

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

---

**Volume 3 | Issue 5**

**2020**

---

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [editor.ijlmh@gmail.com](mailto:editor.ijlmh@gmail.com).

---

# Striking a Balance between Press Freedom and Government Control over Media

---

MRIGANK VAIDIK<sup>1</sup>, HINDOL BANERJEE<sup>2</sup> AND SHUBHAM KUMAR<sup>3</sup>

## ABSTRACT

*India is a democratic country with a system of government in which all the people of the country have the right to voice their own respective opinions. Thus, journalism plays a quintessential role in propagating the same. Freedom of speech is so firmly embedded and established in the Constitution of India through Art. 19 (1) (a) guaranteeing all citizens shall have the right to right to speak and express. With the growing population and its demands in our country, media has become an integral and intrinsic part of the Indian society, Thus along with the executive, legislature and judiciary, media has also become a significant part of our Indian constitution. Throughout the years the press played a potent role in building and developing positive changes in the public interest in issues of all kinds i.e., national movement, social, cultural, political and economic, Thus creating an intellectual contact between the people. It has become immensely important that there must exist a right balance between politics and journalism as the development of a country is entirely implicated with politics, and journalism acts as a watchdog for the people of the country and fulfilling the interest of the public through scrutiny and constructive criticism of politics. It was very adeptly put by justice Louise Brandeis of the US Supreme court that "Freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth." It is therefore very important to ensure there is no misuse against political control over media by politicians and administrative bodies and make sure that there is development in regulatory safeguards against political control over media in India. Journalism must be at all cost transparent and independent and there must not be governments using fundings to push their agendas and thus creating a biased outlook for the audience.*

**Keywords:** *Journalism, Constitution of India, Freedom of speech, media, US Supreme Court, Regulatory safeguards, Administrative bodies, Political control.*

---

<sup>1</sup> Author is a student at KIIT School of Law, Bhubaneswar, India.

<sup>2</sup> Author is a student at KIIT School of Law, Bhubaneswar, India.

<sup>3</sup> Author is a student at KIIT School of Law, Bhubaneswar, India.

## **I. BACKGROUND: LIBERTY OF THE PRESS**

The concept- Liberty of press first originated in England. It's a fact that most of the countries gained their rights to speak and express of the press after lots of scuffle and tussle between the public and the statutory authority, likewise, England also got its right of free expression and opinion. The press was under the clutches of meticulous blackout and restriction. Press was unable to publish any matter or story without prior permission of the licenser and violation of this could lead to very dangerous consequences. Political discussion silenced by the licenser, the Star Chamber, the dungeon, the pillory, mutilation and branding.<sup>4</sup> There came a Bill of rights in 1688, But in that Bill, rights of the press were not mentioned, then came the year 1765 which came with the promising future for the right of press when the public refused to renew the old licensing act, this lead to the concept of the free press.

Blackstone communicated his perspectives that the right of the press was surely fundamental to local of a State and the freedom as he assumed was liberated from any past limitations upon distribution yet State could make a move on the issue when it was distributed furthermore, was ill-advised, naughty or unlawful.<sup>5</sup>

In the USA, the right of the press has been safeguarded in the constitution of the state. In the First Continental Congress which was held in 1774, a resolution was passed to be followed by the state constitutions. There were five priceless rights referenced in the statement of rights by Congress and one of the most valuable rights was the opportunity of the press.

### **POSITION OF THE PRESS IN INDIA – PRIOR 1950**

Before the arrival of the Indian Constitution, no importance was given to the constitutional pronouncement of right to speak and express or freedom of the press. The original set of guidelines of 1799 was outlined by Governor-General Wellesley to counteract the attestation of the opportunity of the press by a part of Englishmen in the wake of the British standard in India.<sup>6</sup> The guidelines demand newspapers under the torment of punishment to print the names of the printers, distributors and editors of papers and to present all material distributed in that for pre-censorship by the Secretary to the Indian government.<sup>7</sup> In 1818, these guidelines were replaced by not so strict guidelines of Governor-general Lord Hasting who recommended a free press. It was during Hastings' time that the first Indian owned newspaper, namely, Bengal

---

<sup>4</sup>Dr. Virender Sindhu, Historical background of freedom of press in India, 3, International journal of advanced educational research, p. 1 (2018)

<sup>5</sup>Blackstone, William's Commentaries (1769), p. 145 quoted in M.S.M. Sharma v. Sri Krishna Sinha, AIR 1959 SC 395, p. 401.

