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Right to Freedom is not an Absolute Right: A Critical Analysis in Reference to Landmark Judgements

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ABSTRACT

The Right to Freedom is one of the most fundamental rights guaranteed by the Indian Constitution under Articles 19 to 22. While it affirms individual liberty in aspects such as speech, movement, assembly, and association, it is not an unrestrained or absolute right. The Constitution allows for "reasonable restrictions" in the interests of the sovereignty and integrity of India, public order, decency, morality, and national security. This paper critically analyzes how the Indian judiciary has interpreted and applied these limitations in landmark cases such as A.K. Gopalan v. State of Madras, which initially adopted a narrow interpretation of personal liberty, and Maneka Gandhi v. Union of India, which broadened the scope of Article 21 to include substantive due process. The paper also examines Romesh Thappar v. State of Madras, a milestone in free speech jurisprudence. Through a study of these cases, the research highlights the judicial balancing act between individual freedoms and collective social responsibility. It also evaluates the evolving notion of constitutional morality in shaping the contours of the Right to Freedom. Ultimately, the paper argues that while the Right to Freedom is essential to a democratic society, it must be exercised within the framework of constitutional limitations to maintain harmony and order.

KEYWORDS

*Freedom, Constitution, Restriction, Judiciary,
Democracy*

HISTORY, CONCEPTS, SCOPE OF FREEDOM OF SPEECH AND EXPRESSION

The declaration of rights of man and of citizen adopted during the French revolution in 1789 specifically affirmed freedom of speech as an inalienable right. The declaration provides for freedom of expression in Article 11, which says that –

“The free communication of ideas and opinions is one of the most precious of the rights of man. All people may, accordingly, speak, write and print with freedom but shall be responsible for such abuses of his freedom as shall be defined by law.”¹

The right to freedom of expression is recognized as a human right under Art. 19 of the Universal Declaration of Human Rights and further recognized in International human rights law in the ICCPR. Article 19 of the ICCPR states that-

“Everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers either orally or in writing or print, in the form of art, or through any other media of their choice”.

MEANING AND CONCEPT OF MEDIA TRIAL

Media trial refers to the phenomenon where news media outlets, particularly television, newspapers, and online platforms, engage in extensive coverage and commentary on legal cases, often before or during court proceedings. In a media trial, the media plays an important role in shaping public opinion, influencing perceptions of guilt or innocence, and potentially impacting the outcome of legal proceedings.²

The concept of media trial encompasses several key elements:

- Media trials involve extensive and sometimes sensationalized coverage of legal cases, often focusing on high-profile or controversial incidents. Media outlets may dedicate significant airtime, column inches, or digital space to reporting on the case, sometimes at the expense of other news topics.

¹ Denis Ramond, Freedom of expression: what are we talking about? In *Raisons politiques* Volume 44, Issue 4, 2011

² Trial by Media, Is it fair?

<http://www.civilserviceindia.com/subject/Essay/trial-by-media6.html>.

- Media coverage of legal cases can shape public opinion and perceptions of the individuals involved, comprising defendants, victims, witnesses, and other parties. Biased or one-sided reporting can influence how the public views the case and the individuals involved, potentially prejudicing against the outcome of legal proceedings.
- Media trials can interfere with the due process of law by potentially prejudicing jurors, witnesses, and other participants in the legal system. Pre-trial publicity can make it challenging to select an impartial jury and make sure a fair trial. In addition, media commentary on ongoing cases may impact on the decisions of judges, prosecutors, and defense attorneys.
- Media trials raise ethical considerations for journalists and media organizations, comprising concerns about impartiality, accuracy, and the presumption of innocence. Journalists should balance the public's right to know with the rights of individuals involved in legal proceedings, comprising their right to a fair trial and protection from undue prejudice.
- Media trials can have significant social and cultural impacts, influencing public discourse, perceptions of justice, and attitudes toward the legal system. They can also shape public policy debates and contribute to broader discussions about ethics, media responsibility, and the role of journalism in society.

Media trial is a term used for those cases which are still under consideration in courts. The verdicts on these cases have not been given yet by the courts but widespread coverage is given by the media, which by adding a pinch of sensation, try to influence the decisions made by the judges involved. It is nothing but a pretrial by the media based on materials collected by it, without scrutinizing its evidentiary value required under law for its acceptance, and pronouncing judgment before the law takes its course.³ Such trial by media can cause irreparable, irreversible and incalculable harm not only to the person subjected to trial but also to the institution administering justice.⁴

In the vibrant democracy of India, freedom of speech and expression, enshrined in Article 19(1), stands as a cornerstone of individual liberties and democratic governance. This fundamental right empowers citizens to express their thoughts, opinions, and beliefs, fostering a robust public discourse

³ Abhitosh Pratap Singh and Madan Mohan, *Media: Facilitating Justice or Hampering Justice?*, Indian Bar Review, 2006.

