



Judicial interpretation in promoting freedom of press in India: A critical analysis

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Abstract

Indian Constitution provides number of fundamental rights to the citizen of India. One of such right includes Freedom of Speech and Expression under Article 19(1)(a) of the Constitution, this right simply means right to speak and express one's thought. Freedom of press is implicitly provided under Article 19(1)(a) of Indian Constitution. Freedom of the press is a fundamental component of every democracy. The press provides the platform for a multiplicity of voices to be heard. In addition to being an educator, entertainer, and modern chronicler, it also serves as the public's watchdog, activist, and protector on a local, regional, and national level. As the public's eyes and ears, journalists need to be free to cover topics of public interest without worrying about being arrested or subjected to other types of intervention. Press freedom must be continuously defended and advanced. Although the protection of press freedom is very crucial still it cannot get the freedom as needed. There judiciary plays an important role in interpreting freedom of press, expanded the scope and dimensions of freedom of press and also in protecting and promoting of freedom of press. Judiciary on one side protect the right of press and at the other hand also ensure that journalist does not extend their freedom and disturb public order. Hence this article focuses on role of judiciary in interpreting, promoting freedom of press, importance of freedom of press, suggestive measures for promoting freedom of Press.

Keywords: Freedom, press, media, speech, judiciary, india, supreme court, journalists, democracy

Introduction

The freedom of the Press means the right to disseminate opinions, news, and ideas by publishing them. All publications which produce, edit, and disseminate information are considered press. Freedom of the press extends to newspapers, periodicals, internet media, and broadcast and cable stations. Indian Constitution does not expressly mention freedom of press as one of the Fundamental Rights, but the Constitution through its Article 19(1)(a) under Freedom of Speech & Expression impliedly provides for Freedom of Press as fundamental right. The Indian Press Commission has also articulated same opinion. It express the view that "Democracy can thrive not only under the vigilant eye of its legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which opinion can become articulate. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press [1]." Even Supreme Court in its different judicial pronouncements has held same view. In *Indian Express Newspapers v Union of India* [2] Supreme Court held that "The Freedom of press has not been used in Article 19 but is comprehended within Article 19(1)(a) and also held Freedom of Press as heart of social and political intercourse." Hence publication of news, information, and ideas is protected under freedom of the press.

▪ Elements of Freedom of Press in India

For press to act freely without any restraint there are certain requisites, without them no press can cherish its freedom.

So for the existence of freedom of press there should be certain elements which includes

▪ Freedom from Censorship

One of the key components for press freedom is that it should be free from any kind of censorship. Censorship in simple means restraining any one from delivering speeches, making public communications or disseminating or broadcasting any other information. Censorship badly impacts the freedom of press as journalists or media outlets in fear of retribution refrain from sharing news, information or engaging in open discussions. The self-censorship leads to lack of diverse viewpoints and also public debates. In case of *Brij Bhushan v. State of Delhi* [3] the apex court held the same view and held that: Freedom of press is important element of Article 19(1)(a). Any kind of pre-censorship by government is hindrance to freedom of press and all kind of prohibition in colorable form of censorship as invalid and infringes Article 19(1). Hence journalists and other media outlets should be given freedom to publish and disseminates news without the censorship imposed by government.

▪ Access to Information

Press could freely disseminate any information only when it has access to information without any restrictions. So to freely exercise its freedom, press should have access to the information; sources for investigation and also right to report on public interest matters. In *Manohar Lal Sharma v. Union of India* [4] also known as Pegasus Spyware Case court held that illegal surveillance; monitoring of the activities and spying of the instruments of journalists; activities by Pegasus Spyware infringe freedom of privacy and also pressurize them for self-censorship which adversely affects freedom of press.

▪ **Autonomy of Press**

Unbiased media is need of the time. Authenticity by media should be at priority and in preserving it media should not be influenced by the politicians; influential person; celebrities and person of elite class and hence a true disclosure of information should be done by the media.

▪ **Representing Divergent Viewpoints**

India is biggest democracy with amalgamation of different cultures. So media must ensure that it should depict viewpoints of every communities and cultures, freedom and right to represent viewpoint of each communities is one of the component of freedom of press.

▪ **Accountability**

Press has wide access to public mind. It plays major role in making public aware of what is happening around them. Press also manipulates public views in one way or other. In any country media plays major role in formation of nation and hence it is also known as fourth pillar of democracy. Being too much important, press should be accountable what they disseminates or broadcasts among public. Although vast freedom is provided to press by virtue of Article 19(1)(a) of Indian Constitution but along with it Article 19(2) provides restriction to such freedom on basis of sovereignty and integrity of the nation; or security of the country; or public order; or decency or morality ; or incitement to an offences; or defamation; or contempt of court ^[5]. Hence press should exercise its freedom keeping such restrictions in the mind.

▪ **International Instruments on Freedom of Press**

Freedom of press is protected and also promoted through various international declarations; initiatives that includes

▪ **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) is a document that acts like a global road map for freedom and equality and protecting the rights of every individual, everywhere. It was the first time countries agreed on the freedoms and rights that deserve universal protection in order for every individual to live their lives freely, equally and in dignity ^[6].

The UDHR was adopted by the newly established United Nations on 10 December 1948, in response to the “barbarous acts which [...] outraged the conscience of mankind” during the Second World War. Its adoption recognized human rights to be the foundation for freedom, justice and peace ^[7]. The Universal Declaration of Human Rights (UDHR) is an international document adopted by the United Nations General Assembly that enshrines the rights and freedoms of all human beings.

