



---

## Freedom of speech and expression: A critical approach

Arshi Sharma

Seedling School of Law and Governance Jaipur National University, Jaipur, Rajasthan, India

---

### Abstract

Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feeling to others. Freedom of speech and expression is thus a natural right, which a human being acquires on birth. It is, therefore, a basic right. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948).

Article 19(1)(a) of Indian Constitution says that all citizens have the right to freedom of speech and expression. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs, and the like. This expression connotes also publication and thus the freedom of press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. This propagation of ideas is secured by freedom of circulation and broadcasting. Liberty of circulation and broadcasting is essential to that freedom as the liberty of publication.

The modern communication mediums advance public interest by informing the public of the events and development that have taken place and thereby educating the voters, a role considered significant for the vivacious functioning of a democracy. Therefore, in any setup more so in a democratic setup like ours, broadcasting of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution.

**Keywords:** freedom, expression, critical approach

---

### Introduction

Freedom of speech and expression occupies a very high position in the Constitution of India because the Preamble to the Constitution of India itself guarantees to its citizens the "Liberty of thought, expression, belief, faith, and worship." The framers of the Constitution had given us the fundamental freedom of speech and expression in India. A Democracy can survive only if there is a free and fair exchange of ideas. Free speech does not imply that a person has the license to say anything that comes out of his mouth. The speech should not be in such a way that it aggravates or influences people to commit any kind of offences that disturb public order and peace or creates a sense of hatred towards persons belonging to any particular caste, community, religion, etc or any form of speech that tarnishes the reputation of another person. Article 19(1) (a) provides that the citizens shall have the right to freedom of speech and expression. Such speech should always be within permissible limits prescribed under article 19(2) in the form of reasonable restrictions. With that being said the exposition of truth should not be counted in as an infringement of free speech <sup>[1]</sup>.

The freedom of speech and expression under Article 19(1) (a) is concept with diverse facets, both with regard to the content of the speech and expression and in the means through which communication takes place. It is also a dynamic concept that has evolved with time and advances in technology.

Article 19(1) (a) covers the right to express oneself by word of mouth, writing. Printing, picture or in any other manner. It includes the freedom of communication and the right to propagate or publish one's views. The communication of ideas may be through any medium. Newspaper, magazine or movie, including the electronic and audiovisual media.

Article 19 (2) contains the following grounds on which reasonable restrictions can be placed on the freedom of speech:(i) sovereignty and integrity of India,(ii) security of the State,(iii) friendly relations with foreign States,(iv) public order,(v) decency and morality,(vi) contempt of court,(vii) defamation,(viii) incitement to an offence.(2)

### Origin of freedom of speech and expression

The idea of freedom of speech had originated a long time ago. It was first introduced by the Greeks. They used the term "Parrhesia" which means *free speech* or *to speak frankly*. This term first appeared in the fifth-century B.C. Countries such as England and France have taken a lot of time to adopt this freedom as a right.

The English Bill of Rights, 1689 adopted freedom of speech as a constitutional right and it is still in effect. Similarly, at the time of the French revolution in 1789, the French had adopted the Declaration of the Rights of Man and of Citizens.

The UN General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948 under Article 19 which recognised the freedom of speech and expression as one of the human rights.<sup>[3]</sup>

Under the colonial era, the liberties of the Indians were at a complete stake. The atrocities of the British Empire actually curbed the freedom of expression and speech of the Indian masses. From the Sedition laws imposed by the English in 1870 to Section 295A of the Hate speech law, the British took every possible way to curb opinion making among Indians in order to suppress the revolutionary sentiments prevailing the masses to an independent struggle.

