

## **The Right to Freedom of Speech and Expression - A Critical Analysis of Article 19(1)(a)**

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### **Introduction**

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*Freedom of the Press is an article of faith with us, sanctioned by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation.*

*- Rajiv Gandhi*

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Article 19 (1) (a) of the Indian Constitution says, “*All citizens shall have the right to freedom of speech and expression*”. The people, and their inherent freedom to freely express their thoughts and ideologies, are the heart and soul of a democratic system. As a result, India, as The world's largest democracy, has incorporated the fundamental right to freedom of speech and expression in its Constitution<sup>2</sup>.

This right involves press freedom as well as press rights. The press is recognised as the fourth

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<sup>2</sup> Romesh Thapar v State of Madras, 1950 AIR 124

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pillar of democracy because it serves as a powerful check on government policies that are formed with bad motives. The right or liberty to print or publish, without intervention from the state or any other public authority is known as press freedom. However, according to jurisprudential principles, no right, freedom, or liberty can exist without limitations; thus, press freedom is bounded by a variety of limits.

Imagine a world without the freedom to speak and do whatever you want; wouldn't it resemble the society that existed under the dictatorships of Hitler and Mussolini? But, thankfully, many countries in today's world have established the right to freedom of expression, at least in writing.

However, as we can see in today's India, how the media is abusing this power of speech and expression in some circumstances, as we will discuss in this paper. With the use of numerous case laws, we will examine how media gained the freedom to propagate ideas and opinions over time, and whether the rights granted to media are being misused.

## **The Constitutional History**

The framers of the constitution never had any dispute during the founding debates that the Constitution should explicitly protect free expression. Several members of the Constituent Assembly clearly remembered, and even had first-hand experience with, the British administration's attempts to crush the freedom movement with repressive anti-sedition

legislation.<sup>3</sup> They were certain that various essential freedoms, such as free speech and expression, should be recognised in the Constitution.<sup>4</sup>

The framers of the constitution had a dilemma in deciding whether to have distinct legislation, similar to the first amendment of the US or to follow the English model, which includes freedom of the press in freedom of speech and expression. In India, draftsmen opted against having distinct legislation for freedom of the press since when writing in the newspaper, citizens are just exercising their right to freedom of speech and expression, thus there is no need for a separate law.

## Issues Identified

1. Does freedom of speech and expression extend to freedom of the press to express itself?
2. Is the media misusing its freedom to propagate and publish ideas and opinions?

## Research Objectives

1. To examine how various case laws have helped the media create a greater scope of freedom of speech and expression over time.
2. To analyse how the media now exploits this freedom of speech and expression and how

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<sup>3</sup> P.K. Tripathi, 'Free Speech in the Indian Constitution: Background and Prospect', pp.67 Yale L.J. 384, .391-393 (1957-1958) (discussing the importance of free speech to Gandhi and the Indian national movement)

<sup>4</sup> B. Shiva Rao, 'Framing of India's Constitution: A Study (Indian Institute of Public Administration, Bombay)', pp. 222-223,1968

the judiciary attempts to find a balance between freedom and abuse.

## Critical Analysis

Article 19 of the Universal Declaration of Human Rights enshrines the right to freedom of expression, which lays forth in broad terms the human rights that everyone of us possesses.

It was later legally protected by a slew of international and regional agreements.

## Development of the Right throughout the Years

As construed by the courts in various decisions, freedom of the press comprises the rights listed below.

- ❖ **Romesh Thapar v. Madras**<sup>5</sup>- in this particular case, the SC for the first time held a decision on free speech. It held that there should be a “reasonable” restriction under Article 19(2) of the constitution. And the right to speech also includes the right to propagate ideas.

The First Amendment was enacted in 1951 as a result of Romesh Thapar and other incidents. Among other things, it added the word ‘*reasonable restriction*’ which was not there in the original constitution. In **Life Insurance Corporation of India v. Manubhai**<sup>6</sup> also the court held the right to express one’s convictions and opinions freely.

