

Chapter-14

Freedom of Speech and Expression in Light of Media Law: A Contemporary Analysis

Dr. Nital S. Nandedkar

Principal, V. N. Patil Law College, Chh. Sambhajinagar (MS)
Affiliated to Dr. Babasaheb Ambedkar Marathwada University,
Chh. Sambhajinagar (MS)

Email - nital.nandedkar@gmail.com

Abstract:

Freedom of speech and expression is a foundational element of democratic societies, enabling the exchange of ideas and the functioning of a free press. Media laws play a crucial role in shaping the boundaries within which this freedom operates. This paper explores the intersection of freedom of speech and expression with media law, examining legal frameworks, judicial interpretations, and contemporary challenges such as digital media regulation, misinformation, and hate speech. The study provides a comparative analysis of global media laws and offers recommendations to uphold free speech while maintaining public order and accountability. Furthermore, this paper elaborates that the phrase “*freedom of speech and expression*” under Article 19(1)(a) also encompasses the right to obtain and share information. This right extends to communicating ideas through any form of media — whether print, electronic, or audio-visual — such as advertisements, films, articles, or speeches. It guarantees individuals the liberty to express and circulate their views freely, reaching the widest possible audience both within the country and beyond its borders.

Keywords: Introduction, Legal and constitutional Foundations of Freedom of Speech and Expression, Media Law and Its Influence on Free Speech, Freedom of Expression in the Digital Era, Judicial responses on media freedom, conclusion and suggestions.

1. Introduction

The right to freedom of speech and expression, recognized in many national constitutions and international human rights documents, is essential for protecting individual liberty and sustaining democratic governance. The media, as a conduit for public discourse, plays a pivotal role in realizing this freedom. However, media law imposes certain constraints intended to balance free expression with societal interests such as national security, public morality, and individual reputations. Freedom of speech constitutes the cornerstone of democratic governance and is indispensable to the effective functioning of the democratic process. Recognized as the foremost condition of liberty, it occupies a preeminent position within the hierarchy of fundamental rights, providing support and protection to all other freedoms. Often described as the “mother of all liberties,” this right facilitates open discourse and the uninhibited exchange of ideas in a democracy. Moreover, it plays a pivotal role in shaping public opinion on social, political, and economic issues, thereby strengthening the democratic framework.

2. Legal Foundations of Freedom of Speech and Expression

2.1 International Frameworks

Article 19 of the Universal Declaration of Human Rights (UDHR) affirms the right of every individual to hold opinions without interference and to express them freely. Similarly, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) safeguards the freedom of expression through any form of communication, encompassing all available media channels.

2.2 National Constitutions

In India, Article 19(1)(a) of the Constitution secures the right to freedom of speech and expression, while Article 19(2) authorizes the imposition of reasonable restrictions on the exercise of this right. Media law encompasses regulations governing the operations of print, broadcast, and digital media. *Subramanian Swamy v. Union of India (India)*¹ The primary issue before the Court concerned whether the provisions relating to criminal defamation, which prescribe imprisonment as a penalty, infringed the fundamental right to freedom of speech and expression enshrined in Article 19(1)(a) of the Indian Constitution. The Supreme Court, however, upheld the validity of criminal defamation, holding that the right to reputation constitutes an essential component of the right to life and personal liberty under Article 21. The Court further observed that the freedom of speech is not an unfettered right and may be subject to reasonable restrictions, particularly those aimed at safeguarding the reputation and dignity of individuals.

2.3 Importance of Freedom of Speech

Freedom of speech and expression is a foundational pillar of democratic governance and individual liberty. It enables the dissemination and exchange of ideas, fostering informed public discourse and participatory decision-making. By allowing citizens to critique policies, challenge authority, and engage in debate, it ensures transparency and accountability in governance. Moreover, this freedom underpins the development of public opinion on social, political, and economic issues, facilitating societal progress and reform. Beyond its instrumental value in democracy, freedom of speech and expression is intrinsically linked to personal autonomy, dignity, and the protection of other fundamental rights, positioning it at the apex of the hierarchy of liberties. In *Maneka Gandhi v. Union of India*,² Justice Bhagwati has underscored the critical importance of freedom of speech and expression, observing that democracy fundamentally relies on free debate and open discussion, which serve as the primary means of correcting governmental action. Given that democracy entails government by the people, it is imperative that every citizen be entitled to participate in the democratic process. To exercise this right meaningfully and make informed choices, unrestricted and comprehensive discussion of public affairs is essential.³

¹ AIR 2016 SC 2728

² AIR 1978 SC 597

³ Prof. Jain M. P., Indian Constitutional law, Wadhwa Publication, 5th Edition 2006, p. 987

With reference to the First Amendment of the United States Constitution, which secures the right to freedom of speech, the U.S. Supreme Court has noted that...⁴ "It is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market whether it be by the Government itself or a private licensee".

