



A jurisprudential study of India's freedom of speech: With respect to the privacy right given by the India constitution

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Abstract

Personal, social, and political relationships are based on the concept of "mutual trust," which is ultimately required for the right to privacy to completely materialise. In addition, the principles are dynamic, as they are produced, regenerated, and perpetually reinforced by the foundational principles of the constitution. Merriam-Webster defines media as "a medium of cultivation, conveyance, or expression." Every person has the inherent right to freely express themselves. All inhabitants of India are assured the right to freedom of speech and expression by Article 19(1)(a) of the Constitution. Freedom of speech and expression refers to the liberty to openly express one's views through any medium, be it spoken, written, printed, visual, or otherwise. This includes the freedom to disseminate or publish the opinions of others. The media is an indispensable part of a democracy. Article 21 of the Constitution guarantees the life and liberty of every individual. It protects the freedom of people to live humane lives as opposed to animalistic ones. In this research paper, the author examines the various judicial decisions and Indian constitutional provisions that support assuring the growth of rights to free speech and expression and safeguarding them via privacy.

Keywords: The constitution of India, fundamental rights, freedom of press, rights to privacy, judicial response

Introduction

The adoption of a codified Bill of Rights became apparent throughout India's independence movement as a vital requirement to guarantee the protection of basic freedoms, such as the freedom of speech. The preservation of freedom of expression constituted a paramount consideration during the formulation of India's Constitution ^[1]. Having endured various forms of repression at the hands of the British, they were convinced of the great importance of this right in the independent democratic republic that the Constitution of India would establish. They were of the opinion that free speech is crucial to the success of a democratic society ^[2].

The concept of harmonious construction, which divides freely expressed commercial speech into two categories—speech that advances the public interest and pure commercial speech—has been purposefully interpreted by the Indian judiciary. This safeguard against judicial exclusion of public health is in place. In addition, the DPSP ^[3] in part IV of the Indian Constitution pertaining to health care have been taken into account by the courts ^[4].

The "golden triangle" of the Indian Constitution of 1950 consists of Article 19, which protects Article 14, which safeguards the right to equality, Article 21, which defends the right to life and liberty, and the right to freedom of speech and thought. Many laws that seem to infringe the rights enumerated in Part III can be challenged as unconstitutional by using the above-mentioned passages. According to some, the common custom of interpreting Article 19 with Articles 14 and 21 ignores the reasons why Article 19 might be limited. This is because this standard is not included in laws that limit Articles 14 or 21, leading many to assume that this approach ignores the potential justifications for limiting Article 19. This result increases the likelihood that a law that breaches rights and runs counter to the spirit of the Indian Constitution will be upheld. Since this result increases the likelihood of a legislation violating rights, it carries normative weight ^[5].

An individual whose privacy has been significantly infringed upon is unable to live a life free from concerns or worries. There is a widespread consensus that individuals necessitate a certain degree of safeguarding of their privacy in order to maintain a reasonable level of security in their lives. The ICCPR ^[6] and the UDHR ^[7] are two significant international agreements that uphold the right to privacy. According to Article 12 of the Universal Declaration of Human Rights (UDHR), individuals possess the entitlement to be exempt from unwarranted intrusion into their personal lives, familial relationships, residences, and written communications. Moreover, this article safeguards individuals from unwarranted assaults on their dignity and reputation. It is crucial that the law offers protection to all individuals against such invasions and assaults ^[8].

In case of *A K Gopalan v. Union of India* ^[9], ('A. K. Gopalan') The author proposed a strategy known as the "silos approach," which entails evaluating the effects of legislation that affects multiple rights using only those most directly affected. As a result, the rights outlined above were intended to operate in distinct domains, precluding any type of combined interpretation.

The right to unrestricted information acquisition, storage, use, and distribution is an inherent component of fundamental human rights and liberties. All of human history is intricately intertwined with the process of accumulating and disseminating knowledge across successive generations, thereby facilitating the cultural and technological development of humanity. The aforementioned privilege is enshrined in the fundamental legal structures of the majority of nations.

