

Constitutional Rights and Liberties of the Media in India: A Comparative Analysis

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Abstract

One of the key tenets of a democratic system is journalism. Journalism raises awareness about democratic and social responsibility in society. Journalists are the watchdogs of the country. That's why the freedom of the media in the country plays a special role in its progress. The media is not entirely free to do what they believe to be correct, though. There are some restrictions on this too. Journalism, like any other profession, is also subject to legal restrictions. Subject to these restrictions, the media has to achieve its goal. The paper discusses the freedom of media in India in comparison to other countries. It is based on the study and analysis of world press freedom index 2022.

Keywords: Freedom of speech and expression, Indian constitution, journalism, world press freedom index 2022

INTRODUCTION

With ease, men used different mediums to express their thoughts, like symbols, signs, speech, and scripts. In today's time, these have increased and hence print and computer language have also become a part of it. Freedom of speech and expression are vital to the growth and survival of a free and democratic society. This right to freedom of speech and expression has been provided to us by Article 19 (1) (a) of the Indian Constitution according to which every citizen has freedom of speech and expression subject to certain restrictions. Because this right is not an absolute right [1], there are some restrictions on it under Article 19 (2). Although our Constitution does not specifically mention the freedom of media as in the Constitution of America but still according to every citizen, the media and the press also have this right under the said restriction, and it has been mentioned by the Supreme Court in its decision that the freedom of the press is included in it.

FREEDOM OF SPEECH

In this regard, it would be appropriate to quote the following observations of the Apex Court in *S. Rangarajan V. P. Jagjivan Ram* [2]:

“The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19 (2) may briefly be touched upon here. There does indeed have to be a compromise between the interests of freedom of expression and special interests [3]. Therefore, we cannot simply weigh the two interests equally. It is a requirement of our commitment to freedom of expression that it not be restricted unless a threat to the public good or pressing circumstances, make it necessary to do so. The threat should not be improbable, far-fetched, or in the distant future. It should be closely and directly related to the expression [4]. The expression of an

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Received Date: February 15, 2023

Accepted Date: February 22, 2023

Published Date: March 27, 2023

Citation: Aateka Bano. Constitutional Rights and Liberties of the Media in India: A Comparative Analysis. *Journal of Constitutional Law and Jurisprudence*. 2023; 6(1): 57–62p.

idea should be inherently harmful to the public interest, or else it should be tightly bound to the proposed course of action like a “spark in a power keg”.

FREEDOM OF EXPRESSION

Freedom of expression possesses an important constitutional quality which is greatly different from any other kind of freedom. It may only be natural that people who believe in the worth and dignity of the individual should feel that material happiness is not enough, if they are deprived of intellectual or political freedom. The spirit, that freedom of expression is the most important element and is inviolate and that no individual should be deprived of the same, permeates our Constitution. What, then, is the spirit which is so important and inviolable? A person is a noble and proud thing. Every person has the capacity to freely consider what is true, good, and beautiful in regard to religion, morals, worldviews, and human existence, as well as in his or her own area of endeavour within society. He is capable of expressing what he thinks or understands and of learning different ideas from other people through the exchange of free speech or artistic medium [5]. He is capable of accomplishing all these without resorting to physical force. In this way, he is not only able to lead a noble life and develop his intellectual faculties, but he can also give the results of his experience as an inheritance to posterity and render services to all of humanity if the authorities and the law do not control speech. Finally, the truth will win out, and it could even be feasible for all kinds of flowers to bloom profusely and bear fruit amicably. Absolute uniformity of thought should be disregarded. If free competition of speech or expressionism repressed or controlled people's morale, it would be moulded into an orthodox form and eventually become atrophied. All individuals in a nation are entitled to be informed publicly of daily happenings and the real truth. It is only when the nation hears the sincere inward feelings of the majority of people and heeds the bitter counsellor sad news of the facts that it will be possible to attain a clean politics which will meet actual circumstances and follow the people's will. Where there is not enough information, people will easily be influenced by rumours and false reports [6]. If people are to be given only restricted news, such as those supplied by the government, they will soon become deaf and blind. If the system is such that no discussion can be actively conducted, they will become mutes who will blindly follow the dictates of others. The people should also know the truth with regard to history. No control should be exercised to select materials that present only a partial fact, omit, or emphasize certain portions from the viewpoint of one ideology. Sometimes a person has the freedom not to express, not to hear, and not to see certain things. That is why, under our Constitution, one is generally free to believe in any religion or creed, or profess any belief, even anarchism, which advocates the abolition of the existing Constitution, or communism, despotism, or the inequality of man and woman. This seems to be the weak point of a liberal constitution, but actually therein lies the strength of such a constitution [7]. This is the reason why freedom is constitutionally guaranteed, and why not even the government, the legislatures, whatever their ideology or plank may be, can deprive or restrict that freedom by legislative or administrative means. In the event, such oppression takes place, such an act will be declared unconstitutional by the court.