The prevention of Seditious Meeting Act, 1907 which prevented open discussions and formation of Unions was also the driving force behind the very fundamental freedom of speech and expression being guaranteed to the citizens which they were earlier deprived of. The framers and the architects of the Constitution of India have also borrowed the idea of freedom of speech from the democratic ideas laid in the American Constitution. Freedom of speech and expression is a significant feature of the American Constitution.<sup>[4]</sup>

### **Reasonable Restrictions on Freedom of speech and expression**

Article 19(2) contains the following grounds on which reasonable restrictions can be placed on the freedom of speech:

1. sovereignty and integrity of India
2. security of the State
3. friendly relations with foreign States
4. public order
5. decency and morality
6. contempt of court
7. defamation
8. incitement to an offence

### **Sovereignty and Integrity of India**

The Sixteenth amendment introducing 'sovereignty and integrity of India' as a ground under Article 19(2) for restricting the freedom under Article 19(1)(a) was a reaction to the tense situation prevailing in different parts of the country. Chinese had started in the north-east in 1960. Also around this time, there were strong demands led by Master Tara Singh for a separate Sikh homeland. The Dravida Munnetra Kazhagam (DM had called for an entity separate from India called Dravida Nadu comprising Madras, Mysore, Kerala and Andhra. Law Minister Ashok kumar Sen introduced a bill in the Lok Sabha on 21st January, 1963 describing its object as giving 'appropriate powers... to impose restrictions against those individuals or organisations who want to make secession from India or disintegration of India as political purposes for fighting elections.

The object of the amendment was to confer on Parliament specific power to legislate on this subject without having to face a constitutional challenge on the ground that the legislation was inconsistent with Article 19(1)(a). The amendment enabled the enactment of laws such as the Criminal Law Amendment Act, 1961 and the Unlawful Activities (Prevention) Act, 1967 which made punishable the act or words of any individual or association intending or supporting the cession of any part of the territory of India or the secession of the same.

### **'Security of the State' and 'Public Order'**

- The term 'public order' means public peace, safety and tranquillity. The insertion of 'public order' as a ground under Article 19(2) by the Constitution (First Amendment) Act, 1951 was an attempt to get over the effect of the decisions of the Supreme Court in *Romesh Thappar v. State of Madras*<sup>20</sup> and *Brij Bhushan v. State of Delhi*.
- In *Romesh Thapar's* case was a challenge to Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 under which the Government of Madras had issued an order imposing a ban on the entry and circulation of the journal *Cross Roads* in the state. In considering whether the impugned Act was made in the interests of the security of the State, Patanjali Shastri, J. drew a difference between a breach of public order which affects the security of the State and that which involves a breach of a purely local significance:

Though all these offences thus involve disturbances of public tranquility and are in theory offences against public order, the difference between them being only a difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Penal Code. Similarly, the Constitution in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Art 19(1), has placed in distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify the curtailment of the rights to freedom of speech and expression.... The Constitution thus requires a line to be drawn in the field of public order or tranquility marking off, more or less roughly, the

boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance treating for this purpose differences in degree as if they were differences in kind.

In *Ramji Lal Modi v. State of U.P.*, a post First Amendment judgment, the Supreme Court held that the expression in the interest of public order' is much wider than 'for the maintenance of public order.' A law may not have been designed to directly maintain public order and yet it may have been enacted in the interests of public order. In this case, Section 295-A of the Indian Penal Code, 1860 was challenged as violating Article 19(1) (a). It was contended that insults to religion or religious beliefs of a class of citizens of India may not lead to public disorder in some cases and therefore, a law making such insults punishable could not be described to be in the interest of public order.

*Superintendent of Police Central Prison v. Ram Manohar Lohia*, took a challenge to Section 3 of the U.P. Special Powers Act, 1932 which made it an offence to instigate persons not to pay dues to the government. Dr. Lohia was arrested under the Act for making speeches exhorting people not to pay the government's increased irrigation rates. The impugned provision was struck down by the Supreme Court which held that the provision was not in the interests of public order'. The Supreme Court held that the expression in the interests of public order' though wider than the phrase 'for the maintenance of public order' could not mean that the existence of any remote or fanciful connection between the impugned act and public order would be sufficient to sustain the validity of the law.

### **Friendly relations with foreign states**

Restrictions under this category would include not only libel of foreign dignitaries but also propaganda in favor of rivals to authority in a foreign state after India has recognized a particular authority in that state, or propaganda in favor of war with a state at peace with India. At present there is no specific legislation on this subject.

However, a variety of statutes contain restrictions on forms of expression which would have an adverse impact on friendly relations with foreign states. These statutes include the Cinematograph Act, 1952, the Cable Television Networks (Regulation) Act, 1995<sup>43</sup> and the Right to Information Act, 2005.