Part III ^[10] of there is a high degree of congruence between the fundamental civil and political rights protected by the Indian Constitution and those outlined in the International Covenant on Civil and Political Rights (ICCPR). The Indian Constitution safeguards an extensive array of civil and political rights that possess legal enforceability. The

Constitution safeguards the fundamental entitlement to freedom of speech and expression, explicitly enshrined in Article 19(1)(a). The Indian Constitution recognises a number of essential rights, one of which is the freedom of expression; nevertheless, this freedom has its bounds and is not considered an unrestricted right.

In *Romesh Thaper case* ^[11], Patanjali Sastri, C. J. observed: *“Free political discourse is essential to the functioning of the democratic process of popular rule. For the democratic process to function properly, public education is also essential. There is a risk of abuse due to the large margin for error. James Madison, author of the Declaration of Independence and the Constitution, also penned the First Amendment to the United States Constitution. The literal meaning of the slang phrase “injure the vigour of the prudence of the prudence” is “to prune the vigour of the prudence of the proper fruits.” Pruning the strength and wisdom of the right fruits is where this expression comes from.”*

In Case of R. Rajagopal v. Tamil Nadu ^[12] Justice Jeevan Reddy restated

“The preservation of press freedom is of utmost importance in fostering a robust democratic system. In his cogent explanation, he identifies the judicial necessity as follows: Nevertheless, given the current context, it is imperative to achieve a suitable equilibrium between the freedom of the press and the aforementioned legislation that aligns with the democratic principles enshrined in the Constitution. In recent decades, there has been a notable rise in the influence of both the press and electronic media within American society. The individuals in question are currently undergoing a process of growth, during which the manifestation of curiosity is observed as one of the associated outcomes. The functioning of our governmental system, as well as those of the United States of America and the United Kingdom, necessitates the continuous monitoring of the exercise of governmental authority by various entities, including the press and the media. The efficacy of government operations is contingent upon their criticality.”

In Govind case ^[13] Mathew J. claimed that

“The counter argument to the right is that the stronger the interest in privacy, the more likely it is that the case will be denied. He also said, “The establishment of this right will necessitate a gradual progression through individual case analysis and development.”

Historical Background

The historical interactions between the government and the British Raj seem to have shaped the current constitutional framework. The superimposition method experienced significant advancements as a result of India's partition. Moreover, it was widely perceived that the fragility of governmental activities rendered them susceptible to disruption by the media and press, who were seen as capable of causing disturbances without due regard for their consequences. Additionally, there was the potential for civil unrest ^[14].

In order to effectively safeguard freedom of expression within our intricate democratic society, it is imperative to gain a comprehensive understanding of the historical methods employed to maintain this fundamental right. This article has the effort of addressing the aforementioned

objective. The progression is comprised of three distinct components. In Part I, an examination is conducted on the historical background and contemporary implementation of several legislations constituting the non-First Amendment framework for safeguarding freedom of speech. The second part of this study delves into the consequences arising from the non-First Amendment free speech tradition, shedding light on its impact on our understanding of the historical and contemporary aspects of freedom of expression within the United States. In conclusion, Part III posits that the scholarly community's neglect of the non-First Amendment free speech heritage has inadvertently facilitated the Supreme Court's assertion of an overly simplistic laissez-faire characterization of the American free speech tradition, obscuring its inherent complexity ^[15].

In contrast to US's 1st amendment, there has been limited effort to formulate a comprehensive theoretical framework elucidating the extent and objectives of unbound verbal communication within the Indian Constitution. The insufficient scholarly and judicial examination of the constitutional issue regarding the circumstances under which expressive conduct should warrant the protection of free speech in India, despite its international significance, is evident in this context ^[16].

The freedom to access various forms of media is a fundamental component of the existence of an individual in a democratic society. The media acts as an important basis for a liberated community and serves as a vehicle for the reform of both society and politics ^[17].