<sup>6</sup>See Report of the Press Commission, Part II (1954) at pp. 4-9.

<sup>7</sup>Margarita Barns, The India Press (1940)

Gazette was started in 1816 by Shri Gangadhar Bhattacharjee.<sup>8</sup>

Raja Ram Mohan Roy most unmistakable front author of the Indian reporting distributed in Calcutta without precedent for the year 1820 the English 'Brahmanical Magazine'. In the exact year, he additionally began the distribution of India dialects papers in Bengali and Persian. Toward the finish of the 18<sup>th</sup> century, Roy was the primary Indian to utilize the press administrations brought into the nation by the different Englishmen to spread his social change thoughts to the Indian scholarly in Bengal. He was the First Indian who stood against the British government for not granting freedom to the press. The Ordinance and existing guidelines in British India were supplanted by the Press Act 1935 prominently known as the Metcalfe's Act, which just required the printer and distributor of each paper to pronounce the area of the premises of its distribution. In the event of any change, a new statement was required. The Act recommended a fine of rupees 5,000 and detainment for a term not surpassing two years for not agreeing to the necessity of presentation.<sup>9</sup> Sir Charles Metcalfe, acquire a practical attitude towards the press and asked Lord Macaulay, Law member of Governor-general in council to revise the existing laws regarding licensing regulation of the press. Macaulay was, along these lines, for establishing enactment in the spot of the current one which would empower a printer to distribute without acquiring earlier authorization yet at the same time make him liable for punishment for printing sedition. Until 1860 the Indian press included no recognizable impact inside the nation, it grew gradually with the single special case of Bengal. The Indian Penal Code 1860 was enacted. Though the Act was not coordinated explicitly against the press, it set down offence which any author, editorial manager or distributor must dodge, for example, the offence of criticism, profanity and advancing hostility between various classes.<sup>10</sup>

Toward the start of the twentieth century, the Newspapers Act, 1908 and the Indian Press Act 1910 which came into power during the main decade of this century were planned to forestall progressive exercises in India and limited the opportunity of the press even more. The previously enabled the nearby power to make a legal move against the editor of any paper for distributing matter which in its view was an instigation of defiance. The Second Act required managers of print machines and distributors of papers to store security and enabled the chief to relinquish the security in specific cases. Under the Act orders could be given for search warrant, property seizures and relinquished and articles in transmission by post confined.<sup>11</sup>

---

<sup>8</sup>See Report of the Press Commission, Part II (1954) at p.17

<sup>9</sup>Margarita Barns, *The India Press* (1940)

<sup>10</sup>Dr. Virender Sindhu, Historical background of freedom of press in India, 3, *International journal of advanced educational research*, p. 3 (2018)

<sup>11</sup>Dr. Virender Sindhu, Historical background of freedom of press in India, 3, *International journal of advanced*

Report prepared by Motilal Nehru Committee in 1928, which is also recognized as Nehru report brought several enjoiners related to the incorporation of fundamental rights which also includes Rights to speak and express one's own opinion. Unfortunately, this report failed to bring any change.

### **POSITION OF THE PRESS IN INDIA - AFTER 1950**

In 1950, India adopted a new Constitution which modified the position of Press in relation to its freedom. According to the Constitution, "all citizens shall have the right to freedom of speech and expression".<sup>12</sup> SC of India through its various decision Made it clear that freedom of the press is a latent part of freedom of speech and expression.<sup>13</sup> The Newspaper Act 1956, was instituted to prevent unjust rivalry among papers by controlling the costs charged by them. Under this Act, the administration declared the Daily Newspapers Order 1960 subsequently fixing the greatest number of pages that may be distributed by a paper as per the cost charged and recommending the number of enhancements that could be given. This was challenged in the Supreme Court by a portion of the papers as violating the Right to speak provided by the Constitution in Sakal Papers v. Association of India.<sup>14</sup> After that, the act was replaced by the Newspaper (price control) Act, 1972, which also got struck down after two years. At present, there is no control of price over the newspaper.