### **Incitement to an offence**

The word 'offence' is not defined in the Constitution. According to the General Clauses Act, 1897, it means 'any act or omission punishable by any law for the time being in force.'

In order to qualify as a reasonable restriction under Article 19(2), the law imposing a Constitution relating to 'incitement to an offence' must relate to a pre-existing offence i.e. the incitement must be of an act which is, at the time, a punishable offence under an existing law.<sup>[11]</sup>

Further, the legislation must be in respect of a definite offence. Mere approval of or admiration for an act of murder or violence does not automatically come within the scope of this restriction unless the publication itself has a present tendency to incite or encourage the commission of the offence.

The court must look to the circumstances in each case in judging such a tendency, the purpose of the work, the time at which it was published, the class of the people who would read it, the effect it would have on their minds, the context of the words and the interval between the incidents narrated and the publication of the work.<sup>[12]</sup>

This ground too was added by the First Amendment to the Constitution in 1951. Freedom of speech does not confer the license to cause incitement to commit offences.

The law of sedition covered under section 124A of the Indian Penal Code is a good example of this.

### **Criticisms on Freedom of Speech and Expression with reasonable restrictions No Provision Dealing with Protection of Individual Privacy**

Privacy is that sphere of the life of an individual into which the Government cannot interfere. It may at times be a pure right i.e. the right literally to be left alone in the confines of one's house, so long as no unlawful activity is carried out. It may also be the right to an unhindered exercise of some or the other constitutional right, so long as the right is exercised in a private or personal arena. It is a protection of the basic inviolable nature of the human personality.

In the Indian context, it embodies a freedom from unwarranted, arbitrary and unnecessary surveillance, search and seizure. It signifies the power to decide what kind of personal information may be disclosed, and the choice of whom the disclosure may be made to. It is a safeguard of the exercise of choice in matters fundamental to our existence. It is not merely an informational right, but a truly substantive right. However, there is no specific legislation in India that affords to an individual protection of his individual privacy.

The exponential growth of the media, particularly the electronic media in recent years, has brought into focus issues of privacy. The media has made it possible to bring the private life of an individual into the public domain, exposing him to the risk of an invasion of his space and his privacy. At a time when information was not so easily accessible to the public, the risk of such an invasion was relatively remote. In India, newspapers were, for many years, the primary source of information to the public. Even then, newspapers had a relatively limited impact given that the vast majority of the population was illiterate. This has changed today with a growth in public consciousness, a rise in literacy and perhaps most importantly, an explosion of visual and electronic media which have facilitated an unprecedented information revolution.

This is not a hidden fact that media reporting often results in the invasion of individual privacy. In an age of revolutionized communications and aggressive voyeurism, the individual's privacy is under siege. But the law makers in India have shown scarce concern on the issue. While in many other countries, there are now a variety of statutes in place that seeks to protect these rights, Indian laws on the subject lag far behind. The Indian Supreme Court has already made much headway in giving constitutional protection to privacy by including it within the penumbra of personal liberty as guaranteed by Article 21 and by inserting the wedge of judicial review to test the reasonableness of penal laws authorized by Article 21. Of course, this aspect of privacy concerns an individual's relation with the State but not with the media.

Investigative journalism is based on recognition of right to know. The 'Age of Information' is a ground reality today and a lot of power rises with the electronic media. Issues like pornography and sleaze, and the 'right to air' have emerged. In this context it is useful to recall that a number of thinkers have cautioned against over-use of the right to know. Mahatma Gandhi discouraged the publishing of too many books since quality could not be ensured. Granting that the right to know may provide an appropriate framework, yet rights adhere in an ethical groundwork which has never been sufficiently recognized. As there are limits to the right to expression, so also there should be limits to the right to know. At present, public institutions can continuously collect information for the surveillance and control of individuals. The right to privacy is infringed upon. In this context, should the right to know take precedence over the Right to Secrecy? Constitutional safeguards already exist for this. But the problem is one of ethics and rational cooperation, which are not seen much today and in the absence of which no solution is possible.

Today, unlike yesterday, personal confidentiality is the subject of state-run robbery and, therefore, the nation needs national privacy policy to protect individual rights in the instant and automated information communication age.