It was pointed out by the Supreme Court in *L.I.C. of India v. Prof. Manubhai D. Sha*, that freedom of speech and expression is a natural right which a human being acquires on birth and, therefore, is a basic human right. This basic human right has been recognised by the Universal Declaration of Human Rights (1948).

FREEDOM OF PRESS

Burke used the expression “fourth estate of the realm” to describe the press in his days and the analogy still holds true today. It serves as a reminder that the press, as the coequal of other “estates”, is an independent political entity that is closely linked to all other governmental organisations. Together, they establish the nature of the regime and the equality of public life. It affects them and is impacted by them in turn. The press has an impact on politics by influencing how ideas and information enter the “public arena” where political activity takes place [8]. Governmental institutions utilise their legislative, executive, or judicial authorities to have an impact on politics.

The development of the modern press is intrinsically linked to the rise of constitutional government and, in particular, the crystallisation of the system of popular representation. Without it, constitutional government is unimaginable. Thomas Jefferson dramatized this view by saying that if he were confronted with the choice of having a government and no newspaper, or newspapers and no government, he would have no hesitation in preferring the newspapers; as an ardent believer in minimizing the role of government, he realised that the government could not be restrained without independent newspapers ready to criticize.

MEDIA TRIAL VS. FREEDOM OF SPEECH

Freedom of Speech vs. A Fair Trial

Freedom of Speech

The criminal justice system, which we have been studying, requires that guilt be established beyond a reasonable doubt and that senses, not feelings, serve as the basis for legislation. The media and the general public tend to forget that when we express our feelings, it puts a lot of pressure on the judge sitting over the case [9]. How can we expect a judge who is under such intense pressure from all facets of society to render a fair decision? A person is deemed innocent until proven guilty by a court of competent jurisdiction, however in our country, it is common practise to convict someone immediately after their arrest. The media's role is to report on events and news, not to make moral judgements. The police are not even permitted to carry suspects or accused from their transport trucks into the courts or vice versa because of the print and electronic media's strong and cutthroat competition, or as we like to call it, aggressive behaviour. The Press Council of India periodically provides recommendations, and in some situations, actually takes action. Nonetheless, even when apologies are ordered to be published, they are often done so in a way that makes them appear to be neither apologies nor to be published in the papers in prominent locations [10]. The most objectionable and unfortunate aspects of the media's newly reimagined role is that it often begins reporting on sensational crimes and presenting its "evidence" before the person who will ultimately preside over the trial even recognises the crime, and that it is not constrained by the traditional rules of evidence that govern what information can and cannot be used to find a defendant guilty.

