

Right to freedom of press since historical to digitalized era: A critical appraisal

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Abstract

Media outlets and activists fear that press freedom in digitalized era paves way for the government to censor digital content and curb press freedom. Moreover the new oversight of digital news platforms is drawing protest from the media industry and activists who fear that present rules will curb press freedom in the world's largest democracy. This paper aims to analysis the right to free of press since historical to digital era in USA, UK, INDIA and the role of courts in this concern.

Keywords: right to freedom, democracy, critical appraisal

Introduction

Digital news sites are on edge and expecting the worst after several countries promulgated rules thereby, bringing them under regulation and further endangering the environment for press freedom in the country. The rules, in essence, give the government powers to censor website content, with little chance for appeal. Indian journalists and experts say the rules are an attempt to clamp down on one of the few remaining platforms for critical journalism and commentary.

Historical Background

Origin of Right to freedom of press – Indian scenario

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 Second World War (1939-45), the executive exercised exhaustive powers under the Defence of India Act & enforced censorship on press. At the same time the publication of all news relating to the Congress activities declared illegal.

Development pre & post constitutional era

In the Post-Constitutional Era, there is a change in the outlook. The Constitution of India in Article 19(1) (a) lays down that "All citizens shall have the right, to freedom of speech & expression." Unlike, the U.S. Constitution, the Indian Constitution does not expressly provide freedom of press. However, it is now well settled that the words "speech & expression" in Article 19(1) (a) includes freedom of press also.² The freedom of press means freedom from interference from authority which would have the effect of interference with the content & circulation of newspapers.³ The Article 19(1) (a) of the Constitution is subject to certain restrictions laid down in Article 19(2) of the Constitution

Present status

Presently attack on Press Freedom is increasing day by day through political pressure. In some of the most influential democracies in the world, large segments of the population are no longer receiving unbiased news and information. This is not because journalists are being thrown in jail, as might

occur in authoritarian settings. Instead, the media have fallen prey to more nuanced efforts to throttle their independence. Common methods include government-backed ownership changes, regulatory and financial pressure, and public denunciations of honest journalists. Governments have also offered proactive support to friendly outlets through measures such as lucrative state contracts, favorable regulatory decisions, and preferential access to state information. The goal is to make the press serve those in power rather than the public. The problem has arisen in tandem with right-wing populism, which has undermined basic freedoms in many democratic countries. Populist leaders present themselves as the defenders of an aggrieved majority against liberal elites and ethnic minorities whose loyalties they question, and argue that the interests of the nation—as they define it—should override democratic principles like press freedom, transparency, and open debate.

Freedom of Press- Development and discovery of newspaper

Historically, the origin of the concept of freedom of press took place in the England. From the earliest times, in the West, persecution for the expression of opinion even in matter relating to science or philosophy was restored to by both the Church and the State, to suppress alleged heresay, corruption of the youth or sedition. Such restraints, through licensing and censorship, came to be accentuated after the invention of printing towards the latter part of the 15th Century, and the appearance of newspaper in the 17th Century, - which demonstrated how powerful the press was as a medium of expression.

Shortly after their emergence, newspaper came to take up the cause of the Opposition against monarchical absolutism, which in turn, led to different methods of suppression. It is in protest against such governmental interference that freedom of the Press was built up in England. Opposition to governmental interference, which had been brewing on for some time, was supported by logical arguments by Milton in his *Areopagitica* (1644), for instance, that free men must have the 'liberty to know, to utter, and to argue freely according to conscience, above all liberties'. Any for of

ensorship was intolerable, whether imposed by a royal decree or by legislation. In fact, Milton's *Areopagitica* was a protest addressed to the Long Parliament which had taken up licensing, after the abolition of the Star Chamber. It was as a result of such agitation that the Licensing Act of 1662 was eventually refused to be renewed by the House of Commons, in 1694, though the reasons given were technical.