### **No Specific Definition of "Decency or Morality"**

The terms 'morality' and 'decency' come with their own baggage of value-laden subjectivity and as such hold the potential to be the harbingers of denial of right to freedom of speech and expression on the basis of transitory sentiments.

The Constitution permits the enactment of laws in the interest of morality and decency, but the present laws fail to achieve this objective, because they are uncertain, frequently oppressive and are prone to curb the legitimate expression of literary, artistic and cultural ideas. The various laws and codes aimed at censoring pornography are most unsatisfactory. The laws are mostly administered by executive officers who are not familiar with literary and aesthetic values, and are not aware of modern trends in creative art, and the psychological impact of erotic matter on the majority of people.

From time and again, starting from the Hicklin test to the preponderating social purpose test, the Apex Court has devised a number of tests to judge whether a work is obscene or not. There is so much that is vague, uncertain and undefined that it is impossible to the objective about what is to be declared obscene and what should be held unobjectionable. An even greater flaw in the law is that the evidence of experts cannot be admitted to support the defence of public good. Therefore, all that an accused person can say in his defence is that the material he has published was good literature or good science, and it is left to the judge, who may know very little of literature or science, to come to the conclusion whether the defence plea is good or not.

Undoubtedly, there are several legislations which put a check on the obscene element in speech. There are laws which embody restrictions on the right to free speech in the interest of decency and morality.

Derived from Article 19 (2), constitutional morality is as a concept, very different from traditional societal notions of morality or decency, which as public perceptions are ever-changing and should not be held as the index for imposing restrictions on the rights given by Article 19 (1)(a). It is also to be pointed out that the phrase "decency or morality" has been, generally, interpreted in terms of the phrase "obscenity", whereas there may be certain expressions which have nothing to do with inculcating prurient interests; nevertheless, they need to be prevented in the interest of "decency or morality". For example, subtle expressions preaching falsehoods, corruption, disregard for marginalized Sections etc. Further, the latest version of obscenity is hard core pornography and no provision covers the phrase and the problem gets aggravated in the internet age. Thus, immediate steps are needed to tackle this issue.

### **Too Broad A Definition of Official Secrets**

It is pitiable that certain Secrecy laws are still continuing in the age of Right to Information. It is a reality that punitive processes are sometimes unleashed even against truthful publications including privacy of official secrets, defamation of persons, spreading of disharmony or violation of censorship laws plus more severe penalties under penal laws relating to national security, breach of privileges of the Legislature, contempt of the Court and the like. Apart from the statutory secrecy provisions, the state has other tactics to thwart the free flow information by gagging the press and also by supplying false or half-true information through its electronic media i.e. Doordarshan and Akashvani. The state power attempts to gag the press by putting economic pressure and professional interference and thereby obstruct the free flow of information.

The citizens have a right to know but the government sometimes wishes to be secretive. The object of Right to Information, 2005 is to balance people's right to know and interests of Government to preserve the confidentiality of sensitive information. However, what information is "sensitive" is the prerogative of the

government to decide. While commenting on the Official Secrets Act, 1923, Ms. Rani Advani had once said that “in its application and interpretation the executive and judiciary have allowed the interest of the State to be read as the interest of the Government currently in power”. Thus, the phrases like official secrets, sensitive information etc. give considerable room to the government to be secretive under the garb of protecting the national interest. What constitute ‘public interest disclosures’ need to be clearly defined. The legal protection should apply to specific disclosures only involving an illegality, criminality, and breach of regulatory law, miscarriage of justice, danger to public health or safety and damage to environment, including attempts to cover up such malpractices. It is submitted that this issue needs to be addressed at all levels at the earliest so that “gagging orders” by the government or even by the Courts do not become a rule but an exception for truthful publications in public interest.

The fifth pay Commission in its report in 1997 advocated amendment in Official Secrets Act to ensure transparency in Government functioning. The United Front government constituted a committee to look into the matter and give necessary recommendations. However, nothing concrete came out of it. There is lack of will power coming in the way of concrete action. Analysts believe that the government must not delay repealing Official Secrets Act particularly when there is right to information available now.