## **II. CONSTITUTIONAL INCORPORATION**

A constitution is the base of every legal system in a country. This same goes with Indian legal system also, every single right, liberty, freedom, power and liability is attached to the constitution itself and is according to principles of the constitution. Likewise, liberty of the press has also been added to the Constitution, and if people want they can invoke this freedom anytime they want.

### **It has been assimilated in the Constitution in two facets:**

1. Preamble
2. Right to freedom of speech and expression<sup>15</sup>

#### **(a) Preamble**

The preamble is called the heart and soul of the constitution and constitution starts with

---

educational research, p. 4 (2018)

<sup>12</sup> INDIA CONST. art.19, §1, cl. a

<sup>13</sup>Ramesh Thaper v. State of M.P., AIR 1950 SC 124 ;BrijBhushan v. State of Delhi, AIR 1950 SC 129

<sup>14</sup>AIR 1962 SC 305.

<sup>15</sup>INDIA CONST. art.19, §1, cl. a

preamble itself, therefore it is considered as a vital part of the constitution. A word 'liberty' is mentioned in the preamble of the constitution, which means that every individual of the country has the freedom of thought, ideas and belief. The freedom of thoughts and ideas incorporate in itself the right of an independent press. The core of the Article 19 says that everybody has the occasion to impart their tendency and verbalization, this advantage intertwines the occasion to hold closes without block and to look for, get and grant data and considerations through any media and paying little mind to edges.<sup>16</sup>

### **(b) Constitutional provision**

Post-independence, Framing of Constitution got started and a dilemma arose in the minds of the members of the Drafting Committee, that whether to have a distinct regulation regarding freedom of the press or to include it in the freedom of speech and expression. In this regard, Dr BR Ambedkar kept his point that "The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editors of the press or the manager are all citizens and therefore when they choose to write in the newspaper they are merely exercising their right of freedom of speech and expression and in my judgment, therefore, no special mention is necessary of the freedom of the press at all."<sup>17</sup>

There are 6 rights stated in Art. 19 of the Constitution and rights of the press is mentioned in Art.19(1)(a) of the Constitution. Every right comes with some restriction, so here Art.19(2) - 19(6) are the restriction to those rights.

In the case of Re Daily Zemmedar,<sup>18</sup> "It was held by the judge that printing and publication of the news was the important part of the press." In the case of Gopal Dass v. D.M.,<sup>19</sup>

"it was laid down by the court that Freedom of press Includes printing of editor's views." "The option to free press incorporates to distribute sees as well as incorporates to administer and course those perspectives in the whole society as was chosen in Romesh Thappar, v. Province of Madras."<sup>20</sup>

### **III. REGULATORY BODIES OF THE PRESS**

Press in India is generally self-governed. But for the government to have an overwatch, there

---

<sup>16</sup>Manoj Kumar Sadual, Freedom of Press in Indian Constitution: A Brief Analysis, International Journal of Applied Research 2015; 1(8): 194 -198

<sup>17</sup>[https://shodhganga.inflibnet.ac.in/bitstream/10603/173762/9/09\\_chapter%202.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/173762/9/09_chapter%202.pdf) (FREEDOM OF PRESS: THE CONSTITUTIONAL PERSPECTIVE.)

<sup>18</sup>AIR 1947 Lah 340

<sup>19</sup>AIR 1974 SC 213

<sup>20</sup>(1950) SCR 594

are bodies such as Press Council of India (PCI) which is a statutory body and News broadcasting standards authority (NBSA), a self-governed organisation, which set standards and issue guidelines for the press and media.

### **1. Press council of India(PCI)**

The PCI was set up under the PCI Act of 1978 for welfare of the press and keeping up and improving the standards of papers and news associations in India.