Right to a Fair Trial

Right 10, a fair trial, is the absolute right of every individual within the territorial limits of India vide Articles 14 and 20, 21 and 22 of the Constitution. Needless to say right to a fair trial is more important as it is an absolute right which flows from Article 21 of the Constitution to be read with Article 14. Freedom of speech and expression incorporated under Article 19 (1) (a) has been put under 'reasonable restriction' subject to Article 19 (2) and Section 2 (c) of the Contempt of Court Act. One's life with dignity is always given priority in comparison to one's right to freedom of speech and expression. The media should also ponder these facts. A fair trial is not a purely private benefit for an accused; the public's confidence in the integrity of the justice system is crucial [11]. The right to a fair trial is the cornerstone of the Indian criminal justice system. Many additional rights are included in it, including the right to a speedy trial, the right to legal counsel, the right to an open trial, the right to attend the trial and cross-examine witnesses, and the right to be presumed innocent until proven guilty. In the case of *Zahira Habibullah Sheikh v. State of Gujarat*, the Supreme Court explained that a "fair trial obviously would mean a trial before an impartial judge, a fair prosecutor, and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the witnesses or the cause which is being tried is eliminated."

Right to be Legally Represented

Using the media, we have begun to put pressure on the attorneys to decline to represent the accused, forcing them to stand trial without a lawyer. Is this not a violation of natural justice's principles? Everyone has the right to choose a lawyer of their choosing and present their case before the deciding court, and no one has the authority to prevent them from doing so. For instance, when eminent lawyer Ram Jethmalani decided to defend Manu Sharma, a prime accused in a murder case, he was subject to

public derision. A senior editor of the television news channel CNN-IBN, called the decision to represent Sharma an attempt to “defend the indefensible”. This was only one example of the media-instigated campaign against the accused? As we all knew that in that case, we had one of the best lawyers of the country, Gopal Subramaniam, appearing for the state and the case of Manu was handed to some mediocre lawyer. The media went into a tongue-twister when Mr. Jethmalani took the case and posed him as a villain. Don’t we want to give everyone equal opportunity?

Have we lost faith in the judicial system, or does the definition need to establish its case? Before it is too late, the media must realise its bounds accused and suspects.

Trial by Media vs. Right of Fair Trial

The right of the public to obtain information on societal concerns is known as media freedom. A healthy democracy requires a strong and free press. Democracy entails electing a representative government and actively taking part in local decision-making. Therefore, it is essential that the populace is informed about the pressing issues facing society today. The duty of the press and media is to make the people enlightened about issues of public importance. It is why freedom of speech and expression has been extended to include freedom of press and media. The right to freedom of expression is contained in Art. 19 of the Indian Constitution but this freedom is not absolute. Reasonable restrictions are permitted by sub-clause (2) of the same article. Freedom of expression does not mean the freedom to commit contempt of court.

Parties to a litigation have a constitutional right to a fair trial in a court of law by an impartial tribunal, free, fair, and uninfluenced by any pressure. This right to a fair trial may be violated if the media uses language in its coverage of a case that could influence a judge’s decision or otherwise influence the course of justice. The variety and reach of media have greatly expanded with the rise of cable television and channels, local radios, newspapers and magazines, network, and internet. Many times in recent years, the media has presided over an accused person’s trial and rendered a verdict before the court. This phenomenon is popularly called the “media trial”. Trial is a word, which is associated with the process of justice. Presumption of innocence is the basis of criminal jurisprudence, and it is the essential component of a judicial system that the accused should receive a fair trial [12]. Needless to remind that in recent times, in order to sensationalize the reporting and increase its commercial value, the media has started naming and blaming the suspect or accused. Photographs and other materials in the form of interviews, etc. are published and shown, along with public reactions. When famous people and huge names are involved, the issue is more obvious. In such circumstances, public opinion may change due to media coverage. As a result, a balance must be struck between the constitutional right to free speech and the right of the individual to a fair trial.

In *Saibal Kumar vs. B.K. Sen*, the Supreme Court tried to discourage the tendency of media trials and remarked, “No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of the investigation”. This is due to the necessity of preventing trials by media while a trial by one of the nation’s regular tribunals is ongoing. This opinion is supported by the idea that such media conduct serves to impede the administration of justice, whether the probe tends to favour the accused or the prosecution.

Even in England, there have been differences of opinion. Despite the fact that our judicial system depends on the skill, objectivity, and bravery of the trial judge, and that unrestricted media coverage of court proceedings on the record would not affect the verdict. According to Lord Denning, a professional judge, will not be swayed by media publicity that only affects the average person. This concept of judicial superiority was not endorsed by Lord Diplock. Even in United States, the judiciary has been of the view that the court cannot function properly if a reporting is calculated to disturb the judicial mind.