2.4 Article 19(1)(a) of The Constitution

Article 19(1)(a) of the Indian Constitution guarantees every citizen the right to freedom of speech and expression. However, Article 19(2) permits the imposition of reasonable restrictions on this right for specified purposes. Any limitation that falls outside the scope of Article 19(2) is constitutionally invalid. The right to freedom of speech encompasses both the freedom to communicate and the right to disseminate or publish opinions, subject to the reasonable restrictions authorized under Article 19(2).⁵

3. Freedom of Expression in the Digital Era:

Freedom of expression in the digital era has become a topic of intense debate, largely due to the rise of social media, the spread of misinformation, government censorship, and the evolving power of tech companies. While the internet offers unprecedented access to information and the ability for people to share their voices on a global scale, it has also raised complex questions about the limits of that freedom, the responsibility of platforms, and the regulation of content.

3.1 Right to Receive Information

The concept of “freedom of speech and expression” encompasses the right to both acquire and disseminate information. It includes the liberty to communicate ideas through any available medium—whether print, electronic, or audio-visual, such as advertisements, films, articles, or speeches. This right further extends to the circulation of one’s opinions without interference to the widest possible audience, both domestically and internationally. The Supreme Court has interpreted Article 19(1)(a) expansively, affirming that the freedom of speech not only protects the communication of information but also guarantees the right to receive it. The right to both receive and impart information and ideas without undue interference constitutes a fundamental dimension of the freedom of speech and expression.⁶In *Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*⁷, The Supreme Court reaffirmed that the freedom of speech and expression under Article 19(1)(a) encompasses both the right to obtain information and the right to communicate or disseminate it..

3.2 Freedom of the Press

The principal objective of safeguarding a free press is understood to be the establishment of an independent institution beyond the governmental framework, serving as an additional mechanism of oversight over the three official branches—the executive, the legislature, and the judiciary.⁸ The fundamental role of the press is to furnish

⁴ Associated Press v. U.S.,326 US 1

⁵ ibid

⁶ Supra 5 p.988

⁷ AIR 1995 SC 1236

⁸ *New York Times v. Sullivan* 376 U.S. 254 (Known as Pentagon Paper Case)

thorough and impartial information concerning all dimensions of a nation's social, economic, and political life. It functions as a critical check against the misuse of authority by government officials and ensures that elected representatives remain accountable to the citizens who entrusted them with public office.⁹

In India, the freedom of the press is derived from the right to freedom of speech and expression enshrined in Article 19(1)(a), as there is no distinct constitutional provision explicitly guaranteeing press freedom. The freedom of the press is regarded as a "species of which freedom of expression is a genus."¹⁰ The Supreme Court has consistently underscored, in numerous judgments, the critical role of a free press in a democratic society. Accordingly, it is the paramount responsibility of the judiciary to protect this freedom by striking down any legislation or administrative measures that contravene the constitutional guarantee of press freedom.¹¹

In *Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer*,¹² The Supreme Court has reiterated that, although freedom of the press is not explicitly recognized as a Fundamental Right, it is inherently encompassed within the right to freedom of speech and expression. Across democratic nations, the press has consistently been regarded as a vital institution, often described as the "fourth estate." The Court has further emphasized that the protection of press freedom serves not merely the interests of the press itself, but primarily the interests of the public, as citizens have a right to access information, and the government bears a responsibility to educate the populace within the constraints of its resources.¹³

Circulation of Newspapers: Olivier v. Buttigieg,¹⁴ A Privy Council case from Malta provides an illustrative example concerning the circulation of newspapers. In this case, church authorities condemned Voice of Malta, a publication operated by the opposition party. Subsequently, the Health Minister issued a circular banning the distribution of the newspaper within hospitals and other branches of the Health Department, while no restrictions were imposed on other newspapers. The Privy Council held that the Minister's order constituted an obstruction to the editor's ability to disseminate ideas and information, which forms an essential component of the freedom of speech and expression.

In *Sakal Paper case* The Supreme Court correctly observed that Article 19(1)(a) safeguards not only the content a person publishes but also the extent of its circulation. The Court held that a newspaper's right to determine the number of pages it publishes and the scale of its distribution constitutes an essential element of the freedom of speech

⁹ Prof. Jain M. P., Indian Constitutional law, Wadhawa Publication, 5th Edition 2006, p. 991

¹⁰ *Sakal Paper v. Union of India* AIR 1962 SC 305

¹¹ *Indian Express Newspapers (Bombay) P.Ltd. v. Union of India*, AIR 1986 SC 515 (1994) 2 SCC 434

¹² *Ramesh Thappar v. State of Madras*, AIR 1950 SC 124

¹³ Prof. Jain M. P., Indian Constitutional law, Wadhawa Publication, 5th Edition 2006, p. 992

and expression. Consequently, the regulation of newspapers' commercial operations cannot serve as a basis for limiting this fundamental freedom.

Bennett Coleman & Co. v. Union of India¹⁵ The Supreme Court, by a majority, held that the Government was entitled to formulate a policy for the allocation of newsprint on a fair and equitable basis. However, a policy that uniformly restricted all newspapers—regardless of size or language, whether English or any Indian language—to ten pages was deemed discriminatory. In the words of the Court: "*Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content*".