PCI comprise of a chairman and 28 other members. Chairman is elected by the Lok sabha speaker, Rajya sabha chairman, and selected individual by the body. PCI helps the newspapers in maintaining their independence, construct a set of principles for writers and news organizations, encourage responsibility among residents and audit improvements prone to limit the stream of news.<sup>21</sup>

### **2. News Broadcasting Standards Authority(NBSA)**

NBSA is an autonomous body established by the News Broadcasters Association. Its assignment is to contemplate and arbitrate upon grievances about transmissions. It consists of a Chairman, four persons with special knowledge and field experience of law, education, medicine, science, public administration, consumer affairs, environment and human psychology.<sup>22</sup>

## **IV. POLITICAL INFILTRATION IN PRESS & BALANCE BETWEEN GOVERNMENT AND INDEPENDENT MEDIA**

The Position of Press and the government is so intertwined in India, that essentially makes it very difficult to sustain the Freedom of Press. If we are to actually reflect upon the history of Freedom of Press in India post independence we will find there have been several instances where the government has curtailed freedom of the press and put restrictions on the same. In 2020 India's Press freedom ranked an appalling 142<sup>nd</sup> out of 180 countries as per the freedom of press index an annual ranking published by "Reporters without Borders" (RWB), which is essentially an International non-governmental organization dedicated wholly for safeguarding the right to freedom of information by the press.<sup>23</sup> However, the point to note is that this is not

---

<sup>21</sup><https://www.prsindia.org/theprsblog/regulation-media-india-brief-overview>( Regulation of media in India : A brief overview)

<sup>22</sup>[https://www.ibfindia.com/news-broadcasting-standards-authority-nbsa#:~:text=News%20Broadcasting%20Standards%20Authority%20\(NBSA\)%20Back,The%20nine%2Dmember%20Authority%20comprises%3A&text=Four%20eminent%20editors%20employed%20with%20a%20broadcaster.\(News Broadcasting Standards Authority\)](https://www.ibfindia.com/news-broadcasting-standards-authority-nbsa#:~:text=News%20Broadcasting%20Standards%20Authority%20(NBSA)%20Back,The%20nine%2Dmember%20Authority%20comprises%3A&text=Four%20eminent%20editors%20employed%20with%20a%20broadcaster.(News%20Broadcasting%20Standards%20Authority))

<sup>23</sup>Jha, Fiza (21 April 2020). "Pressure to toe Hindutva line' sees India drop to 142 on World Press Freedom Index"

a sudden sharp ameliorating increase rather over the last 20 years we can see that India has consistently ranked out of the top 100 with the lowest coming in 2001 at 106th.<sup>24</sup> The Decline in the Index ranking can be attributed over the years to the increased risk to journalists and their killings, restrictions imposed on the news media and the censorship in Kashmir and also the very recent protests surrounding the Citizenship Amendment Act, for which the government restricted media coverage of the same stating these demonstrations as “Promotion of anti-national attitudes” as well as prevention of Law and Order in the country.

History of Political Infiltration and freedom of press Post Independence: The first significant instance of Curtailment of freedom of the press in India and censorship in journalism media was discerned during the Emergency proclaimed under the Indira Gandhi, Under the emergency, the freedom of speech was suppressed like never before. Censorship was at its zenith with every piece of news had to undergo scrutiny done by the government before going to print. This essentially created a totally biased and draconian regime with no possibility to scrutinize the actions taken by the government during the emergency period.-During this period of emergency, RSS inspired magazines and newspapers played quite a major role. This was the vehement reason that many such magazines and newspapers did face the wrath and chagrin of the then government. Some of the titles of these magazines and newspapers to name a few are Panchajanya, Organiser, Motherland, Tarun Bharat, Vivek, Vikram, Rashtradharm, Yugdharm. The supervisor of Motherland and Coordinator K.R Malkani was the primary correspondent captured during the crisis and stayed in prison till the finish of the emergency.(Rakesh Sinha, Raajneetik Patrakarita, p. 108)

To quote Malkani further writes, “Motherland was the only newspaper in the nation which in its release distributed on 26th of June educated individuals about crisis as well as illuminating individuals about captures and fights at the public level against crisis. He further composes that the power of the homeland office arranged at Jhansi Road, Jhandewalan, New Delhi, was cut however there was light at neighboring office 'Janyug', the socialist mouthpiece. (K.R Malkani, The midnight Knock, p. 1). Also Subsequently later, 253 reporters were jailed under the M.I.S Legislation.<sup>25</sup>

The attack on the press and media freedom was so blatant by incorporating measures which the higher judiciary found to be absolutely illegal and illegitimate was paralysing to the spirit of democracy.

---

<sup>24</sup>"2020 World Press Freedom Index". *Reporters Without Borders*. 2020.