Article 19 of such declaration provides that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers ^[8].”

▪ **World Press Freedom Index**

It is index published yearly since 2002 by Reporters Without Borders (RSF) ^[9] in which countries are ranked on the basis of records of freedom given to press in each countries. The criteria includes the degree of freedom provided to journalists; news organizations and to citizens.

It also measures effort made by nation’s authorities to respect it.

▪ **World Press Freedom Day**

Every year on 3 of May press freedom is celebrated worldwide. It was initiative proclaimed in 1993 by UN General Assembly for promoting respect towards press freedom by government and bonding media professionals to follow their ethics and norms ^[10].

▪ **National Framework on Freedom of Press**

In India, Freedom of Press is provided under Constitution of India. Along with it there lies The Ministry of Information & Broadcasting, Certain other Organizations like The News Broadcasters Association, The Editors Guild of India which protects and promotes Free`dom of Press in India. A brief about such organizations is as under

▪ **Constitution of India**

Freedom of press is one of the fundamental rights in India. Article 19(1)(a) of Indian Constitution provides for freedom of speech and expression. Though press freedom is not explicitly mentioned under it but it is implicitly provided under the article. In the assembly of drafting of constitution, the drafting chairperson Dr. B.R. Ambedkar declared that press is not different from citizens of India hence the freedom of speech and expression provided to citizen also extended to press. He opined that “Democracy can thrive not only under the vigilant eye of its legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which opinion can become articulate. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press ^[11].”

▪ **The Ministry of Information and Broadcasting**

It is the government agency which administers and formulates law, rules, regulations for broadcasting, information, press and cinema. It helps in creating conducive atmosphere for the working of broadcasting sectors. It plays an effective role in growth and management of the broadcasting sector ^[12].

▪ **The News Broadcasters Association (NBA)**

There is also another regulatory body that is News Broadcasters & Digital Association (NBDA). One of the key features of this body is it is a self-regulatory body that is it is not made, sponsored or in any way aided by the government and also it is not the result of any statutory framework. It is private group of various current affairs broadcasters and news channel broadcasters. It was established for dealing with certain ethical; operational; regulatory; technical; as well as legal issues relating to news channels or current affair channels ^[13].

▪ **The Editors Guild of India**

This includes voluntary association of editors of various mainstream newspapers as well as magazines in India ^[14]. They play important role in promoting freedom of press and also dealing with various issues of rights and liabilities of journalists.

▪ **Judicial Interpretation Promoting Freedom of Press**

Active Role of judiciary in defining and expanding the horizon of freedom of press cannot be denied. From restricting the government oppressive actions, declaring unconstitutional law as ultra vires, protecting the media outlets and journalists judiciary has always been at back of promoting press freedom. From independence to till date judiciary has provided different dimensions to freedom of press which includes

▪ **Right to Publish and Circulate**

One of the basic components of press freedom is right to publish what one wants without any pre-censorship or fear of any actions by the government. Such right of publication can be whole enjoyed only if such publication has public reach without restriction. Hence court through various judicial interpretations held that right to publish also include right to circulate freely. Leading Case stating such right is Romesh Thapar v. State of Madras ^[15]; the main issue in case was that Madras government restricted the circulation of English Journal "Cross Road" in certain area of Madras raising concern of public disorder. Petitioner Romesh Thapar file a petition in apex court claiming that such restriction infringes his right to freedom of press. Hence apex court for protecting the Freedom to Press order Madras government to withdraw such order restricting circulation of such journal and opined that "Freedom of speech & expression 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 and restriction as unreasonable and violative of freedom of speech and expression as without liberty of circulation, publication would be of little value and hence freedom of circulation has been held to be integral part of freedom of publication." Another case defining such right is Sakal Papers Ltd. v. Union of India ^[16] Supreme Court held that "The Daily Newspapers (Price and Page) Order, 1960", which places a cap on the number of pages, was unconstitutional because the right to publish does include the freedom to choose the pages and sizes of the newspaper at any reasonable price. The order's requirement that the newspaper be published in accordance with certain sizes at any given price was deemed to be an unreasonable restriction under Article 19(2). Another milestone in achieving such right is Bennet Coleman and Co. v. Union of India ^[17] in which Supreme Court prohibits government from limiting publisher to publish newspaper within prescribed page; sizes as infringing the freedom of press and even the contention of government that such rules was aimed to help small newspapers to grow was rejected by the court. In Indian Express Newspapers v. Union of India ^[18] Court said that any conditions including pre-censorship or prohibition on circulation or making government aid as necessary component for any publication is violative of Article 19(1)(a). The Supreme Court ruled that it is impossible to dispute the press's crucial role in any democracy. The court was ruled to have a duty to protect journalistic freedom and to stop, invalidate, and prohibit any legislation and administrative measures that infringe upon it. Press freedom includes fundamental components of unrestricted access to information sources and the ability to circulate them freely.

▪ **Rule against Pre Censorship**

Time again government through its various legislative enactments have tried to control the press by censorship. This censorship can take form of permission before publication, unnecessary pre- publication formalities, imposing penalties for not fulfilling conditions and so on. However judiciary by its judgment plays active role in preventing pre censorship. In Brij Bhushan v. State of Delhi ^[19] court held that: "the imposition of pre-censorship of a journal is a restriction on the liberty of the press which is an essential part of the freedom of the speech and expression declared by Article 19(1)(a)." and all kind of prohibition in colorable form of censorship as invalid and infringes Article 19(1).