Justification by the Media and Law Commission's Report

Justification by Media

Our nation has a long history of fiercely independent media. In actuality, the media exposed all of the major frauds. Law enforcement simply followed them. The underpaid journalists deserve praise for obtaining the details that the highest security teams in the nation believed were unavailable. That is how the HDW (Howald Swersey) marine case hit the headlines before. That is how we found out that Narasimha Rao had bribed the Jharkhand Mukti Morcha MPs, and Satish Sharma and Buta Singh had brokered the deal. The media did us proud at every juncture of our political journey. The public is paying more and more attention to the courts and the cases that are heard there. Indians eagerly consume this information, whether it is reported in a daily newspaper or on electronic media, because they are curious about what happens in court. The courts are likely to remain under the media's scrutiny for the foreseeable future. There have been both good and bad effects, as with most changes.

A Positive Outcome of Change

Law Commission's Report

The most authoritative research on the positive and negative aspects of media trials has been elaborated in the Law Commission's 20th report, *Trial by Media: Free Speech vs.*, which has made recommendations to address the damaging effect of sensationalised news reports on the administration of justice. While the report has not yet been made public, news reports indicate that the Commission has recommended prohibiting the publication of anything prejudicial to the accused—a restriction that will be in effect from the time of arrest. It also reportedly recommends that the high court be empowered to direct the postponement of publication or telecast in criminal cases. The report noted that at present, under Section 3(2) of the Contempt of Court Act, such publications would be in contempt only if a charge sheet had been filed in a criminal case. The commission has proposed that the beginning point of a criminal case be the arrest of the accused rather than the filing of the charge sheet. According to the Commission, such a change would stop the media from prejudging or negatively impacting the case. Another contentious suggestion was to give the high court the authority to order a print or electronic media to postpone publication or telecast of a criminal case and to prohibit the media from doing so in the future. The 17th Law Commission has made recommendations to the centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest through investigation and trial.

CONCLUSION

The freedom of expression granted to traditionally published newspapers, including various electronic mediums, is called freedom of the press.

A democratic society's growth and existence depend on press freedom. The "fourth pillar of justice" is referred to as the media because of this.

The right of speech and expression provided by the Indian Constitution has been accepted as a media right so that it can reach the voice of the lower level to the upper administration and provide justice to the common citizen.

But today, there is a problem in front of the whole world that the media is becoming a puppet in the hands of corporations whose aim is to earn maximum profit. Governments of different countries also want to control the press.

For example, the Government of India has recently introduced a new law to monitor online media websites.

Media has a responsibility. Disseminating the truth to the public as long as the media is not free, it cannot fearlessly convey the truth to the public. But this does not mean that media should be given freedom to such an extent that it violates the right of privacy of common people.

For example, it is forbidden to reveal the name of a rape victim.

Despite this, media freedom is necessary for the progress of the country. Attention should be paid to this.

Indian media ranks very low according to the World Media Freedom Index.

The significance of media independence can be seen in the fact that it is unlikely that the majority of citizens will personally be aware of important events. The media therefore represent the whole populace when they look for news. It is a method for ensuring that people can freely exchange ideas and information, which is crucial to democracy and informed self-governance. Citizens must be informed about news from all around the nation and even overseas in order for democracy to function properly since only then can they come to informed decisions. It is unreasonable to expect a citizen to personally look for evidence to back such claims. As a result, the media is crucial to a democracy and act as the people's agency for news gathering. For this reason, while it was prohibited in feudal or totalitarian regimes, press freedom has been promoted in all democratic nations. Both freedom and responsibility are significant. In nations like India, the media has a duty to oppose outdated ideologies like casteism and communalism, and aid the populace in combating poverty and other social ills.

Today, in India, there is much discussion over press freedom and journalistic ethics, with the term "press" including both print and electronic media. A thoughtful discussion on the subject is necessary. The press obligations should be discussed, as the media has grown to be both very strong and very influential.

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