In juxtaposition to the explicit inclusion of "the liberty of the press" in the Constitution of the United States of America, the Constitution of India does not include the term "freedom of the press," which refers to the unfettered ability to distribute information without prior authorization. Nevertheless, the ability to articulate one's ideas must ultimately encompass the ability to distribute one's thinking. The preservation of this freedom is afterwards safeguarded by the liberties pertaining to the dissemination and distribution of information, both of which are integral elements of the entitlement to freedom of the press.

Furthermore, the media can be regarded as a supplementary manifestation of both individuals and the broader society. In other words, individuals employed in the field of journalism, including editors and managers, possess the status of citizens. Consequently, their involvement in newspaper publications can be viewed as an exercise of their personal entitlement to freedom of speech. In India, the constitutional guarantee of freedom of speech and expression encompasses the freedom of the press, which is firmly established as a legal norm ^[18].

The second press commission was subject to observation

“An objective assessment of Article 19(1) (a) of the constitution necessitates acknowledging that the right to freedom of expression may be limited if its use is contingent upon the discretion of mass media administrators. In the context of a democratic system, it is acknowledged that the majority may occasionally utilise its authority to limit the scope of discourse. However, there appears to be a lack of awareness regarding the influence wielded by non-governing minorities who oversee the mechanisms of communication, as they too possess the ability to stifle nascent ideas.” ^[19]

The constitutional discourse surrounding freedom of the press should be contextualised within the government's assertion that the press not only possess monopolistic power structures, but also contribute to societal disorder.

The Constitutional Regulation for Freedom of Expression

Preserving & upholding freedom of speech and expression within a democratic framework is vital, while simultaneously recognising the need for limited constraints to ensure the preservation of social order. Freedom can manifest in two forms: absolute freedom or unfettered freedom. In accordance with Articles 19(2), 358, and 359, the state has the legal power to pass laws that restrict the exercise of the right to freedom of speech and expression, specifically where it is considered essential for the security of the state.

Main restrictions mentioned in Art 19(2) are ^[20]

- State security.
- Diplomatic relations with a foreign nation characterized by amicability.
- Public order, decency, or morality.
- Disregard for the authority of the court.
- Slander or libel, which involves making false statements that harm someone's reputation.
- Provocation of a criminal act.
- Preservation of India's sovereignty and territorial integrity.

In the Case of Sakal Papers Ltd. v. Union of India ^[21]

The petitioner filed a constitutional challenge against the Act of 1960 ^[22]. Petitioner contended that the imposition of minimum price and page requirements for newspapers by this judgement constituted a violation of the freedom of the press. The Court's ruling established that the fundamental right to freedom of speech and expression cannot be violated in order to impose restrictions on an individual's commercial pursuits. The permissibility of restricting freedom of expression is contingent upon adherence to the stipulations outlined in Article 19, clause 2. Analogous to the liberty to partake in economic endeavours, it is seen as impermissible to curtail this liberty in the interest of collective welfare.

In The Case of Bennett Coleman and Co. v. Union of India ^[23]

Newspapers were only allowed to publish a maximum of 10 pages under the Newsprint Control Order. This order was challenged as unconstitutional since it violated the fundamental rights protected by Art. 19(1)(a) & 14 of the Constitution. The Court declared, the petitioner's constitutional right to freedom of speech and expression is violated by the restrictions placed on newsprint.

In Indian Express Newspaper case ^[24]

The appellants, who are publishers of daily newspapers and periodicals, have raised objections to the import tariffs and additional charges on newsprint. They argue that because these actions place an undue burden on the industry and negatively impact the distribution of newspapers and magazines, they infringe press freedom. The press corporation was found to be ineligible for tax exemption by the Court. The newsprint business requires the application

of taxes since public services, facilities, and amenities are provided. The government bears responsibility for maintaining these resources. The government lacks the authority to evaluate the content of newspapers before they are published. Implementing a tax restriction on a publication can be viewed as a form of pre-censorship, which is expressly prohibited by the Constitution.