Recently there was a report in the Indian Express Newspaper wherein it was published that two military units began moving towards Delhi without notifying to the government of India raised a considerable alarm at highest levels in government and highlighted issues about top level politico-military relation. The entire establishment tried to keep this report under wraps; nevertheless, the same got published. The army called it a routine fog time exercise but so many questions revolved around the movement. Given the sensitive nature of the news, the vital question that arose was whether the alleged leak of the report and its subsequent publication is covered within the free speech protection or should it have been restricted on the grounds of security of state? Further, should media have exercised some restraint while reporting the news?

In this regard, a public interest litigation was filed by a social activist and a freelance journalist Nutan Thakur seeking a direction to the Prime Minister’s Office to conduct an inquiry to ascertain the veracity of the report and if the report was false, action should be taken against those responsible for the publication of a false report on a sensitive matter dealing with national security. The Indian Express Newspaper, on the other hand, in a statement said that it stands by the report.

#### **Media’s Interference with the Administration of Justice**

The tension between the Courts and the media revolves around two general concerns. The first is that there should be no ‘trial by media’; and the second is that it is not for the press or anyone else to ‘prejudge’ a case. Justice demands that people should be tried by Courts of law and not be pilloried by the press.

The power and reach of the media, both print as well as electronic is tremendous. It has to be exercised in the interest of the public good. A free press is one of very important pillar on which the foundation of Rule of Law and democracy rests. At the same time, it is also necessary that freedom must be exercised with utmost responsibility. It must not be abused. It should not be treated as a licence to denigrate other institutions. Sensationalism is not unknown. Any attempt to make news out of nothing just for the sake of sensationalisation has to be deprecated. When there is temptation to sensationalize particularly at the expense of those institutions or persons who from the nature of the office cannot reply, such temptation has to be resisted and if not it would be the task of the law to give clear guidance as to what is and what is not permitted.

The judgments of Courts are public documents and can be commented upon, analyzed and criticized, but it has to be in dignified manner without attributing motives. Before placing before public, whether on print or electronic media, all concerned have to see whether any such criticism has crossed the limits as aforesaid and if it has, then resist every temptation to make it public. In every case, it would be no answer to plead that publication, publisher, editor or other concerned did not know or it was done in haste. Some mechanism may have to be devised to check the publication which has the tendency to undermine the institution of judiciary.

However, there is another viewpoint also to it according to which neither does media reporting influences judges nor does it lead to miscarriage of justice. Admittedly, the media has the right to be present and report Court proceedings, which presumably is based on the media’s role as a conveyor of information. It is no secret that the content presented to the public is often inextricably laced with opinions, bias and subjective notions of justice. Every effort should, therefore, be made by media to maintain the distinction between trial by media and information media.

#### **Lack of Control on The Objectionable Contents on The Internet**

Internet communications cross national territorial boundaries. Their global character is one of their principal characteristics, so much so that, in the view of some commentators, effective regulation by state authorities is impossible. Moreover, it is arguably undesirable to attempt it. Website operators and ISPs might not know which legal systems they will become subject to. As a result they might be prosecuted under the obscenity or hate speech laws of, say, France or Germany, for communications intended for computer users in the United States or England. Communicators in cyberspace, it has been argued, would have to be aware of the libel laws in every country from Afghanistan to Zimbabwe, if the Courts in any state where a defamatory message was accessible could claim jurisdiction and apply its law. Attempts by one jurisdiction to regulate communication on the Net would inevitably chill the exercise of free speech rights in others, particularly in the United States where speech

is very strongly protected. Conflicts may occur, arising from the inconsistency between the decision of a Court in one country regulating speech on the Net and that of a Court in another state refusing to enforce that judgment. When the Constitution of India was written, the outer space was safe and secure because highly sophisticated equipments were not invented to encroach upon the culture of our country. High-tech communication satellites in the outer space have invaded most of our homes. Everyone knows that pornography is made available at a very cheap rate. Nudity, sex, vulgarity and violence have gone abnormal, extreme and beyond imagination. As a result, eve-teasing, rape, house-breaking, pick-pocketing, stabbing, killing and mass-massacre have become a part of daily news in our country. The viewers are increasing and there is no possibility of their return. They print everything they wish to poison our minds. Enemy countries vomit out poisonous propaganda through their satellite channels. Our country is at a gross disadvantage because we do not have any provision of law to stop them doing wrong, notorious, nefarious, illegal and anti-national activities. This cannot be tolerated under the name of any international treaty or universal brotherhood or humanity. To add to the problem, the identity of bloggers or persons posting comments on the internet is protected, some people feel free to abuse, attack, defame, hate, hurt and harm others without fear of being held accountable.