The history of Freedom of Press, in England, is thus a triumph of the people against the power of the licensor. Since there is no written Constitution nor any guarantee of fundamental right in England, the concept of freedom of press, like the wider concept of freedom of expression, has been basically negative. In other words, freedom of press, in England, means the right to print and publish anything which is not prohibited by law or made an offence, such as sedition, contempt of court, obscenity, defamation, blasphemy.

Right to Press in USA, UK & INDIA- Comparative analysis Constitutional provisions in USA - Freedom of Press is also recognized by the American Constitution. Initially, the freedom of press was not expressly provided in the American Constitution. The freedom of press was inserted only after the First Amendment of the American Constitution. The Amendment prohibited the U.S. Congress from making laws which infringes the freedom of press. The First Amendment of the U.S. Constitution was influenced by the Virginian Declaration of Rights.

Constitutional provisions in UK: The Parliament is sovereign in the United Kingdom. Unlike, the U.S., India & other states the subjects of U.K. does not possess any guaranteed rights. The freedom of press is also well recognized in the U.K. The citizens have full liberty to do anything up to the extent that it does not violate the rule of common law or statute law.

Constitutional provisions in India: The freedom of press comes within the ambit of freedom of speech & expression. In a democracy, freedom of press is highly essential as it (the press) acts as a watchdog on the three organs of a democracy viz. the legislature, the executive & the judiciary. But, the freedom of press is not absolute in nature. It is subject to certain restrictions which are mentioned in Article 19(2) of the Constitution. The following are the grounds of restrictions laid down in Article 19(2):-

1. Sovereignty & Integrity of India
2. Security of the State
3. Friendly relations with Foreign States
4. Public Order
5. Decency or Morality
6. Contempt of Court

The grounds of 'Public Order' & 'Friendly relations with Foreign States' was added by the Constitution (First Amendment) Act, 1951. While the ground of 'Sovereignty & Integrity of India' was added by the Constitution (Sixteenth Amendment) Act, 1963.

Sedition-Section 124A of the Indian Penal Code deals with the offence of sedition. It lays down that, "Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite

disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine". But Explanation 3 says "Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section". In *Devi Saran v/s State* AIR 1954 Pat 254, the Court has held that Section 124A imposes reasonable restriction on the interest of public order & therefore it is protected under Article 19 (2) of the Constitution.

Comparative analysis-which countries provision is best for guaranteeing right to freedom of press

When it comes to freedom of the press, it is 'problematic' in many of the countries across the world. Among USA, UK, INDIA – USA tend to have greater press freedom than other countries, because the United States has among the strongest press protections in the world. Freedom of the press in the United States is legally protected by the First Amendment to the United States Constitution and Although it had been uncertain whether people who blog or use other social media are journalists entitled to protection by media shield laws, they are protected by the Free Speech and Free Press Clauses (neither of which differentiates between media businesses and nonprofessional speakers).

Hence considering the constitutional status of freedom of press in other countries the National Commission to Review the Working of the Constitution (NCRWC) has in its final report submitted to the Government recommended that Article 19(1)(a) which deals with "freedom of speech & expression" must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It has been sixty years since India became Republic & commencement of the Constitution there is been a lot of ups & down in our democracy & the press also has come across age. As being a subject of the largest democracy of the world we should remember the words of our former Prime Minister Rajiv Gandhi, "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."

Right to Press in Technological or Digital age

Blocking search engines, charging the earth for internet, torturing activists to get their Facebook and Twitter passwords, passing laws that control what people can (and can't) talk about online. These are just some of the ways in which nations from China to Iran, Cuba to Azerbaijan are preventing journalists, bloggers and activists from speaking out about human rights abuses. In some countries, criticizing authorities online is so dangerous that, according to Reporters without Borders, 2011 was the deadliest year for online activists – with several 'netizens' killed in Bahrain, Mexico, India and Syria. But journalists, bloggers and activists are coming up with new ways to by-pass internet controls and ensure their voices are heard by millions across the world. "The opening of the digital space has allowed activists to support each other as they fight for human rights, freedom and justice around the world," said Widney Brown, Senior Director for International Law at Amnesty International. "States are attacking online

journalists and activists because they are realizing how these courageous individuals can effectively use the internet to challenge them. We must resist all efforts by governments to undermine freedom of expression *Twitter*- On May 2021 Twitter labels India's new content blocking powers as threat to freedom of expression and freedom of press. Despite the potential for Twitter employees to face imprisonment, the social media platform has not complied with an Indian government notice that calls for it to remove the verified accounts of various journalists, activists, and politicians. These kind of polices which ultimately curbs the freedom of press in social platforms.