The examination of the extent and range of the "right of privacy" or the "right to be left alone" was presented to the Supreme Court for consideration in the case of *R. Rajgopal v. State of T.N.* Justice B.P. Jeevan Reddy, J.-: In this instance

Comparing court decisions from other common law countries and looking at relevant constitutional provisions, like those in the UK and the US, it is argued that the right to privacy can be extrapolated from Article 21 even if it isn't specifically listed as a basic right in the Constitution.

The court, in its final determination, rendered the following holdings

- Art. 21 of the constitution implicitly include the right to privacy in it. The concept might be understood as a fundamental entitlement to privacy. Individuals possess the inherent entitlement to protect the confidentiality of their personal affairs, including but not limited to their own personhood, familial relationships, marital status, reproductive choices, maternity, child-rearing, and educational pursuits. Publication of any content related to the aforementioned subjects, regardless of its veracity or tone (positive or negative), is strictly prohibited without obtaining prior approval. Such behavior would be considered an infringement of the person's right to privacy, making the offender legally liable and open to a lawsuit demanding damages for any injury that may have resulted. The position, however, may differ if a someone actively engages in controversy or intentionally instigates or intensifies a confrontation.
- The aforementioned norm is susceptible to an exemption, namely, any publication pertaining to the aforementioned features becomes unobjectionable if it is grounded on public data, such as court records. This is due to the fact that once a particular issue is made part of the public record, the entitlement to privacy ceases to exist, so rendering it a valid topic for scrutiny and analysis by the press, media, and other interested parties. However, we maintain the viewpoint that, in accordance with the principle of decency as outlined in Article 19(2), it is necessary to establish an exemption to this regulation. Specifically, we propose that females who have experienced sexual assault, kidnapping, abduction, or comparable offences should not be subjected to the additional humiliation of having their names and the details of the incident publicised in the press or media.
- An additional exception to the aforementioned rule in (1) exists. This phenomenon is not an anomaly, but rather a distinct principle in its own right. When considering public officials, it is evident that their entitlement to privacy, as well as the option to seek compensation for harm, is not applicable in relation to their actions and behaviour pertaining to the fulfilment of their official responsibilities. Even in cases where a publication is grounded in false facts and statements, it

remains permissible unless the plaintiff can prove that the defendant published the publication with a reckless disregard for the truth. In the aforementioned scenario, it would suffice for the defendant, who is a representative of the press or media, to demonstrate that they behaved after a reasonable process of fact-checking. It is not obligatory for them to provide evidence of the absolute truthfulness of their published content. In instances where it can be substantiated that a publication is demonstrably false and motivated by malicious intent or personal hostility, the defendant would be devoid of all legal defences and would be held accountable for compensatory damages. It is also evident that the public official is afforded the same level of protection as any other citizen in situations unrelated to the fulfilment of their responsibilities, as elucidated in the aforementioned points (1) and (2). It is unnecessary to emphasise that the judiciary, safeguarded by the authority to impose penalties for contempt of court, and the parliament and legislatures, protected by their privileges as outlined in Articles 105 and 104, respectively, of the Constitution of India. These instances exemplify deviations from the aforementioned norm.

- Defamation lawsuits cannot be filed on behalf of the government, local authorities, or other bodies exercising governmental power.
- However, neither Rule 3 nor Rule 4 exempt the press or media from the duties imposed upon them by the Official Secret Act of 1923 or any other lawfully binding legislative or rule.
- No law gives the state or any of its representatives the right to prohibit or place prior restrictions on any media or press personnel.

In K S Puttaswamy case the Apex Court decide ^[25]

It has been argued that the right to privacy is protected not only within the freedoms guaranteed by Part III of the Constitution but also in Art 21 as it's essential attribute. Thus, it is argued that the Indian Constitution guarantees the right to privacy, which is a fundamental right. It is crucial to remember that this privilege is subject to several constraints and limitations rather than being unrestricted.

India's Speech Freedom and its Repercussions

In India, the legal position of freedom of expression is dreadful and terrifying. Our country supports a number of laws that restrict free speech, including those pertaining to sedition, censorship, Section 295A of the Indian Penal Code, and Section 298 of the Indian Penal Code, which deal with speech that offends religious sentiments. The prohibition of Salman Rushdie's book *Satanic Verses* was a startling illustration of their application ^[26].