⁴ A. Raghunadha Reddy, *Trial by Media- A Critique From Human Rights Angle*, Nyaya Deep, 2010.

essential for a thriving democracy. However, the exercise of this right is not without its complexities and limitations, particularly in the context of media trials. Media trials, characterized by sensationalized coverage, prejudicial commentary, and trial by public opinion, have emerged as an important challenge to the principles of fair trial and justice in India. While the media plays a crucial role in disseminating information, holding power to account, and shaping public opinion, its unchecked power can sometimes infringe upon the rights of individuals and undermine the rule of law.⁵

In a country like India where Article 19(1) itself remains an important aspect for widespread engagement within a democratic atmosphere, media is considered to be one of the freest bodies in terms of legal constraints. Freedom of speech and expression incorporated in the Constitution has been supporting media in performing its business well. But at the same time media has reincarnated itself into a 'Public Court' and has started interfering into court proceedings. It has not only overlooked the vital gap between an accused and a convict but also forgot the golden principle of 'presumption of innocence until proven guilty' and 'guilty beyond reasonable doubt'. These days they have come up with a different concept altogether of 'Media Trial' where the media does a separate investigation, builds up a public opinion against the accused even before the court takes cognizance of the case. By this way, it prejudices the public and sometimes even judges and as a result the accused is presumed criminal and is devoid of all his rights and liberty.

Now excessive publicity in the media about the suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who has indeed committed the crime, it amounts to undue interference with the administration of justice, which would result in contempt of court against the media. But the sad part being the rules designed to regulate journalist conduct are inadequate to prevent the encroachment of civil rights.

Article 19(1)(a) of India guarantees freedom of speech and expression and Article 19(2) permits reasonable restriction to be imposed by the statute for the purpose of different matters comprising 'contempt of court'. Article 19(2) does not refer to administration of justice but interference in the administration of justice is clearly referred to in the definition of criminal contempt in Section 2 of the Contempt of Courts Act, 1971 and in Section 3 thereof as amounting to contempt. Therefore, the

⁵ Ibid.

provision of that Act imposes reasonable restriction on freedom of speech, such restrictions would be valid.

FREEDOM OF SPEECH AND EXPRESSION

Articles 19(1) (A) & 19(2)

Meaning and scope

Article 19(1)(a) guarantees the right to freedom of speech and expression. It states:

"(1) All citizens shall have the right

(a) to freedom of speech and expression;"

This provision guarantees that all people of India has the liberty to express their opinions, beliefs, ideas, and thoughts without fear of censorship or reprisal from the government. It encompasses different forms of expression, comprising verbal, written, artistic, and symbolic expressions.

However, this right is not absolute and is subject to reasonable restrictions under Article 19(2). Article 19(2) states:

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the 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."

This clause allows the government to impose certain restrictions on freedom of speech and expression in the interest of sovereignty and integrity of India, 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 offense. These restrictions are intended to balance individual liberties with broader societal interests and are subject to judicial review to ensure they are reasonable and necessary.

Overall, Article 19(1)(a) guarantees the right to freedom of speech and expression as a fundamental right in India, while Article 19(2) allows for reasonable restrictions on this right to protect different public interests. These provisions form the cornerstone of India's constitutional system for protecting freedom of speech and expression while also guaranteeing the maintenance of

public order and the preservation of broader societal interests.

NEW DIMENSIONS OF FREEDOM OF SPEECH AND EXPRESSION

The Supreme Court widened the scope and extent of the right to freedom of speech and expression and held that the government has no monopoly on electronic media and a citizen has under Art. 19(1)(a) a right to telecast and broadcast to the viewers/listeners through electronic media television and radio any important event. The government can impose restrictions on such a right only on grounds specified in clause (2) of Art. 19 and not on any other ground. A citizen has fundamental right to use the best means of imparting and receiving communication and as such have access to telecasting for the purpose.

The court held that commercial speech (advertisement) is a part of freedom of speech and expression. The court, however, made it clear that the government could regulate commercial advertisements, which are deceptive, unfair, misleading and untruthful. Examined from another angle the Court said that the public at large has a right to receive the "Commercial Speech". Art. 19(1)(a) not only guaranteed freedom of speech and expression, it also protects the right of an individual to listen, read, and receive the said speech.