In Indian ***Express newspaper case***¹⁶ The Supreme Court aptly observed that levying customs duty on newsprint effectively constitutes a tax on knowledge, placing a burden on individuals for being literate and for exercising their civic responsibility to stay informed about the world. The Court further noted that newspapers, like other entities, are subject to general fiscal obligations. Emphasizing the significance of press freedom in a democratic society, the Court affirmed that, in the contemporary world, a free press forms the core of social and political interaction.

3.3 Restrictions upon Freedom of media:

a. Taxable: The press is not exempt from taxation, general labor regulations, or civil and criminal laws. The constitutional prohibition, however, applies to any restriction that directly impinges on the right to publish, the right to disseminate information, or the circulation of newspapers.¹⁷

b. Name, Place Etc. of Publisher required: A legal provision that obliges newspapers or books to display the printer's name, place of printing, publisher's name, and place of publication does not contravene Article 19(1)(a), since its objective is solely to provide the public with information regarding the identity of the printer or publisher.

c. Forfeiting any book or newspaper: Under S. 99A, Cr. P.C., a State Government can forfeit any book or newspaper if it appears to contain any seditious matter, or matter intended to promote feelings of enmity or hatred between different classes of citizens, or matter intended to outrage the religious feelings of a class of citizens.

4. Media law and its influence on free speech:

a. Defamation: Laws against libel and slander protect individuals from false statements that can damage their reputation. These laws often require balancing truth, intent, and harm.

b. Obscenity and Indecency: Media laws often restrict content deemed obscene or harmful to minors, leading to debates over censorship and artistic freedom.

c. National Security and Public Order: Governments may restrict media content that could incite violence, promote terrorism, or reveal classified information.

d. Copyright and Intellectual Property: Media law ensures that creators' rights are protected, limiting the extent to which others can use or reproduce their content.

¹⁵ AIR 9173 SC 106

¹⁶ AIR 1986 SC 515

¹⁷ *Printer Mysore Ltd. v. Asst. Commissioner Tax Officer* (1994) 2 SCC 434

e. Privacy: Journalists and media outlets must navigate the legal boundaries between public interest and individual privacy.

f. Hate Speech: Many countries criminalize speech that incites hatred against groups based on race,

4. Judicial responses on media:

In *State of Uttar Pradesh v. Raj Narain*¹⁸, The Supreme Court has affirmed that Article 19(1)(a) of the Constitution not only guarantees the freedom of speech and expression but also encompasses the citizens' right to know and to receive information on matters of public importance. The Court has emphasized that the right to know is an essential component of a democratic society.

In *Dinesh Trivedi, M.P. and Others v. Union of India*¹⁹, The Supreme Court, in addressing the right to freedom of information, observed that in contemporary constitutional democracies, it is a fundamental principle that citizens are entitled to access information regarding government affairs, as the government, being elected by the people, is responsible for formulating policies aimed at their welfare".

In *Rajgopal v. State of Tamilnadu*²⁰, The issue before the Supreme Court was the extent to which the press may critique and comment on the actions and conduct of public officials. The Court held that the freedom of the press includes the right to engage in open and uninhibited discussion concerning the role of public figures in matters of public interest. However, with respect to their private lives, a careful balance must be maintained between press freedom and the rights to privacy and protection against defamation, in accordance with the democratic principles enshrined in the Constitution.

In *Hamdard Dawakhana v. Union of India*²¹ Parliament enacted legislation aimed at regulating the advertisement of drugs in specific instances. The Act was contested on the basis that such restrictions constituted a direct infringement of the freedom of expression. The Court held that advertisements promoting drugs or products whose sale is not aligned with public interest do not constitute the dissemination of ideas and, therefore, are not protected under Article 19(1)(a). Similarly, a commercial advertisement promoting an individual's business does not fall within the ambit of freedom of speech.

5. Conclusion and suggestions:

Freedom of speech and expression remains a cornerstone of democratic life, and the media is its primary vehicle. However, evolving political, technological, and legal landscapes have introduced complex challenges. Media laws must be carefully crafted and enforced to preserve the delicate balance between liberty and regulation. Ultimately, a free and responsible media is indispensable for informed citizenship and accountable governance. With regard to the freedom of the press, it derives from the freedom of speech and expression guaranteed under Article 19(1)(a). However, this right is subject to reasonable restrictions imposed by existing laws or by laws enacted after the

¹⁸ AIR 1975 SC 865

¹⁹ (1997)4 SCC 306

²⁰ AIR 1995 SC 264

²¹ AIR 1960 SC 554

commencement of the Constitution in relation to the matters specified therein. In contemporary times, there is a need to appropriately balance press freedom with these legal restrictions in a manner consistent with the democratic principles enshrined in the Constitution. Over recent decades, the press and electronic media have become significant influences in the life of the nation.

Suggestions

1. Clearer and strict Legislation is required to void vague provisions that allow arbitrary suppression of facts.
2. Independent Media Bodies and laws has to be established.
3. Courts must protect freedom of expression while balancing other rights.
4. Digital Literacy is required so as to educate citizens on discerning credible information.