expression of ideas. In the present case the advertisement was held to be dealing with commerce or trade and not for propagating ideas. Advertisement of prohibited drugs would thus not fall within the scope of Article 19(1)(a).

In view of the Supreme Court decision in *Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd.* the ruling in Hamadard Dawakhana case has now a limited application that is, prohibiting an abnoxious advertisement and cannot be applied to general advertisement as such. In this case the Court has held that commercial speech is a part of the freedom of speech and expression guaranteed under Art. 19(1)(a) of the Constitution. 'Commercial speech' cannot be denied the protection of Art. 19(1)(a) of the Constitution merely because the same are issued by businessman. Describing the advertising as the cornerstone of Indian economic system, the Judges said that low prices for consumers are dependent upon mass production, mass production is dependent upon volume of sales, and volume of sales are dependent upon advertising.

In *Printers (Mysore) Ltd. v. Assistance Commercial Tax Office*, the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a Fundamental Right, it is implicit in the all democratic countries and the press has rightly been described as the fourth estate. The democratic credentials of a state are judged by the extent of freedom the press enjoys in that state.

The Supreme Court has emphasized that the freedom of the press is not so much for the benefit of the press as for the general community because the community has a right to be supplied with information and the government owes a duty to educate the people within the limits of its resources.

## CONCLUSION

In Democracy, the Government cannot function unless the people are well informed and free to participate in public issues by having the widest choice of alternative solutions of the problems that arise. Articles and news are published in the press from time to time to expose the weaknesses of the governments. The daily newspaper and the daily news on electronic media are practically the only material which most people read and watch. The people can, therefore, be given the full scope for thought and discussion on public matter, if only the newspapers and electronic media are freely allowed to represent different points of views, including those of the opposition, without any control from the Government. The following suggestions are offered in this connection: Freedom of press may be inserted as a specific fundamental right under Article 19 of the Constitution of India. Parameters of freedom of press should be clearly earmarked. Information must be available at an affordable cost within specified, definite and reasonable time-limits. Free press should not violate right to privacy of an individual. Free press must be law enforcing and preventive of crime. Rule of law must be followed by the free press. Influence through free press upon the judiciary should not be exercised. Press is the watchdog to see that every trial is conducted fairly, openly and above board, but the watchdog may sometimes break loose and has to be punished for misbehaviour. It shows that there are certain restrictions on the freedom of press.