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<sup>5</sup> Romesh Thapar v. Madras, AIR 1950 SC 124

<sup>6</sup> Life Insurance Corporation of India v. Manubhai, 1992 (3) SCC 637

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❖ **Express Newspapers v. Union of India**<sup>7</sup>- In this judgement, the Supreme Court held, emphasising the importance of press freedom, *“The expression freedom of the press has not been used in Article 19, but it is comprehended within Article 19(1)(a). The expression means freedom from interference from an authority, which would have the effect of interference with the content and circulation of newspapers.”* In the case of **Sakal Papers v. UOI**<sup>8</sup>, the court reaffirmed the observation made in the Express Newspapers case.

❖ **Bennet Coleman and Co. v. Union of India**<sup>9</sup>- SC struck down a limit on the number of pages in a newspaper. “It is, therefore, the primary duty of courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate”.<sup>10</sup>

## Exploitation of Rights

- ❖ **Media Trials**- It is no difficulty for the media to convey its opinions on certain topics. The issue emerges only when the media takes on the roles of judge and executioner rather than simply giving facts. This type of opinion by media was called the ‘media trial’.
- ❖ By definition, a media trial is the coverage of a person's reputation by deeming them guilty regardless of the legal judgement. To put it another way, it's essentially the media posing as SC and passing judgement regardless of the court's decision.

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<sup>7</sup> Express Newspapers v. Union of India, (1959) SCR 12

<sup>8</sup> Sakal Papers v. Union of India, AIR 1962 SC 395

<sup>9</sup> Bennet Coleman and Co. v. U. O.I, AIR 1973 SC 106

<sup>10</sup> Harijai Singh AIR 1997 SC 73

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- ❖ In cases like **Jessica Lal's**<sup>11</sup> and **Priyadarshini Matto's**<sup>12</sup>, the media has helped to bring justice to the victims who had been waiting for years. In situations involving wealthy and powerful defendants, where the likelihood of a ‘fair trial’ without vigilance does not exist, the media’s campaign restores equilibrium.
- ❖ Though the media’s freedom to express is very crucial, still it cannot take over an individual’s right to a fair trial and right to have privacy. Moreover, the intended duty of news stories is to bring issues to the attention of society, not to cast judgement on people's guilt or innocence.
- ❖ We can take various examples like the **Jasleen Kaur case**<sup>13</sup> in which a girl unjustly accuses a person of sexual harassment, and the media concludes that the person is the of Delhi without even hearing the other side of the story, and the latter is acquitted by the court.
- ❖ In the **Arushi Talwar case**<sup>14</sup>, the media judged who was guilty and who wasn’t before even the final judgment came.
- ❖ Another very recent example is the ‘**Rhea Chakraborty incident**’. After the demise of the famous actor Sushant Singh Rajput, the actor's girlfriend's character, dignity, and personal space were attacked by the TRP-driven media. The media presented

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<sup>11</sup> Sidhartha Vashisht @ Manu Sharma vs State (Nct of Delhi) CRIMINAL APPEAL NO. 179 OF 2007

<sup>12</sup> State (Through CBI) vs Santosh Kumar Singh, (2006) DLT 393.

<sup>13</sup> *Jasleen Kaur case: Sarvjeet acquitted after four years, netizens demand apology from Kejriwal, Arnab for maligning him*, newindianexpress.com (Oct. 26, 2019), <https://www.newindianexpress.com/nation/2019/oct/26/jasleen-kaur-case-sarvjeet-acquitted-after-four-years-netizens-demand-apology-from-kejriwal-arnab-2053322.html>.

<sup>14</sup> 2013 (82) ACC 303

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their take on the actor's death daily, including black magic, murder, and narcotics<sup>15</sup>.