▪ **Right to Conduct Interviews**

It is through the judicial interpretation that press freedom not only include right of publication and circulation but also include facets of right as right to conduct interviews. Hence journalists may conduct interview of anyone including person in jails but subject to the consent of the person giving interviews. In Prabha Dutt v. Union of India ^[20] supreme court allowed right of conducting interviews of the prisoners but such right is not absolute and subject to permission of the interviewee.

▪ **Right to Report Court Proceedings**

Public should also be aware of what is happening in the court, what proceedings is followed especially in case of national importance. However every citizen cannot reach the court for getting information, updates of such cases. In such cases press play a major role as like common man; press person can attend court proceedings and subject to the permission of the court may publish court proceedings. In Sahara Real Estate v. SEBI ^[21] Supreme Court upheld such right of publication of court proceedings but court also mention that in interest of justice court may restrict such right or even postpone such publication. Such freedom also includes right to report legislative proceedings of parliament and legislative assemblies. However all such proceedings of court or of parliament should be true, authentic and unabashedly published by the press.

▪ **Right to Advertisement**

Advertisements are meant for promoting and commercializing the various products. Media is outreach by advertiser for large public access whereas press uses such advertisement for earning money. Hence there was controversial dispute whether advertisement is part of freedom of speech or not. Earlier view was that advertisement is not part of freedom of speech. Later it was held that advertisement of which sole purpose is trade come under purview of commercial nature and hence not protected. However Supreme Court through its judgment Tata Press v. M.T.N.L ^[22] held that right of advertisement and commercial speech is part of freedom of speech and hence protected under freedom of press.

▪ **Right to Reply**

Supreme Court in LIC v. Manubhai D. Shah ^[23] held "Right to Reply" as integral part of freedom of expression. The court interpreted that the freedom to circulate or to propagate the ideas, news, information among public also

includes the ability to utilise the media to respond to criticism of one's own beliefs. Thus, having the "right to reply" entails having the ability to express oneself freely.

▪ **Right of Information**

In *The Secretary, Ministry of I&B v. Cricket Association* [24] Supreme Court observed 'right to information' is part of right to speech and expression. This right is extended to get information for educating, informing and entertain others. Electronic media can be also used for exercising such rights.

▪ **Right to Exhibit**

In *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sangathan* [25] Supreme Court mentioned that freedom of expression do includes in it right to exhibit films on Doordarsan while fulfilling the conditions and norms imposed by the Doordrashan.

▪ **Pre Censorship of Films**

Films have wide range of audience access, causing high impact on public life. They affect public emotions, and causes impact on their minds, their thinking capability and so on. Keeping such thing in mind apex court in *K.A. Abbas v. Union of India* [26] said that films are different from all other arts form and hence unlike other arts, film can be categorized as 'A' and 'U' in which 'U' certified Means film has reach to all public without restrictions of any age groups or gender and 'A' certified means film can be viewed by adults only.

▪ **No Restraint on Publication against Government Officials**

Press has impact on large public, it helps in formulating and making public opinion so government officials also fear from anything published against them. They endeavor to restraint the press for publishing anything against government officials. In famous case *R. Rajagopal v. State of Tamil Nadu* [27] Supreme Court held that government cannot impose prior restriction on publication of anything which they seem to be defamatory against their officials. As apprehension of defamation cannot be ground for restriction however if the material is found to be defamatory or based on false and malicious facts further action for damages can be taken. But if all the allegations are based on true facts, authentic and properly checked no action can be taken. Restrictions can be only imposed when the ground of restriction is based on constitutional law and bye- law.

▪ **Right to Privacy of Journalists Sources**

Right of privacy is one of the fundamental rights provided under Article 21 of the Indian Constitution [28]. By virtue of this right, every person has right to preserve its personal information, protect it from public disseminates unless such information disseminates is necessary for public interest. Now with regard to press, media outlets and journalists the question arises is that the source from where they get information, their instruments in which they safe their information should be preserved under right to privacy or government can have spy or keep eye on them in public interest. Such controversial dispute come and settled by the apex court in famous case of *Manohar Lal Sharma v. Union of India* [29] also known as Pegasus Spyware case. In this case, several petitions were filed in court by various journalists, activists and politicians that government in

alliance with an Israeli technology firm kept any spy on various citizens' digital devices. They can control user device without their knowledge. The question of concern was that it infringed the right of privacy of targeted person which includes journalists, media outlets and hence even hampering right to freedom of press. The court protecting freedom of press said that breach of privacy of such journalists, media outlets result in self- censorship. Court said that press that is fourth pillar of democracy is allies to privacy and apprehension of monitoring was an "attack" on freedom of press. Violation of privacy right of any person cannot be infringed in excuse of national security so as union government can avoid its responsibility. Legitimate violation of person's right to privacy must be in proportion to goals of law. Court emphasis that journalists sources should be protected as one of basic condition for preventing freedom of press. Court bench established a Technical Committee headed by Justice R.V. Raveendran to examine whether Pegasus used was legal or not. They must also give suggestions on upgrading the nation's cyber security measures to preserve citizen's right to Privacy and establish grievance redressal processes in situations of improper surveillance.