<sup>25</sup> <https://www.organiser.org/Encyc/2019/6/25/When-Freedom-of-Speech-and-Press-were-by-completely-curtailed-by-Congress-and-Indira-Gandhi-during-Emergency.html>

The media and press had to strictly adhere to the despotic rules and regulations set up by the legislation and pressures formed by the government, all this led to a pathetic situation of the press. Some of the extracts from the Shah commission report below will reflect the issues then by highlighting the situation:

- During the first few days, the censorship contraption and apparatus was being set up, the power supply to the newspaper offices was disfavoured.
- Proceedings in the Court as well as the Parliament was also subject to censorship.
- During the emergency, legislation was actively amended and subsequently enacted to make censorship an important part of the ordinary law of the land. Legislation surrounding Prevention of publication of objectionable matter act was passed delivering a Coup de grace to any left means of freedom left in the press.
- In practice, any news or form of media which directed at criticizing any government action or news unfavourable to the government or unfavourable to the supporters of the Congress Party was censored outright.
- Not merely court judgement were censored but directions were given as to how the judgement were to be pronounced and given.
- The work of censorship went beyond the scope of the guidelines and was issued sometimes even orally and was constantly changing on a day to day basis with absolutely no ounce of absolutism or solidity of any kind.<sup>26</sup>
- There were also some other coercive pressures put forward by the Government such as Newspapers were graded into categories such as “friendly”, “hostile” and “neutral” and the political affiliation and consideration were one of the main and important criteria for giving advertisements.

The functioning of the daily news and Samachar during the time of the emergency was both administratively and editorially supervised by the government.<sup>27</sup>

Thus basically the Promulgation of the emergency gave succour by the government at the time to brazenly create a more imperious, illiberal and absolute situation in the country which could help sustain the term of the Ruling party by receiving no criticism on the administration.

---

<sup>26</sup>Kumar, Virendra; Agrawal, S. P. (1993). 1977. *Volume 15, Part 1 of Committees and commissions in India*. Concept Publishing Company. ISBN978-8170224846.

<sup>27</sup>Sarkar, JnanadhirSarma (1990). *Commissions of inquiry: practice and principle with up to date case laws and commentaries*. P.18, APH Publishing. ISBN978-8170243311.

This was a first major situation where the government tried to directly control the media and press by bringing in legislation and framework of rules taking out the spirit of democracy and free speech from journalism which essentially caused the media to no longer be representative of the common consensus of the people. Since then it has again recurred from time to time and can be attributed even in the present.

In 2020, The then *Press Council of India*, a state-owned body argued consistently and constantly that the government authorities, including state police's censorship on mass media and journalism, is unfavourable and hostile adducing "intimidation" of journalists and "curtailment" of press freedom in the country. The several country's news outlets and the journalists which were associated with them were allegedly inculpated with *sedition* and *criminal prosecution* charges by the authorities. The Press Club of India (PCI) described charges against journalists "string of seemingly malafide actions". The organization further claims the *federal government of India* responsible for unfavourable-censorship on press and journalists. The *International Press Institute* (IPI), an International organization dedicated to the improvement and enhancement in the freedom of journalism and also journalism in overall practices stated that the government of India responsible for restricting journalists covering *COVID-19 pandemic*-related reports in the country.<sup>28</sup> The Ministry of Information and Broadcasting also blocked the "MediaOneTV" temporarily for covering news about the mob attacks on the Muslims in the country's capital of New Delhi. The Government also restricted the media coverage of the protests relating to the Citizenship Amendment Act (CAA) and NRC in several parts of India citing that these sparked Anti-National attitudes within people and also prevented law and order in the country, sometimes over the last few years the government has also only allowed media to publish news which is favouring the regime or is neutral while the news which is criticizing the economic and political problems relevant in the social context is ignored or face government-issued warnings.

It's not just domestic press agencies or media outlets that are facing the situation, but in the last decade or so the Indian government has repeatedly given warnings to International and foreign newspapers and news outlets like BBC, CNN, Al Jazeera, The Economist and The Huffingpost post to name a few, for portraying the image of India negatively.<sup>29</sup>

Apart from the direct and unmediated ownership, an advertisement can also be a medium for potential control over editorial content since more and more media show greater dependence

---

<sup>28</sup>Kamdar, Bansari. "COVID-19 and Shrinking Press Freedom in India". thediplomat.com.

