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# **FREEDOM OF MEDIA AND THE INDIAN CONSTITUTION**

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## **ABSTRACT**

**Media is a broad term that includes or covers various modes of communication through which information and news are delivered or communicated to a region or place or state or even across the world generally to a larger set of people. Communication is the transmission of one's ideas or thoughts, information, etc. The term media is the plural form of the term Medium, a Latin term, which means "middle ground or intermediate". Media acts as a brain and mouth of the society in any Democracy and other forms of government and thus became part of the society and governance. That's the reason why Freedom of Media became an important concept. The Constitution of India has not expressly provided for the freedom of media but it is implied under Article 19(1)(a) which guarantees the fundamental right to Freedom of Speech and Expression.**

**In this Research Paper, Media and Freedom of media are discussed in an exclusive manner to have a complete understanding of Freedom of Media with respect to the Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Indian Constitution and various pronouncements of the Hon'ble Supreme Court which have widened the scope freedom of media in the country.**

## **INTRODUCTION**

Media is an umbrella which covers various forms of modes of communication of information to the masses. The term Media came into use in the 1920s but its history can be traced back to the 15th century through the advent of the hand press. With the invention of "Paper" in China about 2000 years ago (in 100 BCE), the recording of writings and drawings was started which can be considered as birth and basis of written communication and Print Media. Paper mills started to be established and the 1st paper mill was established in Spain. It became easier to make paper and it was used for printing legal documents, important books, bibles etc. And the invention of the Printing Press in the 1400s took this to next level as this made mass production possible as before each one has to be handwritten.

Media which is generally called "Press" denotes all types of print media under which newspapers, magazines, books, etc., through which printed information or news is published and made accessible to everyone.

Media can be called as Mass-Media as it disseminates information to the masses, both terms are used interchangeably. Mass Media can be broadly classified into two types viz. Print Media and Electronic Media.

**Print Media-** Print Media as later mentioned is one of the oldest forms of mass communication. All forms of written and published communications come under print media viz. newspapers, magazines, books etc.

**Electronic Media** – Electronic Media are the media which makes the content or news available to a wider community with the usage of electronics or electromechanical means which is divergent from print media. Examples of Electronic Media are Radio, Television, the internet and other forms.

**Social Media** emerged as an important mass communication medium in the 20th century through which mass communication is transmissible through the internet which is called a network of networks and other electronic facilities. Social Media enabled people to put their views to the public with just one click without any cost associated with it which made the public use it more than any other medium. People can share their opinions, reviews of something and thoughts, and even promote themselves and their talents and thus many people get fame as social media influencers. Social Media platforms are even used for advertising purposes which lead to the boom of many small businesses and mostly during the COVID-19 Pandemic.

Media or the Press is considered the Forth Pillar of the Democracy as the basic feature of democracy is the accessibility of information about the activities of the Government to the public and awareness as Media keeps the people updated with various events and news, current affairs and gives immense knowledge to the public. It shows the harsh realities of life. A “Democracy without media is like a vehicle without wheels”. It is the *sine qua non* of democracy.

### Functions of Mass Media

- Mass Media provides knowledge, information, and news to a large number of people.
- It's important and basic function is the dissemination of information.
- It educates, informs and entertains people.
- It enlightens and empowers people on various cultural and political aspects.
- It is a watchdog of the society which watches over the society and government and provides a record of the events that happen in the society and the government and transmits the same to the whole of the public.
- And another important function is the advertising of goods and services which is a marketing strategy used by companies to sell their goods and services.

“According to **Harold Lasswell**, there are three major functions: ‘*Surveillance of the environment, Interpretation of the information; and prescription for conduction and the transmission of heritage*’.”

### Freedom of Media and Article 19 of the Indian Constitution

Article 19(1)(a) of the Constitution of India guarantees its citizens “Freedom of Speech and Expression”. It gives all citizens the right to express their views and opinions which are also implied in the Preamble that “liberty of thought, expression, belief, faith and worship.” Freedom of Media/Press is implied under Article 19(1)(a). Media/Press having been considered as a voice of the people and a medium of speech and expression, its freedom is considered to be an integral part of the Freedom of Speech and Expression.

The scope of the Freedom of the Press is widened through various judgements of the apex court. Not being expressly given in the constitution many issues have been associated with this freedom of the press as its extent, scope, limitations, etc. And the apex court time and again put in front the interpretation of the freedom provided under Article 19(1)(a) and confronted the issues by giving judgements.

And being on the same footing as Freedom of Speech and Expression, Freedom of the Press is also not an absolute right. Like Freedom of Speech and Expression, Freedom of the Press is also subject to reasonable restrictions given under Article 19(2) of the Constitution.