The importance of respecting religious sensibilities is widely acknowledged, however, it is crucial to distinguish between speech that may cause offence to religious beliefs and speech that has the potential to encourage acts of religious violence. Only the latter should be prohibited. There are various restrictions on the fundamental right to freedom of expression, yet these restrictions are regularly broken, eroding the very foundation of free speech. Since "public order" is such a broad phrase, the state has more power to essentially restrict free expression. The original wording of the article should have been preserved without

any alterations. According to the Supreme Court's decision in *Romesh Thapar*, it is established that the exercise of freedom of speech should be deemed disruptive to public order only when it poses an immediate and tangible danger to the subversion of the State. 'Public order' is a word that dates back to the colonial era and is considered unsuitable for defending free speech in contemporary culture. We argue that the phrase "which undermines the security of the state or tends to overthrow the state" ought to have stayed the same since it limited the state's ability to interfere with people's right to free expression. The concept in question exhibited a rather clear meaning, with discernible circumstances associated with it, in contrast to the concept of 'Public Order', which is more ambiguous and expands the range of state intervention ^[27].

The Indian Constitution Guarantees Individuals' Right to Personal Privacy

Although the right to privacy has not been explicitly guaranteed by the Indian Constitution, it has been argued that it is protected by Part III of the document. The following clauses are allegedly included in the 'right to privacy' requirements ^[28].

Art. 19(1)(a) of the constitution assured free speech and expressions for which the reasonable restrictions are provided in Art 19(2) only. Thus, Art 19(2) will be applicable if such restrictions serve the interests of public order, safety, good relations with other nations, India's sovereignty and integrity, and state security.

Article 21 ^[29] of the Constitution assured the right to privacy to all people, citizens and non-citizens alike. Included in this is the right to life. The Apex Court has indicated that this is the case as a statutory justification, despite the fact that this is not made abundantly obvious within the statute. The Constitution's Article 21 declares, "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law." The basis for the Indian people's freedom is Article 21. The wording used in this article addressing "procedure created by law" has been hotly contested ever since the Indian constitution was initially drafted. but it has been established now, it can be curtailed only by due process of law ^[30].

Conclusion

"No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write or print freely on any subject whatever." — Oregon Constitution ^[31]

The concepts of "human privacy" and "freedom of the press" seem to contradict one other, but they are both necessary for a democratic society that respects individual rights and the rule of law to operate effectively. The dissemination of knowledge greatly relies on the presence of press freedom, while the capacity for individuals to live unrestricted lives is significantly dependent on the protection of privacy rights.

The commendation of press freedom is warranted, as it plays a crucial role in society. It is imperative to remain vigilant in safeguarding this invaluable freedom, actively countering any attempts, whether overt or covert, to impede its practice. Unquestionably, one of the most important liberties in every democratic country is confirming the press freedom. However, the author made the argument that press freedom shouldn't be seen as a stand-alone goal. The purpose of this measure is to guarantee the presence of the

principles of good governance, transparency in administration, enforcement of accountability among those in positions of authority, and the preservation of human dignity and human rights within a democratic society.

“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 misbehavior.” -Lord Denning

Media increasing influence and responsibility, it is essential that it realize and abide by its limitations. The media has a duty to preserve the privacy and anonymity of its subjects and avoid violating their sense of self-worth in the process. The right to privacy, which must always take precedence over media influence, necessitates the enactment of stringent laws and legislation to govern the oversight and administration of the media.

The study's author opted to wrap things up by making the case that freedom of expression is guaranteed under the Indian Constitution. However, it is crucial to acknowledge the requirement of respecting people's privacy when it comes to regulating these rights. This is due to the fact that these privileges are not limitless and can be regulated within reasonable bounds. This scenario has developed accordingly.