<sup>29</sup><https://thewire.in/media/press-freedom-in-india-over-the-years>, "India As Seen From Abroad: Why Government Is Angry With Foreign Media". [www.outlookindia.com](http://www.outlookindia.com).

on advertisement revenues. Therefore, it is probably fair and redressable to say that Indian media, especially more so these days, is rather a profit and commercially than conviction or truth driven. Through the financial reliance by the media houses on state promotions to fall in line of delivering great inclusion for the administration. A clear, straightforward and autonomous inclusion of substance gets bargained vigorously a lot by method of such 'delicate weight'. Frequently, there is an undetectable weight (which can be effortlessly felt by the crowd), for a paper, or a TV slot to verbalize the perspective of the legislature in a hostile issue. This reliance turns out to be progressively dangerous when media houses bring in extra cash through conveying, specifically, government commercials unequivocally this adds to the spread of their plan.

Sadly, It is very unfortunate that today there are no proper and consistent safeguards and remedies which helps in regulating against the political control over media in India. The Indian laws prevalent here absolutely do not restrict in any firm manner the political ownership in television or print media with the only exception being radio, where political parties or members whereby are disqualified from applying for a license to operate a radio station. However, Radio is barred and impeded from broadcasting independent news. There is no mandatory requirement to disclose political affiliations of the owners or of their family members<sup>30</sup>

## **V. RESTRICTIONS ON FREEDOM OF PRESS**

The freedom of the press comes under the head of freedom of speech & expression. In a democratic country, freedom of the press is appreciably critical because it acts as an observer on the three epic organs of a democratic nation i.e., the legislature, the government and the judiciary. But, the freedom of the press is not boundless in nature. It's difficult to positive regulations which are probably noted under Article 19(2) of the Constitution. The restrictions provided under Article 19(2) are: -

1) Security of the State - Under Article 19(2), the term “security of the state” refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray.

2) Friendly connections with the Foreign States – It was inserted by the constitution (First Amendment) Act, 1951. The motive behind this provision is to restrict unrestrained malicious

---

<sup>30</sup><https://india.mom-rsf.org/en/findings/politicalaffiliations/>

propaganda against a foreign-friendly state, which may compromise the improvement of good relations between India and that foreign state.

3) Public Order - It was added by the Constitution (First Amendment) Act, 1951. 'Public order' is an expression which denotes, "that state of tranquillity which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established."

4) Decency or Morality - The terms 'morality or decency' are expression of extensive meaning. Sections 292 to 294 of the Indian Penal Code provide illustration in the regard of decency or morality.

5) Contempt of Court – Limitations can be imposed if it exceeds the logical and equitable limit and constitute to contempt of court. According to Section 2 'Contempt of court' may be either 'civil contempt' or 'criminal contempt.'

In protecting freedom of the media, the Supreme Court issues the feature of sentinel at the *qui vive* i.e., it determines the constitutionality of impugned statutes. It is the constitutional commitment of all courts to make sure that the policies inflicted through the exercise of a law at the media are economical and concern to functions laid out in Article 19(2).<sup>31</sup> The mere fact that a regulation confers discretion on the government may want to no longer invalidate the law as being unreasonable, so long as it lays down a coverage as to whilst discretion have to be imposed.<sup>32</sup>

In identifying reasonableness of a restrict, the Supreme Court evaluations it under the average prudent guy elegant<sup>33</sup> and is guided by way of the usage of sure different principles, viz., (i) the restrict have to, (zero strike a balance among freedom and social manage<sup>34</sup>(ii) go through a sensible and straight relation to the item that the legislature aspire to control<sup>35</sup> and (iii) no longer be inconsistent or unrestricted.<sup>36</sup> In *State of Madras v. V.G. Row*, Chief Justice Patanjali Shastri of the Supreme Court stated: The test of reasonableness, wherever authorized, should be registered to each individual statute challenged and no abstract standard or common pattern of reasonableness can be laid down as relevant to all cases. The nature of the moral alleged to have been violated, the underlying grounds of the restrictions forced, the extent and importance of the evil sought to be remedied thereby, the disproportion of the enforcing, the prevailing

---

<sup>31</sup>Express Newspapers Pvt. Ltd. v. Union of India. A.I.R. 1958 S.C. 578 at 618

<sup>32</sup>Virendra v. State of Punjab. A.I.R. 1967 S.C. 396

<sup>33</sup>H.B. Khare v. State of Delhi, A.I.R. 1950 S.C. 211.