**Romesh Thappar v. State of Madras**<sup>1</sup>, is the first instance after the adoption of the Constitution wherein the Freedom of the Press is discussed. In this case, the petitioner has challenged **Section 9(1-A) of the Maintenance of Public Order Act 1949**, as the circulation of the petitioner's journal was prohibited under the above section. The petitioner contended that it is the excessive use

<sup>1</sup> AIR 1950 SC 124

of power by the state and the restriction on the circulation of the journal amounts to the restriction of his freedom of speech and expression which is his fundamental right. The apex court has upheld the contention of the petitioner and held the concerned section as invalid. And also stated that freedom of the press can be achieved through the liberty of circulation and otherwise it's not possible. Thus the expression, freedom of speech and expression implies not only freedom of the press but also the publication and circulation of news otherwise the entire purpose of freedom would be defeated.

Public order not being in Art 19(2) which provides for the restrictions to Freedom of Speech and Expression cannot be a ground for the restriction of the freedom of the press as freedom of the press is subjected to reasonable restrictions under Art 19(2) and not otherwise.

***Brij Bhushan and Anr Vs. The State of Delhi***<sup>2</sup>, in this case, the petitioner challenged the restriction, on the publication unless it is scrutinized, by the state in the exercise of powers conferred by **section 7 (1)(a) of East Punjab Safety Act, 1949** as extended to the Delhi province, by the chief commissioner of Delhi and he is satisfied that the English weekly of the petitioner, ORGANIZER is publishing highly objectionable matter which is considered to be a threat to the public law and order. And the petitioner contended that the restriction is a violation of the fundamental right of freedom of speech and expression guaranteed under Article 19 of the Indian Constitution as the restriction is not mandated as a restriction under Article 19(2). The court by taking the precedent of the Romesh Thapper case delivered the judgement by quashing the order of the commissioner of Delhi.

Through the I Amendment to the Constitution (which was brought in response to cases such as Romesh Thapper vs. State of Madras and Brij Bhushan Vs. State of Delhi), "Public Order" along with "incitement to an offence" were added to the restrictions given under Article 19 (2) and also made the restrictions "reasonable" and thus justifiable in nature.

***Bennett Coleman and Co. v. Union of India***<sup>3</sup> – This is another important case on freedom of the press in which the then Newsprint policy 1972-73, was challenged, which has put restrictions on the number of pages and other commercial limitations, for being violative of freedom of press implied under Article 19(1)(a) of the Indian Constitution. The Court held that the Newsprint policy 1972-73 was unconstitutional and made some important observations such as,

- the contention that fundamental rights are not available to the companies is not acceptable. The petitioners being companies cannot be barred from getting relief.

And the bar under Article 358 did not apply to the laws passed before the proclamation of emergency.

- freedom of the press is an essential element of freedom of speech and expression enshrined under Article 19(1)(a) and the absence of its express mention is irrelevant.
- the restriction on the number of pages of the newspaper which affects the economic viability of the newspaper as it would lead to a decrease in either content or advertisements by the Newspaper policy 1972-73 is unjustifiable and not a reasonable restriction under Article 19(2) is held unconstitutional.
- the freedom of the press which had both qualitative and quantitative elements and restriction on qualitative elements were not justified based on the shortage of newsprint being a non-reasonable restriction.

And in many cases, the apex court has put forth the reasonable restrictions under which freedom of speech and restriction which includes freedom of the press can be restricted, provided under Article 19(2) and has held that freedom of the press cannot be restricted unless and until the restriction is reasonable.

#### **Commercial advertisements and freedom of speech and expression:**

Advertisement is a notice made to the public at large for the promotion of a product, service, event, etc. It is to capture the attention and trust of the consumers which businesses rely upon as part of their marketing.

In the case of ***Hamdard Dawakhana v. Union of India***<sup>4</sup>, ***The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954*** which was enacted for controlling misleading advertisements and putting a restriction on the advertisements of drugs possessing magical remedies which worsens the health of the people if they use those, was challenged and contended that it is

<sup>2</sup> 1950 AIR 129, 1950 SCR 605

<sup>3</sup> AIR 1973 SC 106

<sup>4</sup> AIR 1960 SC 554

violative of freedom of speech and expression. The court upheld the validity of the act stating that commercial advertisements do not fall under the freedom of speech and expression guaranteed under Article 19(1)(a).