Role of the Apex Courts- Analysis of cases

USA – The First Amendment, which protects freedom of the press, was adopted on December 15, 1791, as part of the Bill of Rights

The Bill of Rights provides constitutional protection for certain individual liberties, including freedom of the press, freedom of speech, freedom of religion and the right to assemble and petition the government. In 1971, United States military analyst Daniel Ellsberg gave copies of classified documents to The New York Times. The documents, which would become known as the Pentagon Papers, detailed a top-secret Department of Defense study of U.S. political and military involvement in Vietnam from 1945 to 1967. The Pentagon Papers exposed government knowledge that the war would cost more lives than the public had been told and revealed that the presidential administrations of Harry Truman, Dwight D. Eisenhower, John F. Kennedy and Lyndon B. Johnson all had misled the public about the degree of U.S. involvement in Vietnam. The government obtained a court order preventing The New York Times from publishing more excerpts from the papers, arguing that the published materials were a national security threat. A few weeks later, the U.S. government sought to block publication of the papers in the Washington Post as well, but the courts refused this time.

In the *New York Times Co. v. United States*, the Supreme Court ruled in favor of the newspapers, making it possible for The New York Times and Washington Post to publish the contents of the Pentagon Papers without risk of further government censorship. There by media Freedom and National Security was recognized.

In *Near v. Minnesota*, Supreme Court define freedom of the press and the concept of prior restraint. When Minneapolis newspaper editor Jay Near attacked local officials by claiming in print that they were associated with gangsters, Minnesota officials obtained an injunction to keep Near from publishing his paper under state law. The law said that anyone who published a "malicious, scandalous and defamatory" newspaper article was a nuisance and could be stopped from publishing such information. The Supreme Court had to determine if the Minnesota law restricted freedom of the press. The Court ruled that the law kept certain information from being published - a concept called prior restraint -- and violated the First Amendment. This case helped establish the principle that the government can't censor or prohibit a publication in advance, with a few exceptions, even though the communication might be actionable in a future proceeding.

UK: Freedom of expression is a universal human right. It is not the prerogative of the politician. Nor is it the privilege of the journalist. In their day-to-day work, journalists are simply exercising every citizen's right to free speech. A free press is fundamental to a democratic society. It seeks out and circulates news, information, ideas, comment and opinion and holds those in authority to account. The press provides the platform for a multiplicity of voices to be heard. At national, regional and local level, it is the public's watchdog, activist and guardian as well as educator, entertainer and contemporary chronicler.

Current threats: The battle between politicians and the press in the wake of the Leveson Inquiry has abated but not disappeared. Section 40 of the Crime and Courts Act 2013 is designed to punish newspapers in libel and privacy cases – even if they win - if they have refused to sign up to state-backed regulation, a mixture of medieval prerogative and political control. No significant publications have chosen to submit to this regime. Instead, the majority of the industry – nationals, regionals and magazines – has signed up to a tough new system of self-regulation under the Independent Press Standards Organisation which started work in September 2014. The Government is committed to the repeal of Section 40 at the first appropriate opportunity, without commencing it first.

Threats to press freedom include proposals for an online harms regime, unless news publishers' websites and content are exempted, Law Commission proposals for tougher criminal laws against government leaks, efforts to water down Freedom of Information legislation which the NMA has successfully campaigned against, new court reporting restrictions, the use of state surveillance powers to uncover journalists' sources.