Telephone tapping violates Art. 19(1)(a) unless it comes within grounds of restriction under Art. 19(2). Under the guidelines laid down by the Court, the Home Secretary of the center and state governments can only issue an order for telephone tapping. The order is subject to review by a higher power review committee and the period for telephone tapping cannot exceed two months unless approved by the review authority.

The freedom of speech and expression can be studied under two heads:

- 1) *Freedom of press*
- 2) *Right to information*

FREEDOM OF PRESS IN DEMOCRACY

It is the primary duty of all the national courts to uphold the freedom of the press and invalidate all laws and administrative actions which interfere with such freedoms against constitutional mandate”, observed the Supreme Court in *Indian Express Newspaper vs Union of India*⁶, While highlighting the

⁶ AIR 1962 SC 305.

importance of the freedom of the press in a democracy. To arrest the malpractices of interfering with the free flow of information, the democratic constitution all over the world provided guarantee of freedom of speech and expression underlying the circumstances under which restrictions are imposed.

Freedom of press in India and U.S.A – there is no provision in the constitution of India providing guarantee for the freedom of the press but the Supreme Court in *Sakal Papers vs Union of India*⁷ widely interpreted the scope of art. 19(1)(a) to include within its fold the freedom of the press which is regarded as a ‘species of which freedom of expression is a genus. Thus in India the freedom of press flows from the freedom of speech and expression and enjoy no higher privilege than the freedom of speech and expression.

Freedom of Circulation –the Indian Constitution does not use the expression ‘freedom of press’ in art 19 but it is included in one of guarantees in art 19(1)(a). Justice Venkataramiah in *Indian Express Newspapers Pvt. Ltd. vs Union of India*⁸ observed that the freedom of press is one of the items around which the greatest and betters of constitutional struggles have been waged an all countries where liberal constitution prevails.

The effect of art 29 on the freedom of press was analysed by the apex court in *Express newspaper vs Union of India*⁹ and *Brij Bhusan vs State of Delhi*¹⁰ Romesh Thapar, the editor of the journal "Cross Roads," challenged the Madras government's decision to ban the publication under the Madras Maintenance of Public Order Act, 1949, which provided for pre-censorship of newspapers and magazines. The central issue was whether the pre-censorship law violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a). The SCI held that the pre-censorship law was unconstitutional as it imposed a blanket restriction on the freedom of speech and expression without adequate safeguards. The judgment reaffirmed the importance of a free press in a democracy and established that restrictions on speech should be reasonable and not arbitrary. he Supreme Court declared the provision for forfeiture unconstitutional, holding that it violated the freedom of speech and expression. The judgment emphasized the need for reasonable restrictions on speech and the importance of guaranteeing that laws aimed at maintaining public order did not

⁷ AIR 1986.

⁸ [1985] 2 SCR 287.

⁹ 1985 SCC (1) 641.

¹⁰ 1950 AIR 129.

unduly curtail fundamental rights.

The question concerning the freedom of press vis a vis the right of the citizen and the scope of prior restraint by the government and the parameters of the right of the press to criticize was considered by the Supreme Court in *S. Rangarajan vs P. Jagjivan Ram*¹¹. This is an important legal landmark in Indian jurisprudence concerning freedom of speech and expression, particularly in the context of censorship and public order. The central issue in the case was whether the ban on the film violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a). The Supreme Court held that the ban on the film was unconstitutional as it amounted to an unreasonable restriction on freedom of speech and expression. The court emphasized that freedom of speech and expression includes the right to express unpopular or controversial opinions, and restrictions on such expression should only be imposed if they are necessary to prevent public disorder or incitement to violence.

The judgment highlighted that the possibility of a film causing communal disharmony or public disorder cannot be a ground for restricting freedom of speech unless such danger is clear and present. The court stressed the importance of open dialogue and the free exchange of ideas in a democratic society, noting that the state's role is not to suppress dissenting voices but to ensure that diverse viewpoints can coexist peacefully.

However, in the interest of decency an exception should be carved out to this rule. The press should be free from government censorship or undue restrictions on content, allowing journalists to report on matters of public interest without fear of reprisal. Journalists should be able to protect their sources of information, safeguarding whistleblowers and guaranteeing the free flow of information. The press should operate independently from government influence or commercial interests, guaranteeing a diverse range of viewpoints and opinions in the media landscape.