### **Government's Unwarranted Control over The Media**

Control of the media by government does not make any sense in times when we have been overwhelmed by satellite television and the information revolution. The internet brings all the newspapers of the world to our personal computer. The information monopoly of the State violates the basics of the open society to which many of the developing countries seem to be attuned with. The right to know actually becomes real for the citizens when the media informs the public about what the government is doing. People now look to satellite channels for information and entertainment and conveniently sidetrack the state-run electronic media, which manipulates the news and views to a great extent.

Our press lacks maturity and needs training. Simultaneously we need to work on the media ethics. Guidelines for journalists should be developed and published, even circulated to the government and non-government organizations. Right to know is too important to be entrusted to the media alone. The media must rise above the personal interest and must cater to the larger national interest. Recently, on the occasion of the launch of Kashmir Tribune, the Jammu and Kashmir Governor Mr. N.N. Vohra observed:

The role of media has increased manifold over the years and the impact of media reports has acquired enhanced significance. It is a responsibility of media to maintain visible impartiality through unbiased reporting. The media impacts governance, society and the course of events. An objective and a balanced media coverage of varied important issues relating to socio-economic development, governance and democracy would make an important contribution in protecting and enlarging the public interest. An excessive zeal to praise or blame cannot be the basis of good reporting.

All of over 50 cartoons liberally sprinkled through the pages of political science and social science textbooks for classes IX to XII that have invited the ire of Parliament target politicians, in particular former prime ministers Jawaharlal Nehru and Indira Gandhi. Politicians are the subject of satire over pleading for votes to ticket distribution to relatives, the possible criminal-politician nexus to walkouts in Parliament, being evicted from the House by the Speaker and toppling of State Governments, to haggling over a particular portfolio and supporting and opposing Bills and so on. As many as 13 cartoons, the sharpest in the book target Indira Gandhi. They show her presiding over and overpowering an emaciated Cabinet, depict the Emergency, her picking state chief ministers of her choice and crowning Sheikh Abdullah J&K chief minister, her pushing V.V. Giri as president, and make a note of her literally sweeping polls post the Janta Party rule, her discomfiture just before Emergency as well as her tiffs with the Syndicate.

However, it is submitted that there should be some rigorous research based method to guide the decision-making process, as opposed to rejecting cartoons on the anaemic grounds of "political sensitivity" and "ambiguity". Then the discussion can turn away from narrow considerations of personal interests and sensitivities, and towards a rational debate that can serve as a vivid example of politics at its best.

The censorship regime in India, besides being state controlled is also, many a times, influenced by social pressure. Though laws are there to govern and guide those in charge of executing the legal censorship, but once the masses resort to protests, attacks, verbal and physical, on those making the expression then the rule of law gives up. Often, either the State buckles to public pressure to impose some sort of ban on the expression, or those making the expression themselves step down. In rare circumstances, the expression is allowed to prevail. Thus, in this area of extra-legal censorship, strict policies and regulations are required, so that censorship is governed by reason and not by popular sentiments.

### **Lack of Codification of Parliamentary Privilege**

The very concept of Parliamentary and legislative privilege is outdated in an age of information and accountability. The public's right to full knowledge about the performance of their elected representatives in Parliament or in the assemblies is a matter of larger public interest and must override unwarranted privileges and immunities. Unfettered immunity yields opacity, not transparency, and is, therefore, clearly anathema to the spirit of a modern democracy.

The authors of the Constitution intended that Parliament would define its privileges. This is clear from the words of Article 105(3). It is time that privileges are precisely defined and limited to the minimum that is necessary for

protecting free debate in the House. There is a need for codification of the privileges of the members of Parliament and legislators and appropriate amendments to the Official Secrets Act to enable the press to function properly and effectively.