▪ **Right to Dissent Information and Sediton**

Press freedom is not only limited to give information or praise the government actions but it also includes right to criticize the government for their wrong deeds, mentions scam of government officials or rises the issues of public concern. But such criticize can cause repercussion in form of liability of sediton. Sediton is a criminal offence under Section 124- A of The Indian Penal Code,1860 which includes "any act which brings, attempts to bring hatred or contempt, disaffection towards the government as punishable offence with three year minimum imprisonment which can increased upto life sentence". Whereas Section 152 of *Bharatiya Nyaya Sanhita,2023* provides that "whoever excites or attempts to excite secession or armed rebellion or subversive activities or encourages feelings of separatist activities can be charged with sediton which is punishable with imprisonment for life or with imprisonment which can extend upto seven years and shall be liable for fine." Hence journalist may fear that government may put their disseminated information under any activities under sediton clause and punish them for it as many FIRs are frequently brought against press publishing anything against them. Court has time and again held that criticizing the actions and policies of government or its agencies does not mean disloyalty to the government and if their statement does not cause animosity and disloyalty against government or does not cause public disruption or does not cause violence they cannot charged with sediton. Case relating to similar issue is *Vinod Dua v. Union of India* [30] where journalist Vinod Dua was charged under Sediton for talking about lack of adequate testing facilities and overall lack of knowledge by government. He was accused of disseminating harmful and untrue information about government. Supreme Court held that he has right to express his concerns and in doing so he may criticize the government activities as journalist unless such criticism incite violence against government or bring public disorder. Court criticizes government for such action of sediton and held that criticism of government and its policies is not seditious and it comes under right to free speech and

expression. Court reaffirmed that freedom of press is heart of social and political intercourse.

▪ **Right to Internet**

In landmark judgment of *Anuradha Bhasin v. Union of India* ^[31] Supreme Court declared that access to internet is one of the fundamental rights under the Indian Constitution. The issue of concern arises when government shut down internet access unlimited without legal justification. The Supreme Court held that it would be unlawful to limit internet access in any way, and any orders shutting the internet must be passed temporarily, limited, legitimately and proportionality according to the need. The court also declared that freedom of speech as well as expression and freedom of practice any profession or carry any trade, business or occupation through the medium of internet is protected under Article 19(1)(a) and Article 19(1)(g) ^[32]. Hence any restrictions on these rights should be in consonance with the requisite of Article 19(2) and (6) along with test of proportionality. As freedom of speech and expression includes access to internet as fundamental right, so press freedom also include access to internet as fundamental right and hence access of internet to press should not be restricted.

▪ **Guidelines for Search and Seizure of Digital Devices of Journalists**

In current legal framework there is lack of legal rules, principles governing search and seizure of digital devices of the media professionals. In case of *Foundation for Media Professionals v. Union of India* ^[33], *Foundation for Media Professionals* filed writ petition in Supreme Court that there is inadequate legal framework covering digital devices which leads to exposure of their personal data to unwarranted access and infringes right to free speech as there may be intrusion into personal data stored in electronic devices and hence there should be enactment of law regarding search and seizure of their instruments to prevent arbitrary search and seizure. In the case Supreme Court stated that there should be balancing of interests and for doing so proper guidelines should be framed to protect the interests of the media professionals.

▪ **Quashing the Broadcast Ban**

Ministry of Information and Broadcasting issues licenses to the media channel and also on timely basis renew such license on fulfilling of requisite conditions. But the question arises when the ministry without just cause does not issue or re-issue the license or impose ban on the media outlets. In *Madhyamam Broadcasting Ltd. v. Union of India* ^[34] Supreme Court quashed the broadcast ban on Media One broadcast channel and upholds freedom of press. In this case the Union Ministry of Information and Broadcasting had revoked the permission to MBL to uplink and also downlink a news channel naming "Media One". The court stated that freedom of press being component of Article 19(1)(a) can be restricted only on nine grounds which are "sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence" mentioned in Article 19(2). The Court ruled that obtaining a security clearance is necessary in order to reissue a license for uploading and downloading. Refusing to provide security clearance to run a news outlet

is a constraint on press freedom, and only the rationales listed in Article 19(2) of the Constitution allow for such a restriction. The court must determine whether the restriction on the right has a justifiable purpose. Therefore, in order to determine whether the freedom of the press has been fairly confined, the goal of the governmental action that is being contested must inevitably be linked to the grounds listed in Article 19(2). The Court believed that Media-One's critical opinions on government programs could not be classified as "anti-establishment" and opined that "The use of such a terminology in itself represents an expectation that the press must support the establishment. The action of the MIB by denying a security clearance to a media channel on the basis of the views which the channel is constitutionally entitled to hold produces a chilling effect on free speech, and in particular on press freedom. Criticism of governmental policy can by no stretch of imagination be brought within the fold of any of the grounds of Article 19(2)".

▪ **Right to Publish on Public Life of Public Figures**

For benefit of large number, Public should be aware of the news regarding public figures. Public should know what they are doing. Press cannot be restricted from publishing about public dealing of public officials however their personal life is protected under right to privacy. In *Mahua Moitra v. Enforcement Directorate* ^[35] Delhi High Court dismissed the plea filled by leader of Trinamool Congress Party and former MP against ED alleging they leak her information and praying for direction from court against ED to prohibit leak of any information that are confidential, or sensitive, or unconfirmed information to print and electronic media in relation to undergoing investigation proceedings. High Court upheld that "the people are entitled to know about any news regarding the public figures. The accountability of persons who are public figures towards society is higher and they are subject to a higher level of public gaze and scrutiny." Hence publications regarding public figures can only be restricted if it causes harassment or invasion of privacy.

