

# **MEDIA TRIAL AND THE FREEDOM OF SPEECH AND EXPRESSION UNDER INDIAN CONSTITUTION: A STUDY**

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## **Abstract:**

The strength and importance of media in democracy is well recognized. Article 19(1)(a) of the Indian Constitution, which gives freedom of speech and expression includes within its ambit, freedom of press. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like India. Media is not only a medium to express once feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions. The criminal justice system in this country has many lacunae which are used by the rich and powerful to go scot-free. Figures speak for themselves in this case as does the conviction rate in our country which is abysmally low at 4 percent. In such circumstances the media plays a crucial role in not only mobilizing public opinion but bringing to light injustices which most likely would have gone unnoticed otherwise.

**Keywords:** Freedom of Speech, Constitution, Media Trial

## **Introduction**

Blackstonian concept of freedom of press which was expressed as early as in 1769 contained four basic points<sup>1</sup> Which still form the crux of the concept of press freedom . They are as follows:

- Liberty of the press is essential to the state.
- No previous restraints should be placed on the publications.
- That does not mean there is press freedom for doing what is prohibited by law.
- Every freeman has the undoubted right to lay what sentiment he places before the public, but if he publishes what is improper, mischievous or illegal he must take the consequence of his own temerity.

It cannot be denied that it is of practical importance that a precarious balance between the fundamental right to expression and the right to ones privacy be maintained. The second practice which has become more of a daily occurrence now is that of Media trials. Something which was started to show to the public at large the truth about cases has now become a practice interfering dangerously with the justice delivery system. The following observations of the Supreme Court in *R.Rajagopal and Another v. State of Tamil Nadu and Others*<sup>2</sup> are true reminiscence of the limits of freedom of press with respect to the right to privacy

But the legal implications arising out of the concept of 'press freedom' are many and hence they are not confined to the constitutional provisions alone. The different aspects of it infringe *inter alia* on criminal law , law of contempt, Copyright Act , Official Secrets Act, Freedom of Information Act, Law of torts, Prevention of Insults to National Honour Act etc , to name a few .

These laws deal with different issues like those of decency or morality, the issue of privacy and right to information, defamation etc. Issues arising due to investigative reporting are also dealt with by these laws. There are also exclusive press laws like Working Journalists Act, Press Councils Acts, Newspapers Act, Press and Registration of Books Act etc. The Press Councils Act created the quasi-judicial body- Press Council of India. Basic issues relating to Article 19 (1)(a) personal liberties and the principles of natural justice need to be settled. Existing privilege laws are a bit too ambiguous and expansive in nature as it doesn't define what exactly constitutes a breach of privilege or Contempt of House. Hence the need to codify privileges.

Recommendations have also been made with the intentions to protect journalists and professionals, from being compelled to disclose information received in confidence except when required in public interest and also against a charge of contempt of Court by permitting truth as a defense.

At this juncture, as we are approaching the sixth decade of our freedom, let's keep in mind the pertinence of freedom of press and what our former Prime Minister Late Sh. Rajiv Gandhi had said about press freedom:

*"Freedom of Press is an Article of Faith with us, sanctified by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation."*

### **Historical Perspective**

The chapter on Fundamental rights, Part III in the Indian Constitution, was not incorporated as a popular concession to international sentiment and thinking on human rights in vogue after the conclusion of the Second World War. The demand for constitutional guarantees of human rights for Indians was made as far as way back as in 1895 in the Constitution of India Bill, popularly called the Swaraj Bill, which was inspired by Lokmanya Tilak, a lawyer and a great freedom fighter. This bill envisaged for India a Constitution guaranteeing to every citizen, among other freedoms, the freedom of press.

To a certain extent one can say that the debut of press in India was made with commercial interests in mind. It was the contribution of the first British MNC -The East India Company. It was one of those instruments of the British, which was later manipulated by the Indians to serve their interests; as the role of the press underwent a major change and it soon turned out to be one of the most effective weapons Indians had at their disposal during their struggle for freedom from the British. The press was always under the control of the company, but after its press role reversal the necessity to clamp harsh curbs became imminent. Repressive laws were passed and judgments were given curbing press freedom.

The Founding Fathers of the Indian Constitution attached great importance to freedom of speech and expression and the freedom of the press. Their experience of waves of repressive measures during British rule, when the nationalist press was bludgeoned by sedition trials and forfeiture of security deposits, convinced them of the immense value of this right in the sovereign democratic republic which India was to be under its Constitution. They believed that freedom of expression and the freedom of press are indispensable to the operation of a democratic system. They believed that central to the concept of free press is freedom of political opinion and at the core of that freedom lies the right to criticize the Government. They endorsed the thinking of Sh. Jawahar Lal Nehru who said, *"I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press<sup>3</sup>."*

The Indian Constitution provides for this freedom in Article 19(1)(a) which guarantees right to freedom of speech and expression. It has been held that this right to freedom also includes press freedom. It is an implied or deduced right. The economic and business aspects of the press are regulated under Article 19(1)(g) which provides for freedom of profession, occupation, trade or business which is restricted by Article 19(6) which includes provisions for public interest, professional and technical qualifications and state nationalization- total or partial.