And in the *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd*<sup>5</sup> case, the apex court reversed its verdict in Hamdard Dawakhana Case and held that commercial advertisements are the mode of dissemination of information about the product and fall under the freedom of speech and expression guaranteed under Article 19(1)(a) and only under Article 19(2) can be restricted.

### **Restrictions on Freedom of Media:**

Freedom of Media which is an implied right guaranteed under Article 19(1)(a) is not an absolute right and is subject to certain limitations. And the need for restriction on the freedom of media has been identified in many instances. And the limitations or restrictions on freedom of media should not be either excessive or moderate. The freedom of media should be restricted in such a manner that, the purpose of it should not be affected.

The apex court in many cases has held that the freedom of media should be only restricted under article 19(2) of the Indian Constitution.

Article 19(2) enumerates the grounds on which restrictions can be imposed on the freedom of media. They are,

- a) *Sovereignty and Integrity of India*
- b) *Security of the State*
- c) *Friendly Relations with foreign States*
- d) *Public Order*
- e) *Decency or Morality*
- f) *Contempt of Court*
- g) *Defamation*
- h) *Incitement of an offence.*

### **Right to Privacy and Freedom of Speech and Expression vis-à-vis Freedom of Media :**

Every individual having a right should be enjoyed in such a way that it should not violate the rights of others and if so, then it can be barred from such enjoyment.

The right to privacy is an inclusive right under article 21 which guarantees the right to the protection of life and personal liberty.

In the case of *Kharak Singh vs. The State of UP*<sup>6</sup>, the Apex Court held that the right to privacy is an essential element of personal liberty but has not been recognised as a fundamental right.

In the case of *Puttaswamy v. Union of India*<sup>7</sup>, the Bench unanimously held “the right to privacy is protected as an intrinsic part of the right to life and personal liberty under article 21 and as part of the freedoms guaranteed by Part III of the Constitution.” Hence, the right to privacy is recognised as a fundamental right and not absolute and subject to restrictions. In this case, the court has laid down three restrictions for the right to privacy that which state can impose to protect legitimate state interests.

Press and Media have the right to print, publish and disseminate information but such right should not abridge the right to privacy of an individual. The Press generally concentrates on public figures and publishes about their lifestyle, doings and some personal things. But just like a common man, their privacy must be taken into consideration as they have the right to privacy too but this might be outweighed by public interest. If a matter comes public knowledge, then the right to privacy cannot be sustained and the media or press have discussions and debates over it.

*R.Rajagopal v. State of Tamil Nadu*<sup>8</sup>, in this case, the Supreme Court held that the right to privacy is integral in right to life and personal liberty. The Right to privacy denotes “the right to be let alone”. His right over the privacy of his family, marriage, procreation, motherhood, upbringing of child and education etc. cannot be taken away, not even something truthful or critical except when he voluntarily invites or accepts.

<sup>5</sup> AIR 1995 SC 2438.

<sup>6</sup> 1963 AIR 1295, 1964 SCR (1) 332

<sup>7</sup> (2017) 10 SCC 1, AIR 2017 SC 4161

<sup>8</sup> 1995 AIR 264

In *Govind v. State of Madhya Pradesh*<sup>9</sup>, the Apex Court has drawn a line between the right to privacy and freedom of the press. And held that *"an individual's privacy is protected in his personal affairs because at home he drops his mask and lives as a real self"*.

In the recent case of *Nipun Saxena v. Union of India*<sup>10</sup>, the Supreme Court has stated that, in case of sensitive issues, the media should be cautious and not sensationalise. And it is the duty of the media, to ensure that they should not either directly or indirectly disclose the identity of sexually abused victims.

The Press Council of India has also instructed the journalists that in matters involving offences or crimes against children and women, their identity should be concealed. And the media should not ask the questions about character and chastity of the victims.

The media's interest to publish the issues and information about every aspect and in every angle is acceptable but such interest must be subjected to the interest of the persons involved and the ill effects and negative impact and privacy of them should be put first.

### **Conclusion**

Freedom of Media is recognised as a fundamental right implied under Article 19(1)(a) through various Supreme Court judgements and its scope has widened thereto. Many rights like the right to publication, dissemination of information, etc are part of freedom of media which is a part of freedom of speech and expression and any violation leads to the violation of Article 19(1)(a) except if the restriction is one of the reasonable restrictions given under Article 19(2). Media is part of our day-to-day lives which have influence on our opinions, decisions, choices, etc. And due to this dependence, many issues and questions arise like issues related to privacy etc, which have in turn shaped the media law in the country by various verdicts of the Hon'ble Courts.

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<sup>9</sup> AIR 1995 SC 264.

<sup>10</sup> 2019 (2) SCC 703.