While enjoying freedom, the press also bears the responsibility to adhere to ethical standards, accuracy, and fairness in reporting. In India, the freedom of the press is protected under Article 19(1)(a), which guarantees the right to freedom of speech and expression. However, this right is subject to reasonable restrictions under Article 19(2), which include concerns like public order, defamation, incitement to an offense, and

¹¹ AIR 1989 SCC 574.

defamation. Over the years, Indian courts have played an important role in interpreting and upholding the freedom of the press, often reaffirming its importance in a democratic society while also acknowledging the need for responsible journalism. Overall, the right of the press is essential for the functioning of democracy, guaranteeing transparency, accountability, and the protection of individual liberties. It serves as a bulwark against tyranny and corruption, empowering citizens with information and enabling them to participate meaningfully in public life.

The Press Council Act, 1978, aims to strike a balance between preserving the freedom of the press and guaranteeing accountability and ethical conduct within the media industry. It provides a mechanism for redressing grievances and upholding standards of journalism while recognizing the importance of a free and responsible press in a democratic society.

RIGHT TO INFORMATION

Freedom of speech encompasses different aspects of democratic participation, comprising the rights of voters and the antecedents of candidates. In the context of elections, these rights are crucial for guaranteeing transparency, accountability, and informed decision-making. Access to Information: Freedom of speech guarantees that voters have access to diverse sources of information, enabling them to make informed decisions about candidates and political parties.

Voters have the right to freely express their opinions, whether through public discussions, social media, or other forms of communication. This includes expressing support for specific candidates, criticizing government policies, or advocating for electoral reforms.

Freedom of speech encourages active political participation among voters, allowing them to engage in debates, attend rallies, organize protests, and campaign for candidates of their choice. Freedom of speech includes the right of citizens to know about the antecedents of candidates standing for elections. This may include information about their educational qualifications, criminal records, financial assets, and past conduct. Freedom of speech empowers the media to scrutinize the backgrounds and track records of candidates, guaranteeing transparency and accountability in the electoral process. Journalists play a crucial role in investigating and reporting on the antecedents of candidates, helping voters make informed choices. Candidates are often required to disclose certain information about themselves, like financial assets and liabilities, criminal records, and educational qualifications. Freedom of speech protects the

right of candidates to provide this information to the public and guarantees that voters have access to relevant data when casting their votes. In summary, freedom of speech plays a vital role in safeguarding the rights of voters and guaranteeing transparency in the electoral process. It enables voters to access information, express their opinions, and participate actively in democratic decision-making. Similarly, it allows for scrutiny of the antecedents of candidates, promoting accountability and integrity in elections. Overall, freedom of speech is essential for upholding the principles of democracy and guaranteeing the legitimacy of electoral outcomes.

The Supreme Court in *Association for Democratic Reforms Case*¹² has Held that “*article 19(1) (a) which provides for freedom of speech and expression would cover in its fold right of the voter to know specified antecedents of a candidate, who is contesting elections.*”

Also, in *K. Krishnamurthi vs Union of India*¹³ This case is an important legal precedent concerning the right to freedom of speech and expression in India. Following the publication of the article, criminal defamation charges were filed against Krishnamurthy and two others under Sections 500 and 501 of the IPC, which deal with defamation and printing or engraving matter known to be defamatory.

Krishnamurthy challenged the constitutional validity of Sections 499 and 500 of the IPC, arguing that they violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a). The main issue before the Supreme Court was whether criminal defamation laws infringed upon the right to freedom of speech and expression and whether they were consistent with the restrictions permitted under Article 19(2) . In its judgment delivered in October 1991, the Supreme Court upheld the constitutional validity of Sections 499 and 500 of the IPC, which criminalize defamation. The Court ruled that the right to freedom of speech and expression is not absolute and is subject to reasonable restrictions, comprising those aimed at protecting reputation and preventing defamation. The Court held that criminal defamation laws serve a legitimate aim in society by protecting the reputation and dignity of individuals, and they are necessary to maintain public order and prevent the harm caused by defamatory statements. However, the Court emphasized that criminal defamation laws should be applied judiciously and with caution to avoid chilling free speech or stifling legitimate criticism

¹² AIR 2002 SC 2112.

¹³ AIR 2010 SCC 202.

of public figures. The *K. Krishnamurthy vs. Union of India* case reaffirmed the constitutionality of criminal defamation laws in India and highlighted the delicate balance between freedom of speech and the protection of reputation. While upholding the right to criticize public figures, the judgment underscored the importance of guaranteeing accountability and responsible journalism in exercising this right.