According to the constitutional advisor, Dr. B.N. Rau, it was hardly necessary to provide for the freedom of the press specifically, because freedom of expression would include freedom of the press<sup>4</sup>. The views of Dr. Ambedkar and Dr. B.N. Rau have been vindicated by the Supreme Court. In a series of decisions from 1950 onwards the Apex court has ruled that the freedom of press is implicit in the guarantee of freedom of speech and expression. Consequently freedom of press is one of the fundamental rights guaranteed by the Constitution of India<sup>5</sup>.

One of the heads of restrictions on the freedom of speech and expression in the draft Constitution was 'sedition', aptly described by Gandhiji as the 'Prince of the Indian Penal Code'. It was frequently invoked to crush the freedom movement and incarnate freedom fighters, including prominent leaders like Tilak etc. in the heyday of British colonialism sedition was construed by the Privy Council in the cases of *Tilak*,<sup>6</sup> *Wallace-Johnson*<sup>7</sup> and *Sadashiv Bhale Rao*<sup>8</sup> to include any statement that was liable to cause 'disaffection', namely, exciting in others certain inimical feelings towards the government, although there was no element of incitement to violence or rebellion. To restrict speech under the head of 'sedition' was galling to the framers of the Constitution.

### **The Meaning and scope of freedom of speech and expression :-**

Freedom of speech and expression means the right to express one's own convictions and opinions freely by means of mouth, writing, printing pictures or any other mode. It thus includes the expression of one's ideas through any communicable medium or visible representation, such as gesture, signs and the like<sup>9</sup>. The expression connotes also publications and thus the freedom of press is included in this category. Free propagation of ideas is the

necessary objective and this may be done on the platform or through the press. The freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to the freedom as the liberty of publication. Indeed without circulation the publication would be of little value<sup>10</sup>.

Freedom of expression has four broad purposes to serve:-

1. It helps an individual to attain self-fulfillment
2. It assists in the discovery of truth
3. It strengthens the capacity of an individual in participating in decision making
4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change

In the *Romesh Thappar* case the court laid down an important principle:-

"So long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. In other words, Clause 2 of Art 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to public security is involved, an enactment which is capable of being applied to cases where no such danger could arise, cannot be held to be unconstitutional and valid to any extent<sup>11</sup>."

Article 19 (2) was subsequently amended by the Constitution (First Amendment) Act, 1951, which was enacted with retrospective effect on 18 June, 1951.<sup>12</sup> Article 19(2) was subsequently amended by the Constitution (Sixteenth Amendment) Act, which was enacted with prospective. Thus by way of judicial pronouncements over the years there had been a paradigm shift in the application of this article and it became somewhat press friendly although imposing restrictions by way of amendments.

### **The concept of Media Trials- :Pre Judging**

This concept has been floated only in the recent years where the media having the freedom of speech and expression under Article 19(1)(a) uses the power of their communication medium to reach out to the masses and criticize and at times pre-judge a case under judicial consideration in the court of law which at times amounts to Defamation or Contempt of Court. The recent example could be the 'Arushi Double Murder case' where media virtually convicted the person accused. Several recommendations have been made on this issue in the 200th report of the Law Commission of India.

The ever-increasing tendency to use media while the matter is sub-judice has been frowned down by the courts including the Supreme Court of India on the several occasions. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*,<sup>13</sup> the Supreme Court observed:

"There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law."

At the same time, the right to fair trial, i.e., a trial uninfluenced by extraneous pressures is recognized as a basic tenet of justice in India. Provisions aimed at safeguarding this right are contained under the Contempt of Courts Act, 1971 and under Articles 129 and 215 of the Constitution of India. of particular concern to the media are restrictions which are imposed on the discussion or publication of matters relating to the merits of a case pending before a Court. A journalist may thus be liable for contempt of Court if he publishes anything which might prejudice a 'fair trial' or anything which impairs the impartiality of the Court to decide a cause on its merits, whether the proceedings before the Court be a criminal or civil proceeding.

### **Restriction of Freedom of Speech & Expression**

Article 19 (2) contains the grounds on which restrictions on the freedom of speech and expression can be imposed. Some of them as discussed hereunder

#### **(a) Decency and Morality**

One of the heads on which freedom of the press can be restricted under the Constitution of India is 'Decency and Morality'. In matter of morality and obscenity courts do not always reflect contemporary standards and perceptions though they purport to do so. 'Obscenity', 'indecenty' and 'immorality' are equivocal concepts. The standards set for these vary from one society to another. Judges despite valiant efforts, have failed to evolve a satisfactory definition of obscenity. Apparently, obscenity, like beauty lies in the eyes of the beholder. Sections 292 to 294 of the IPC deal with this restriction.

In India vulgarity and strong erotic language are often treated as inter-changeable with obscenity. In its recent judgment concerning the movie, *The Bandit Queen*<sup>14</sup>, the court ruled that neither nudity nor vulgarity can necessarily be equated with obscenity.