Because of the portrayal of Rhea by the media, she was getting a lot of hate online and the media had already declared her responsible for Sushant's death. We can only imagine on which level these kinds of trials affect a person's reputation and mental health. The same thing happened in the recent case of **Aryan Khan** when the media attacked the reputation of a well-known actor Shahrukh Khan and his son when he was accused in a narcotics case.

## Courts on Media Trial

The Bombay HC's two-judge bench, comprised of CJ Dutta and GS Kulkarni, issued an order in this case, stating that it appears to them that the freedom of speech and expression granted to the media by various courts over the years is now being abused.<sup>16</sup>

- ❖ The 200th report of the Law Commission<sup>17</sup> raises worry about the lack of restraint in the media when it comes to the administration of criminal justice. It reminds the media that, while freedom of speech and expression is a valuable privilege, it is not absolute because the Constitution places "reasonable restriction" on it, including the fair administration of justice protected by the Contempt of Courts Act, of 1971.

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<sup>15</sup> Samira Sood, *Indians find the perfect villain in Rhea Chakraborty. It says more about India than her*, theprint.in (Aug. 8, 2020), <https://theprint.in/opinion/newsmaker-of-the-week/indians-find-a-perfect-villain-in-rhea-chakraborty-it-says-more-about-india-than-her/477359/>.

<sup>16</sup> Theprint Team, *Why Bombay High Court's fury on Rhea Chakraborty's media trial is misdirected*, theprint.in (Jan. 21, 2021), <https://theprint.in/opinion/why-bombay-high-courts-fury-on-rhea-chakrabortys-media-trial-is-misdirected/589535/>.

<sup>17</sup> *200th Report on Trial by Media Free Speech and Fair Trial Under Criminal Procedure Code, 1973*, lawcommissionofindia.nic.in (August 2006), [https://lawcommissionofindia.nic.in/report\\_seventeenth/](https://lawcommissionofindia.nic.in/report_seventeenth/).

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- ❖ In the **Sahara case**<sup>18</sup>, SC took the middle ground, deciding each case based on need and proportionality.
- ❖ SC declared in **Saibal Kumar Gupta and Ors. v. B.K. Sen & Anr**<sup>19</sup>. that a newspaper intruding into a crime and conducting an independent investigation for which the accused has been apprehended and then publishing the results of that inquiry would be mischievous.

## Suggestions

- The most prominent remedy is given in the constitution itself which is **Article 19(2)** which provides necessary restrictions on freedom of speech and expression including freedom of the press.
- **The Contempt of Court Act of 1971, Section 3(1), Section 2(c)** exempts any publication or distribution of publication that interferes with the judiciary's work.
- Defamation is covered by **sections 499, and 500 of the IPC**, and a defamed individual whose reputation has been hurt can bring a defamation claim against the accused.
- **Section 228(a) of IPC** gives punishment to people for divulging the names of the people who indulge in certain crimes.
- A person has the right to a free and fair trial under **Articles 304 and 21** of the Indian Constitution. In the case of **Maneka Gandhi vs. UOI**, this was eloquently explained.

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<sup>18</sup> Sahara Real Estate Corp. Vs. Securities Exchange Board of India . I A Nos. 14 and 14 in C.A No. 733 of 2012

<sup>19</sup> 1961 AIR 633, 1961 SCR (3) 460



## **Conclusion**

Freedom of speech and expression is critical for the full development of a person's personality. Other essential freedoms that reflect this aspect of what it means to be human, such as freedom of religion, thought, and conscience, are inextricably related to freedom of speech. Freedom of expression is a democratic value that protects democratic government.

Media plays an important role in the overall development of a country. Therefore, they must have freedom of speech and expression but with time, the aim of the media has shifted. In the largest democratic setup, the termite of corruption has devoured the core structure of the judicial system.

The mandate of press freedom must be confined to bringing a subject to the attention of the public without any assumption. The Court is a competent forum for such determinations, and these forums must be permitted to operate without inciting public prejudice. Article 21 of the Indian Constitution guarantees the right to a fair and impartial trial.

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