▪ **Right to Publication through Online Media**

In today scenario information is not limited only to paper print publication but also includes publication through online medium. Journalist, media outlets can disseminate the news through online platform. In *Shreya Singal v. Union of India* ^[36] Supreme Court struck down the Section 66-A of the Information Technology Act 2000 which reads as "If any person with an intent to cause annoyance, inconvenience, to deceive, or to mislead sends any electronic mail shall be punished with maximum imprisonment up to three years and a fine". Supreme Court struck down this section as it put restrictions on online speech and since restriction on freedom of speech can be impose only on basis of Article 19(2) of the Indian Constitution and this section violate the freedom without 'reasonable restrictions' and hence this section is unreasonable and ultra vires.

▪ **Protection against Intimidation**

To disclose the true information regarding any incidents through video means is also part of right to disseminate information. Any sort of intimidation for false charges harm the press freedom and hence all such practices should not be allowed. In *Ranjit Das v. Union of India* ^[37] Calcutta High

Court while dealing with the anticipatory bail petition of the Ranjit Das, a journalist of ABP Ananda observed that “Freedom of Press is indispensable to democracy. Freedom of press can be maintained by ring-fencing the press from intimidation. A journalist is part of the press and his freedom to execute his journalistic endeavors needs to be protected,” and hence granted anticipatory bail to a journalist who was booked in an extortion case after he shot videos on illegal mining.

▪ **Right to conduct Sting Operation**

In conducting research regarding any case, press may conduct sting operation however that must be not grounded with malafide. In Pradeep v. State of Kerala ^[38] Kerala High Court states that a different viewpoint should be taken on a sting operation carried out by a law enforcement agency and well-known media figures. All sting operations carried out by the media and law enforcement agencies, however, cannot be made lawful by a single, consistent standard. Each case's facts must be taken into account while making a decision. There will be no legal support for the media person organising the sting operation or reporting based on it if it is carried out with malicious purpose or to single out an individual and degrade him.

▪ **Right against Arbitrary Arrest of Journalist**

Fear of actions creates self censorship to the journalists. Instances like arrest of media person are heard on daily basis which restrains them from publishing against government and its functionary. But court through its interpretation has stopped government for taking such actions. In Rajinder Singh Taggar v. State of Punjab ^[39]; the Punjab and Haryana High Court has questioned the Punjab government for “highhandedness” in arrest of journalist, Rajinder Singh Taggar for publishing a new against a real estate firm. High court grant bail and held that such arbitrary arrest violates Right of Press.

▪ **Restrictions on Freedom of Press**

Freedom of press is one of the most important fundamental right contained within freedom of speech and expression under Article 19(1)(a). Press play important role in creating awareness among people, raising voice against injustice, make government liable for its act as any wrong action taken by them can easily be highlighted by the press and the government has to face the wrath of the public which no government wants. Effective role of press in all fields including justice system cannot be denied but sometimes while playing effective role press may also interfere with the working system of justice. It is no wrong to say that no freedom can act freely without any restrictions. Same way Article 19(2) of the Indian Constitution provides restriction to freedom of speech and expression which also equally applies on freedom of press. However such restrictions should be “reasonable”. The phrase "reasonable restriction" implies that there should be a balance between the rights of the individual that are guaranteed by Article 19 and the purposes that are to be served by the limitations imposed by Article 19(2) ^[40]. A few examples of justifiable limits are those that are justified by the need to preserve public order, meet directive ideals, or fall under the scope of the welfare state. Additionally, all of these limits should only be enforced by laws enacted by authorities with the right to do so, such as the Army Act of 1950, the Police Act of 1861,

etc. Since every person has the right to enjoy their freedom unrestricted, any restrictions that are imposed must be supported by solid rationale and must not be irrational or in excess of what is necessary to be imposed for the benefit of the general public. Even the word "reasonable" itself refers to using reasonable care and caution and establishing limitations when necessary. However, what is acceptable in one situation could not be reasonable in another situations, therefore each situation's facts and circumstances need to be considered. Grounds for reasonable restrictions under Article 19(2) are

▪ **Security of the Nation**

For any nation, the security of nation is paramount important and hence anything cannot be published in name of freedom of press which can harm the Security of the State. In State of Bihar v. Shailabala Devi ^[41], Supreme Court held that speeches which incite public to commit crimes like dacoity, extortion, murder etc. are threat to security of nation. Hence any order which restricts such speeches are reasonable under the Article 19(2).

▪ **Friendly relation with Foreign States**

The main objective of this restriction is to prevent any speech which is objected to harm the friendly relations of India with other Commonwealth States. In Jagan Nath v. Union of India ^[42], it was held by the Supreme Court that foreign States in Article 19(2) of the Indian Constitution means all Commonwealth Nations.

▪ **Public Order**

Supreme Court in Romesh Thapper v. State of Madras ^[43] had elaborated the meaning of public order which means “that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established.” Hence anything impacted to disturb the public order will not be permitted to be published or disseminated.

▪ **Decency or Morality**

What is decent or indecent and moral or immoral depends on facts and circumstances of each case. What is decent or moral in one case may not be decent or moral in another case. In R v. Hicklin ^[44] the court interpreted anything as immoral which has tendency to “deprave and corrupt” the mind of people who get access to such publications. Hence the State in order to protect decency or morality in the country restricts freedom of press.

▪ **Contempt of Court**

Judiciary is the third pillar of the democracy. It is very necessary for maintaining justice, law and public order in any society. Hence press should maintain respect, dignity and decor of the court. Contempt of Court simply means act of disobeying court’s order. Hence act of press can be restricted if it tends to Contempt of Court.