### **(b) Defamation**

A statement which injures a man's reputation amounts to defamation. In India Sec 499 of the IPC contains the criminal law relating to defamation. The civil law on the point is largely uncodified. Libel laws can have chilling effect on the freedom of the press. The United States Supreme Court in its landmark decision in *New York Times v. Sullivan*<sup>15</sup> ruled that every inaccurate statement should not be actionable unless it is made with malice. This is because erroneous statements are unavoidable in free debate in a democracy and must be tolerated if freedom of expression is to have 'the breathing space it needs to survive'.

The Supreme Court of India too has taken a similar stand in *R. Rajagopal v State of TN*<sup>16</sup> (Auto Shanker Case).

### **(c) Contempt of Court**

Contempt is another head of restriction on freedom of expression and freedom of the press. The Supreme Court has upheld the constitutionality of the Contempt of Court Act, 1952 on the grounds that the Act did not impose unreasonable restriction on the right to freedom of speech and is saved under Art 19(2)<sup>17</sup>. Courts have frowned upon comments made in the press upon pending cases. The Punjab High Court ruled that 'liberty of the press is subordinate to the proper administration of justice'. The plain duty of a journalist is the reporting and not the adjudication of cases.<sup>18</sup>

Today the law of contempt is such that in India, the country which proclaims '*satyameva jayate*', truth is no defence to an action of contempt.<sup>19</sup> This is a serious anomaly. Art 361-A of the Constitution also deals with contempt which was inserted after the Forty Fourth Amendment Act, 1978.

### **(d) Sovereignty and integrity of India**

Sovereignty and integrity of India as a ground under Article 19(2) for restricting the freedom under Article 19(1)(a) was added by amendment.<sup>20</sup> This was as a reaction of the tense situation prevailing in different parts of the country. The Law Minister Ashoke Kumar Sen introduced a bill in the Lok Sabha on 21<sup>st</sup> January, 1963 describing its object as giving appropriate powers to impose restrictions against those individuals or organisations who want to make secession from India or disintegration of India as political purposes for fighting elections. The object of the amendment was to confer on Parliament specific power to legislate on this subject without having to face a constitutional challenge on the ground that the legislation was inconsistent with Article 19(1) (a).

### **(e) Security of the State and public order**

Public order, law and order and Security of the State are not synonymous expression. These concepts are in the nature of three concentric circles, law and order representing the largest circle, within which lies the next circle representing public order and within which is the smallest circle representing security of State. Thus, an act which affects law and order may not necessarily affect public order and an activity which may be prejudicial to public order may not necessarily affect security of the State.

In *State of Bihar v. Shailabla Devi*,<sup>21</sup> while interpreting Section 4(1) (a) of the Press (Emergency Powers) Act, 1931 dealing with words, signs or visible representations which incite or encourage or tend to incite or encourage the commission of any offence of murder or violence, the Supreme Court held that any speech or expression which incites or encourages the commission of violent crimes such as murder, undermines the security of the State and falls within the ambit of Article 19(2).

### **(f) Friendly relations with Foreign States**

This ground was also added by the Constitution (1st Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state which may jeopardise the maintenance of good relations between India and that state. No similar provision is present in any other Constitution of the world. Restrictions under this category would include not only libel of foreign dignitaries but also propaganda in favour of rivals to authority in a foreign state after India has recognised a particular authority in that state, or propaganda in favour of war with a state at peace with India. At present there is no specific legislation on this subject. However, a variety of statutes contain restrictions on forms of expression which would have an adverse impact on friendly relations with foreign states.

### **Conclusion**

The ground realities are that a citizen is largely dependent on the press for the quality, proportion, and the extent of news. He can seldom obtain for himself the information necessary for the intelligent discharge of his political duties and responsibilities. In disseminating news, the press therefore acts as a representative or, more appropriately, as the custodian of the public. It serves public interest in pluralistic democracy by permitting expression and opinions of all persons. Hence freedom of the press has a dimension and range that is vastly different from the ambit and content of other individual freedoms. Press freedom embodies the principle of accountability and thus enables press to be an instrument of democratic control. Protection and promotion of free press is substance sub serves and strengthens democracy, an essential feature of the Constitution.

Freedom of press is undoubtedly one of the basic freedoms in a democratic society based on the Rule of law. None the less freedom of press is not an end in itself. The public function which belongs to the press makes it an obligation of honour to exercise this function with the fullest sense of responsibility.

Joseph Pulitzer pointed out that 'commercialism has a legitimate place in a newspaper'. Acc. to him, 'without high ethical ideals a newspaper is not only stripped of its splendid possibilities for public service, but may become a public danger to the community'<sup>22</sup>. Press freedom will depend not only on the state of the laws or the provisions of the Constitution but on the integrity and independence of the press. Over the years, Governments of the different parts of the world have used diverse methods to keep press under control. They have used carrot and stick methods'<sup>23</sup>. In the ultimate analysis, the reality of press freedom will be realised by the will and determination of its champions and defenders to assert their rights and to defend their cherished freedom, remembering at all times the spirit of Benjamin Franklin's word to his compatriots:

*" They who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety "*<sup>24</sup>

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