### **Unfair and Unethical Media Behaviour**

With a view to create sensationalism in the era of TRP'S, the media often indulges in unethical behaviour, sometimes crossing the limits of decency. There is no dearth of data to suggest that these kinds of reporting generate a lot of revenue for the media. Be it circulation figures for the papers or TRP ratings for the TV channels, all of them take a hike. The centrality of the issue is often lost in the way the media sometimes treats certain incidents. There is no law which can compel a media outlet to give full and fair information or prevent suppression, varnishing, garbling and distortion of facts, or motivated reportage or mixing comments with facts. Only journalistic ethics may be invoked against such misconduct. However, there is another side to it also. Freedom of the press stems from the right of the public, in a democracy, to be informed on the issues of the day, which affect the public.

The media industry has established tribunals that affect to regulate media ethics through adjudicating complaints by members of the public who claim to have been unfairly treated by journalists and editors. Complaints about newspapers and journals may be made to the Press Complaints Commission, a private body funded by newspaper proprietors. The Press Complaints Commission has formulated a Code of Practice to be followed by the press. It has no legal powers, but its adjudications will be published by the paper complained against, albeit usually in small print and without prominence. The Press Complaints Commission has been regarded as public relations operation, funded by media industries to give the impression to Parliament that the media organizations can really put their houses in ethical order without the need for legislation. Similarly the National Union of Journalists has a code for its members, which they are all expected to follow. However, the code is seldom enforced.

Movies today seem to explore explicit themes of sex and violence unabashedly, and not surprisingly, attract an audience too. But how these are advertised in the public space needs to be examined. Gun holding and scruffy hooliganism have become sexy, cool and commonplace in our movies. And randomly shooting at people is seen as fun. It is, undoubtedly, true that one can decide on not watching or taking one's children to watch such movies. But when newspapers, traditionally seen as family reading give pride of place to such ads and posters, it makes it much harder to explain why being rowdy and using guns is not right.

The trend of media houses reporting murders, rapes and burglaries accompanied by graphic descriptions that out shadow much of the other news. An unfamiliar reader might even believe that we are a nation of bad governance punctuated by perverted and violent actions. And one shudders to think what children who read these newspapers might be thinking. It is, no doubt, difficult to raise one's children totally sheltered from the negative influences of the world; but to be forced into believing that violence is a natural way of life is undesirable and wrong.

The film industry and media need to review this with more responsible intentions. Sensational headlines that insinuate excessive sex and violence are irresponsible attempts to garner readership or viewership, and influence impressionable minds.

Such like incidents raise concerns about how media is flouting ethics in the race of becoming big power houses. Thus, there is a need to ensure that the right of freedom of media is exercised responsibly. It is for media itself and other concerned to consider as how to achieve it.

### **Lack of an Effective Media Policy**

The increasingly complex and elusive media landscape has thrown fresh challenges to an unsettled ecosystem of media policy in India. Advanced communications technologies have fundamentally altered the ways in which information and meanings are delivered, organized and received. These new advancements call into question the efficacy of existing policy approaches to media, including the still-dominant conventional media.

The multiple bills introduced in the last decade reveal a fragmented framework shaped as much by the Indian state's staggered acquiescence to corporate interests as by the entrenched colonial structures of governance aimed at "reining in" the media, or using the technologies for targeted surveillance.

Regulatory authority is currently divided between several government departments, even as the Communication Convergence Bill (2001) and Broadcasting Service Regulation Bill (2007) are still far from realizing their stated objective of introducing a comprehensive and coherent policy framework. It is thus one of the most crucial moments for media policy discussions to funnel their energy towards a meaningful debate, since the unsettled character of today's advanced communication systems is not our burden; it is our chance to act.

### **The Misuse of article 19(1) (a) and the current scenario**

Nowadays, Free speech has now been in the form of curtailment against the right to speak against what is wrong. As the saying rightly goes – Free speech is a guaranteed right but nowadays the citizens take the full liberty to give out information that is false. A country like India where the necessity of free speech is to bring in change for the good is now seeing the change in the wrong sense.