▪ **Defamation**

Defamation is the act of harming someone’s reputation by either forms of words spoken or written, visible representations or gestures etc. It is a criminal offence under Section 356 of Bharatiya Nyaya Sanhita, 2023 ^[45]. So press can be made liable for any act falling under defamation.

▪ **Incitement to Offences**

Any publication which tends to excite public to commit crimes is punishable under criminal law and can be restricted underground of Article 19(2). In *State of Bihar v. Shailabala Devi* [46], Supreme Court held that a restriction on any matter which incites committing of offence is reasonable restrictions under Article 19(2).

▪ **Sovereignty and Integrity of India**

Sovereignty and integrity of any nation is of prime importance to any nation which cannot be curtailed even at sake of freedom of speech and expression. Hence any restriction on press freedom on basis of preserving sovereignty and integrity is reasonable under Article 19(2).

▪ **Importance of Judiciary in Promoting Freedom of Press in India**

Freedom of press has always been there in freedom of speech and expression under Article 19(1) of the Indian Constitution. But such freedom has been restrained by unnecessary censorship by government agencies, interference by politicians; or high class person. Here judiciary plays active role in preventing and promoting press freedom in following ways

▪ **Interpreting and Enforcing provision of Freedom of Press**

The freedom enjoys by the press has never been the same. By different legislations and restrictions government has restricted the freedom but judiciary by liberal interpretation has helped in promoting freedom of press. In case of *Sakal Papers v. Union of India* [47] Supreme Court held that Daily Newspapers (Price and Page) Order 1960, through which government limits the number of pages; sizes of pages to be published by newspaper is against freedom of press and such law was struck down as unreasonable. In another case of *Romesh Thapper v. State of Madras* [48] court held that government by law cannot restrict the circulation of publication as right to circulate is one of the parts of freedom of press.

▪ **Balancing Freedom of Press and Public Order**

As like other rights, freedom of press is not absolute. Such freedom can be restricted on basis of reasonable ground as provided under Article 19(2) which has been validly interpreted by the judiciary as preserving press freedom along with public order. In *S. Rangarajan v. P. Jagjivan Ram* [49] Supreme court held that freedom to speech and expression can be restricted if it affects public order.

▪ **Judicial Review of Executive Actions**

Judicial review means power of the judiciary to examine the constitutionality of any law enacted by the legislative or order of the executive and declared them unconstitutional and inapplicable if ultra vires to Constitution. In *Bennet Coleman and Co. v. Union of India* [50] Supreme Court held that order by the executive which limits newspaper authorities to publish within limited pages, sizes infringes the press freedom even plea that such order was lead down to promote small newspapers was not entertained by the court. Hence court struck down every such order.

▪ **Protecting Press and Freedom of Journalist**

Judicial interventions uphold fundamental rights, reinforces democratic values. In *Indian Express Newspapers v. Union of India* [51] the apex court observed that freedom of press is part of freedom of speech and expression and hence heart and soul of Indian democracy.

▪ **Preventing Restraint on Press if Publication against Government Officials**

To make press freely express its opinion; make public aware, it should have authority to publish even against government officials. In *R. Rajagopal v. State of Tamil Nadu* [52] the apex court view that government cannot impose prior restrictions on the press if it seems to be defamatory content against official of government. However later on it proof to be defamatory such person can take actions for defamation.

▪ **Fostering Open Debates**

Press express views of public at large. Views of different communities can be fully respected by press through various open debates without any restraints. In *Anuradha Bhasin v. Union of India* [53] apex court said that shutting down of the internet unlimited without just explanation is hindrance to freedom of speech and expression and hence ultra vires.

▪ **Challenges for Freedom of Press**

At world level; there is world press freedom index published by organization Reporters Without Borders providing ranks to different countries and various regions according to freedom provided to journalists. Countries are ranked on basis of five indicators which are political; socio-cultural; economic context; legal framework and safety. The rank of India was 150th in 2022 between the 180 countries. The situation has become more worsen in 2023 where India has been ranked as 161st. However little improvement is observed in year 2024 where it has been ranked 159th out of 180 nations [54]. Still situation is worse and need for effective measures are there. So it is also evident from the world press freedom index's report in which India is far behind many countries that India lack in providing appropriate freedom to press. There lies many challenges hindering such freedom to press which includes

▪ **Legal and Regulatory Constraints**

Certain existing laws can act as restraint to press freedom such as defamation laws; sedition laws; and other laws relating to national security. Sometimes these laws act as source of intimidation to journalists as well as media and prevent them from freely expressing their views and opinions. Journalists fear that if they publish anything against government, actions can be taken by government against the journalists and hence they restraint themselves from publishing anything against government [55].

▪ **Interference by Government**

Sometimes government uses advertising budget as tool for rewarding or punishing media organization which due impact their reporting; and due to influence of such rewards or punishment they does not publish all facts as intact as they are. They publish in favour of government, organizations, parties which provides more monetary benefit to them in place of publishing the truth and hence harm the authenticity of press.

▪ **Intimidation and Threats**

On daily basis cases of intimidation or threaten the journalist is not new especially in case of corruption; white collar crimes; or communal tensions. Even sometimes it ends up in murders and death of journalists. Hence such act of threats, murders or attack on them causes a fear in mind of journalists or press person in publishing against such crime resulting in hampering their freedom to express their views or news fearlessly ^[56].

▪ **Self - Censorship**

Self -Censorship means restricting themselves from publishing the whole truth of any news out of fear, threat or influence of money. Coming under pressure or due to reprisal certain media man, journalists, get involved in self-censorship and avoids certain topics to be discussed, published at public platform. Hence such kind of self-censorship acts as a hindrance to freedom of press ^[57].