References

1. Kumar Virendra. “Dynamics Of The ‘Right To Privacy’: Its Characterization Under The Indian Constitution.” *Journal of the Indian Law Institute*. Available at JSTOR, 2019; 61(1):68-96. <https://www.jstor.org/stable/2709735>
2. Raza Aqa. ‘Freedom of Speech and Expression’ as a Fundamental Right in India and the Test of Constitutional Regulations: The Constitutional Perspective (November 24, 2015) *Indian Bar Review* pp, 2016; 43(2):87-110. Available at SSRN: <https://ssrn.com/abstract=2827985>
3. Directive Principles of State Policy
4. Subramanian Sujitha, *et al.* “Right to Commercial Speech in India: Construing Constitutional Provisions Harmoniously in Favor of Public Health.” *Journal of Law, Medicine & Ethics*, 2022; 50(2):284–290.
5. Sharma Sukarm.” Rescuing Article 19 from the ‘Golden Triangle’: An Empirical Analysis of the Application of the Exception Clauses under Article 19”, *15 NUJS L. Rev. 1*, 2022.
6. International Covenant on Civil and Political Rights
7. Universal Declaration of Human Rights
8. Rascão Jose, Poças. Nuno “Freedom of Expression and the Right to Privacy and Ethics in Dialectic of Human Rights in This Complex and Turbulent Society”, *IJPPMA*, 2021. Available at “https://www.researchgate.net/publication/352883549_Freedom_of_Expression_and_the_Right_to_Privacy_and_Ethics_in_Dialectic_of_Human_Rights_in_This_Complex_and_Turbulent_Society”.
9. AIR 1950 SC 88
10. Part III of the Constitution of India deals with the Fundamental Rights
11. Romesh Thaper v. State of Madras AIR 1950 SC 124
12. AIR 1995 SC 264
13. Govind v. State of M.P AIR 1975 SC 1378
14. Dhavan R. “The Press And The Constitutional Guarantee Of Free Speech And Expression” (July-September 1986) *Journal of the Indian Law Institute*, 1986; 28(3):299–335. Available at <https://www.jstor.org/stable/43951022>
15. Lakier Genevieve. “The Non–First Amendment Law of Freedom of Speech” *134 Harv. L. Rev.* 2299 <https://harvardlawreview.org/print/vol-134/the-non-first-amendment-law-of-freedom-of-speech>
16. Kohli Raghav. “Expressive Conduct and Article 19(1)(a) of the Indian Constitution: A Purposivist Approach”. *Asian Journal of Comparative Law*, 2021; 16(2):259–284.
17. Gaur KD. “Constitutional Rights and Freedom of Media in India”. *Journal of the Indian Law Institute*, 1994; 36(4):429–54.
18. Sakal Newspapers(private) Ltd. V. Union of India A.I.R 1962 S.C. 305.
19. Report of Second Press Commission, Pr, 1982, 34-36.
20. Dr DD Basu. *Constitutional Law of India* 92 (LexisNexis, 8th edn, 2009).
21. AIR 1962 SC 305
22. Daily Newspapers (Price and Control) Order of 1960
23. AIR 1973 SC 106
24. *Indian Express Newspaper v. Union of India* (1985) 1 SCC 641
25. K S Puttaswamy (RETD.) and Anr v. Union of India AIR 2017 SC 4161
26. Pandey, Balram, Is It the Problem of ‘Necessity’: The Freedom of Free Speech and the Constitution of India? (September 7, 2020). Available at SSRN: <https://ssrn.com/abstract=3706727> or <http://dx.doi.org/10.2139/ssrn.3706727>
27. Navya Aggarwal, Aadya Malik. “Critical Analysis of Freedom of Speech and Expression in India”. Available at <https://pclslnluchapter.weebly.com/the-pcls-blog/critical-analysis-of-freedom-of-speech-and-expression-in-india>
28. JN Pandey, *Constitutional Law of India* 187-213(Central Law Agency, New Delhi 52nd edn., 2015)
29. Ibid
30. HM Seervai. “The Constitutional Law in India : A Critical Commentary” 43 (Central book publication, New Delhi, 2003).
31. Article I, Section 8 of Oregon Constitution.