For example, the recent statement of Sr. Adv. Dushyant Dave regarding the opaqueness of the collegium and the transfer of Justice Jayant Patel had led to the issue of contempt proceedings against him. Free speech is a necessity to introduce changes and alter the wrong actions or activities committed by the government. But whenever a wrong is pointed out, it is taken as an insult or defamatory matter or the like. Distribution of wrong information also forms a part of the problem. Looking at the recent situations, it is necessary that a limitation is necessary on the distribution of such wrong and incorrect statements that ultimately influence those people who are illiterate.

The reasonable restrictions imposed on the fundamental rights are meant to control the use of free speech. However, nowadays there are attempts to violate such restrictions in the form of hate speeches which can be spread by masses or by social media. The spreading of hate speeches against a particular community or caste or religion can have very bad consequences in the future.

The media too is now very much inclined towards the spreading of false news and wrong information to the masses.

This goes against the very ethics of the freedom of the press which has been guaranteed to us by the Constitution makers. Sometimes even the media goes to the extent of defaming a person without proper proof as seen in numerous cases. The grant of free speech as a right guarantees the right to people to speak matter about which they have no information about or no knowledge about. If truth is let out, it is denied and then silenced after a pretty long gap.

The current situation of free speech in India is deteriorating as people are more inclined towards accepting what is wrong and is against what is actually right. Paid news is a very good example of this. It is important that such methods be curbed and laws passed be made stringent so that people do not get to misuse this right without substantive proof.

### Conclusion

The freedom of speech and expression lay at the foundation of all democratic organizations. Therefore freedom of speech is of paramount importance in a democracy.

Hence it is concluded here that the freedom of speech in India has been a boon granted to us by the Constituent Assembly, in the preamble and under article 19(1) (a) However, in the current scenario, it had been granted to us is used in such a way that it imposes a hindrance in the life of the citizens.

The use of social media and other websites for the purpose of sending messages to the citizens must be under scrutiny as there could be a possibility of the freedom of speech being used for dangerous purposes.

The very essence of a democratic nation lies in public discussions and debates which can help the government and authorities mend its way of functioning so that the citizens can have the feeling that the State is indeed a welfare state and is working for the welfare of its citizens.

Therefore a careful and knowledgeable use of the freedom to speak and disseminate correct information will help create a better society and the dream of a Welfare State will be realized.

### References

1. Madhavi Goradia Divan, Facets of Media Law, 2010.
2. DD. Basu, Introduction to Constitution of India, 25<sup>th</sup> edition
3. AIR 1950 SC 124
4. AIR 1957 SC 620
5. AIR 1960 SC 633
6. Right to information act, 2005, section 8 1 (a)
7. General Clauses Act, 1897, Section 3 (38)
8. Superintendent of Police Central Prison v. Ram Manohar Lohia AIR 1960 SC 633
9. State of Bihar V. Shailabala Devi, AIR 1952SC 392
10. <http://www.legalservicesindia.com/article/1830/Critical-Appraisal-to-the-Existing-Framework-of-Freedom-of-Speech-and-Expression-In-India.html>
11. [https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/right-to-freedom-of-speech/?amp\\_js\\_v=a6&amp\\_gsa=1&amp=1&usqp=mq331AQKKAFQArABIICAw%3D%3D#aoh=16406632698288&referrer=https%3A%2F%2Fwww.google.com&amp\\_tf=From%20%251%24s&ampshare=htps%3A%2F%2Fblog.ipleaders.in%2Fright-to-freedom-of-speech%2F](https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/right-to-freedom-of-speech/?amp_js_v=a6&amp_gsa=1&amp=1&usqp=mq331AQKKAFQArABIICAw%3D%3D#aoh=16406632698288&referrer=https%3A%2F%2Fwww.google.com&amp_tf=From%20%251%24s&ampshare=htps%3A%2F%2Fblog.ipleaders.in%2Fright-to-freedom-of-speech%2F)
12. <http://www.legalservicesindia.com/article/1830/Critical-Appraisal-to-the-Existing-Framework-of-Freedom-of-Speech-and-Expression-In-India.html>
13. <https://www.iilsindia.com/blogs/right-freedom-speech-expression-vis-vis-freedom-press/>