▪ **Ownership of Media**

Ownership of media in India is in hand of few powerful personalities; which impacts decision of editors; oppressing the voices of minorities; leading to manipulating the views of journalists, making an impression of threat and unnecessary influence which end up on spreading of misappropriates news in public. This ownership of media in limited hands impact the free disseminating of the news.

▪ **Popularity Competition**

In today's scenario competition among newspapers; news channels has so much increased that due to such pressure of being in fame game they forget their dignity and involve in publications of such news which are biased; or opined by majority people; and also exaggerate small issues whereas not even highlight major issues happening around the world. Many cases which require public spotlight are left unspoken by the media like ethnic violence erupted in Manipur whereas unnecessary happening like appearance of celebrities in gym or party are so much highlighted as if they are matter of national importance.

▪ **Prominence of Advertisements**

Early object of newspaper or other media was to spread news; awaken the public with variety of information based on facts and circumstances but now with the involvement of advertisements in press such media and publications in monetary gains forget that what should be advertised and what should not. Today advertisements of smoking; drinking; online gaming and gambling; advertisement regarding fake companies; fraud of multiplying money by fake companies; vulgar advertisements are so common that it has badly effect the genuineness and trust on media which depicts that there is need for regulatory framework for press ^[58].

▪ **Gender Diversity**

Although today is era of women and women has outshined in every field but still media and journalism is one of profession where there still lies gender diversity. Both the owners and workforce involved in the organization are such that women are still not properly represented. Such under representation of women lead to limiting the diversity of equal viewpoints and voice within the media. Such inequity also increases gender stereotypes and reinforce patriarchal

norms. Such male dominating profession restricts the free exercise of freedom by press.

▪ **Suggestions**

Prominent role of press in any democracy cannot be denied. From creating awareness among people; raising voices for wrong; disseminating information among people; check and balance on government and its actions, press act as safeguard of democracy. Although press is so much significant it still faces many challenges. To overcome such challenges, and to protect and preserve the freedom of press certain steps can be very useful which includes

▪ **Strengthen Legal Protections**

To promote freedom of press at first Reforms in laws such as defamation and sedition laws should be brought which unnecessary restricts press freedom. More fair as well as speedy legal procedure should be implemented in dealing with violations of press freedom. Even Sakal Papers (Pvt.) Ltd. v. Union of India ^[59] Supreme Court hold the view as "Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its rights to choose the instrument for its exercise or to seek an alternative media, prevent newspapers from being started and ultimately drive the press to seek Government aid in order to survive, would be struck down as unconstitutional."

▪ **Judicial Review**

The court's ability to conduct judicial reviews serves as a constant check on the law's arbitrariness. Court decides the constitutional validity of the legislative enactment whether it is justified in restricting press freedom or is actually required for the sake of justice. The court can serve as a check and balance on unreasonable laws passed by the legislature.

▪ **Independent Regulatory Framework**

There should be establishment of certain independent regulatory bodies and other autonomous media regulating organisations that are free from political and governmental intervention ^[60]. The members of such regulatory bodies and organisation should be selected from different societal backgrounds so that institution can act freely and can act as protector to press freedom.

▪ **Protect Journalists as well as Whistleblowers**

On day to day basis daily news of journalists; media outlets threatened by disturbing element of society keep on coming. While article of our Constitution provides liberty in speech; expression; in thought process or to form opinion but still there is no specific law providing and protecting journalists. Hence Laws to prevent journalists from annoyance; violent behavior; as well as intimidation should be there. Even whistleblowers providing information to media should be protected.

▪ **Promote Transparency**

Strong regulations should be enacted pertaining to access to information or freedom of information in order to encourage openness and which allow journalists to obtain information from the government. Also openness in the media ownership should be encouraged to avoid conflicts of interest and media consolidation.

▪ Promote Journalistic Ethics

Media companies should be encouraged to follow a code of ethics that prioritizes truthfulness, impartiality, fairness; transparency and fair reporting. Journalists' professional growth and training should be enhanced so they can uphold the highest ethical standards. Public understanding of the value of an unbiased media should be promoted for free press in a democracy.

▪ Public Broadcasting Independence

Public broadcasting institution shall be given independence from unnecessary control and influence of government. An impartial and well qualified board should be appointed for overlooking public broadcasters and such board shall be provided with proper fund and training.

▪ International Cooperation

Press freedom can also be promoted by collaborating with various international organizations for example UNESCO and various such international press freedom group. The action plan of UN on safety of Journalists targets to make a free as well as safe atmosphere for journalists as well as media workers.

Conclusion

A key principle of freedom of the press is the ability of journalists as well as media outlets to function without intervention from the government or imposing of any kind of censorship. It is fundamental for right to free speech and required for any democracy. The press protects the interests of public by drawing attention to falsehoods, wrongdoings by the government and its allies, institutions that operate under the government, raising public awareness of what is going on in their community, educating the public about new laws and regulations, giving them access to global perspectives on incidents at their doorsteps, and amplifying public voices in response to incidents. A free press is essential to preserving democracy and promoting an open and responsible government. Due to all of these reasons media, especially the press, is appropriately referred to as the Fourth Estate. But recent moves against journalists-raids, seizures, and arrests, among other things-have raised more questions about India's press freedom. However the judiciary's active role in protecting freedom of expression against unjustified censorship is crucial for upholding democratic values and the rule of law. Even by active role played by the judiciary the press still does not get the freedom which is needed. Further necessary actions are required for promoting freedom for press by government, press and by judiciary also. Future efforts should focus on enhancing judicial independence, ensuring timely interventions, and fostering international judicial cooperation. Comprehensive judicial training on freedom of expression and robust legal frameworks will further balance free speech with societal needs, ensuring a resilient democracy.