Journalists in the UK are also subject to a wide range of legal restrictions which inhibit freedom of expression. These include the libel laws, official secrets and anti-terrorism legislation, the law of contempt and other legal restrictions on court reporting, the law of confidence and development of privacy and data protection actions, intellectual property laws, legislation regulating public order, trespass, harassment, anti-discrimination and obscenity. There is some special provision for journalism and other literary and artistic activities, chiefly intended as protection against prior restraint, in the data protection and human rights legislation. There are some additional, judicial safeguards requiring court orders or judicial consent before the police can gain access to journalistic material or state agencies can instigate surveillance in certain circumstances, but, in practice, the law provides limited protection to journalistic material and sources.

In *Goodwin v. United Kingdom*, where it emphasised that the protection of sources 'is one of the basic conditions for press freedom' intrusion of which should only be justified where there is an overriding requirement in the public interest. The high principle set out in *Goodwin* has been recognised by the English courts in subsequent national cases. In terms of the availability of a court order to disclose a source, the key legislation is the Contempt of Court Act 1981 (CCA). Section 10 states that 'no court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible'. There are, however, exceptions to this presumption where

the disclosure of information will be deemed necessary in the interests of justice, in the interests of national security or for the prevention of disorder or crime.

In the recent case of *Various Claimants v. News Group Newspapers Ltd*, a journalist was held to be entitled to protection under Section 10 of the CCA as a source even though his identity was known. It was deemed irrelevant that the source was himself a journalist or that he was paid, and paid on a large scale.

The powers of the police with respect to journalistic sources and information are governed by the Police and Criminal Evidence Act (PACE). Pursuant to PACE, police are able to search premises where an offence has been committed to obtain evidence but journalistic material is carved out of these powers and may only be seized by the police via a specific procedure requiring an application for a warrant. However, the police have used other powers to obtain journalistic material. In *Miranda v. Secretary of State for the Home Department*, Mr Miranda (the partner of a UK investigative journalist reporting on the Snowden affair) challenged his detention by police under the Terrorism Act 2000. Mr Miranda was carrying encrypted material provided by Edward Snowden and relating to the mass surveillance of internet communications by the UK and US intelligence agencies. The Court of Appeal held that in this instance the stop was properly exercised and that any journalistic rights were outweighed by the interests of national security. However, the stop powers of the Terrorism Act per se were held to lack sufficient legal safeguards to be in line with Article 10 rights to freedom of expression in respect of journalistic information or material

INDIA: In *Romesh Thapar v/s State of Madras*, Patanjali Shastri, CJ, observed that “Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.” In this case, entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as “without liberty of circulation, publication would be of little value The Supreme Court observed in *Union of India v/s Association for Democratic Reforms*, “One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions”.

In *Indian Express Newspapers v/s Union of India*, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are. Freedom of access to all sources of information, Freedom of publication, and 3. Freedom of circulation.

In *Sakal Papers v/s Union of India*, the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in *Bennett Coleman and Co. v/s Union of India*, the validity of the Newsprint Control Order, which fixed the maximum

number of pages, was struck down by the Court holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court also rejected the plea of the Government that it would help small newspapers to grow.

Conclusion

Freedom of Press has been deteriorating around the world over the past decade. In some of the most influential democracies in the world, populist leaders have overseen concerted attempts to throttle the independence of the media sector. While the threats to global media freedom are real and concerning in their own right, their impact on the state of democracy is what makes them truly dangerous. Experience has shown, however, that press freedom can rebound from even lengthy stints of repression when given the opportunity. The basic desire for democratic liberties, including access to honest and fact-based journalism, can never be extinguished. The fundamental right to seek and disseminate information through an independent press is under attack, and part of the assault has come from an unexpected source. Elected leaders in many democracies, who should be press freedom’s staunchest defenders, have made explicit attempts to silence critical media voices and strengthen outlets that serve up favorable coverage. The trend is linked to a global decline in democracy itself: The erosion of press freedom is both a symptom of and a contributor to the breakdown of other democratic institutions and principles, a fact that makes it especially alarming.

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