References

1. Dr. Ambedkar's Speech in Constituent Assembly Debates, VII.980.
2. 1 SCC 641(SC), 1985.
3. AIR 129(SC), 1950.
4. AIR CRL NO. 314(SC), 2021.
5. The Constitution of India, Article 19(2).
6. Amnesty International, 'Universal Declaration of Human Rights', (<https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights>) assessed 25 November, 2024.
7. United Nations, 'History of the Declaration', (<https://www.un.org/en/about-us/udhr/history-of-the-declaration>) assessed 28 November, 2024.
8. United Nations, 'Universal Declaration of Human Rights' (<https://www.un.org/en/about-us/universal-declaration-of-human-rights>) assessed 30 November, 2024.
9. Reporters San Frontiers, 'Index'(<https://rsf.org/en/index>)assessed 15 December, 2024.
10. Press Information Bureau Government of India, 'World Press Freedom Day'(3rd May 2024) (<https://pib.gov.in/PressNoteDetails.aspx?NoteId=151884&ModuleId=3®=3&lang=1>) assessed 17 December, 2024.
11. Dr. Ambedkar's Speech in Constituent Assembly Debates, VII.980.
12. Wikipedia The Free Encyclopedia, 'Ministry of Information and Boardcasting(India)' ([https://en.wikipedia.org/wiki/Ministry_of_Information_and_Broadcasting_\(India\)](https://en.wikipedia.org/wiki/Ministry_of_Information_and_Broadcasting_(India)))assessed on 18 December, 2024.
13. News Broadcaster and Digital Associations, (<https://www.nbdanewdelhi.com/>) assessed on 19 December, 2024.
14. Editors Guild on India, 'Editors Guild on India' (<https://editorsguild.in/>) assessed on 25 December, 2024.
15. AIR 124 (SC), 1950.
16. AIR 305 (SC), 1962.
17. 2 SCC 788 (SC), 1972.
18. 5 SCC 294 (SC), 2002.
19. AIR 129 (SC), 1950.
20. AIR 1184(SC), 1982.
21. 10 SCC 603(SC), 2012.
22. 5 SCC 139 (SC), 1995.
23. 3 SCC 410 (SC), 1992.
24. 2 SCC 161 (SC), 1995.
25. 3 SCC 410 (SC), 1988.
26. AIR 481 (SC), 1971.
27. AIR 264 (SC), 1995.
28. Justice KS. Puttaswamy Retd. and Anr. v. Union of India[2017] SC, 2017, 10 SSC 1.
29. AIR CRL NO. 314(SC), 2021.
30. SCC OnLine 414 (SC), 2021.
31. SCC OnLine 25(SC), 2020.
32. The Constitution of India, A. 19(1).
33. W.P. (Crl.) No. 395/ 2022 (SC), 2023.
34. SCC OnLine 366 (SC), 2023.
35. SCC OnLine Del 1264 (Del. HC), 2024.
36. 12 SSC 73(SC), 2013.
37. SCC OnLine 10432 (Cal. HC), 2024.
38. CRL. MC NO. 2924 of 2015(Ker. HC), 2015.
39. PHHC 116639 (PHHC), 2024.
40. Dr. JN Pandey Constitutional Law Of India(58th edn., Central Law Agency), 2021.
41. SCR 64 (SC), 1952.
42. AIR 811 (SC), 1997.
43. AIR 124 (SC), 1950.
44. 3LR 360 (QB), 1868.

45. Bharatiya Nyaya Sahita, S. 356.
46. SCR 64 (SC), 1952.
47. AIR 305 (SC), 1962.
48. AIR 124 (SC), 1950.
49. 2 SCR 204(SC), 1989.
50. 2 SCC 788 (SC), 1972.
51. 1 SCC 641(SC), 1985.
52. AIR 264 (SC), 1995.
53. SCC OnLine 25(SC), 2020.
54. Reporters San Frontiers, 'Index'(<https://rsf.org/en/index>)assessed 26 December, 2024.
55. Kalyani Chadha and Sachin Arya, 'Challenges to Press Freedom in India'(28 June), 2021. ([https://oxfordre.com/communication/display/10.1093/acrefore-9780190228613.001.0001/acrefore-9780190228613-e-974](https://oxfordre.com/communication/display/10.1093/acrefore/9780190228613.001.0001/acrefore-9780190228613-e-974)) assessed on 27 December, 2024.
56. UNESCO, 'Threats to freedom of press: Violence, disinformation & censorship' (<https://www.unesco.org/en/threats-freedom-press-violence-disinformation-censorship>) assessed on 27 December, 2024.
57. Romesh Thapper v. State of Madras[1950]SC, AIR 124 (SC), 1950.
58. Jahnabi Chakravarty, Legal Bites Law and Beyond, 'Freedom of Press in India: Significance and Challenges'(<https://www.legalbites.in/topics/articles/freedom-of-press-in-india-significance-and-challenges-966610>) (9 October 2023) assessed on 28 December, 2024.
59. AIR 305 (SC), 1962.
60. Kishore Sharma, Freedom of Press: The Rise of People's Journalism (Centrum Press), 2010.