<sup>34</sup>Dwarka Prasad v. State of Uttar Pradesh, A.I.R. 1954 S.C. 224 at 227

<sup>35</sup>Arunachala Nadar v. State of Madras. A.I.R. 1959 S.C. 300 at 303

<sup>36</sup>Romesh Thapper, supra note 1 at 124

conditions at the time, should all enter into the judicial verdict.

## **VI. PRESENT SCENARIO OF INDIAN MEDIA**

With the advancement in generation and industrialization, the function and significance of media has widened within the lives of individuals. Within the nowadays, Indian media has found yourself a critical medium to supply, “voice to the unvoiced” and to seek out the face of the reality; amidst growing corruption, hatred, and violence within the name of energy and politics. The media encompasses a large role in shaping and broadening the horizon of the attitude of the public additionally as making them aware of the incidents going down in society on a daily basis foundation. Since it's through the journalistic lens of media that the public sees the society and takes choices for it, it's miles of paramount importance to the media platforms to require an impartial approach closer to the incidents they report every single day. India is the largest democracy within the international. It offers area to people to freely express their critiques, and concomitantly there additionally exists room for confrontation, and one such important freedom is the freedom of the clicking. In very country like India, Indian media, a robust entity, has been defined because the “Fourth Pillar of Democracy.” Being one in all the pillars of the democratic nation of India, Indian media include a huge responsibility toward the making of the country because it influences human being's political leanings, and consequently permits them to form the correct selection while choosing a government.<sup>37</sup>

Though, the press has played remarkable roles for public comfort but now and then it reacts negligently. For example the virtual media plugged the Sushant Singh Rajput's case within the form of manner that different critical information became ignored. In Prof. Sabharwal's case, at the identical time as Prof. Sabharwal end up to be killed with the resource of ABVP activists, there had been a number of news channels & newspaper journalist were present and that they had evidence of the homicide but the media reacted carelessly and the police declared it as an ‘Open & Shut Case.’ When Mumbai became under terror risk in 26/11 the media acted unwisely through telecasting stay the long sixty-hour Operation Black Tornado carried out at The mausoleum Palace Hotel & Nariman House. It protected live feed of air losing NSG Commandos at the rooftop of Nariman House.<sup>38</sup>

However unfortunately it does now not. In April 2009, Union Home Minister P. Chidambaram become addressing the media at a press convention a journalist threw display on the minister on protest of acquittal of a Congress chief accused of leading Anti-Sikh riots in

---

<sup>37</sup>KANISHKA GAIROLA, [www.ingeniousscribblers.in/current-scenario-of-indian-media/](http://www.ingeniousscribblers.in/current-scenario-of-indian-media/)

<sup>38</sup>Mayukh Gupta, <http://www.legalservicesindia.com/article/217/Freedom-of-Press-In-India.html>

1984. The journalist named Jarnal Singh changed right into a reporter of Dainik Jagran, a close-by newspaper. Afterward he apologized to the Union Home minister for his act. This becomes one in all the utmost condemnable acts which confirmed the unsightly facet of the press. Within the beginning, news channels were considered as a reputable supply of ground reporting that supplied , ‘facts’ to humans. The inferences and judgement of the news was left to the judgement of proper and wrong of the positioning visitors. However, that may not be the case now. Today’s reporters and anchors normally circulate beyond the scope of simply ‘reporting’ the news with the useful resource of giving their private verdict of the matter, giving the positioning visitors little or no region to think on their own. Anchors of debates act greater like judges instead of mere mediators. The inclination of media houses within the direction of sure political parties , and commercial enterprise home have given rise to biased-journalism. They were used as gear to influence and tweak people’s mind. Political activities and company houses use them to growth their vote-bank and marketplace charge respectively. <sup>39</sup>

“Journalism is what maintains democracy. It’s the force for progressive social change.”

-ANDREW VACHSS

Recently, an FIR has been registered for fake TRP on Republic TV Media and Mr. Arnab Goswami. The corporate, and Mr. Arnab Goswami are charged under Sections 409 (criminal breach of trust by employee, or by banker, merchant or agent), 420 (cheating, and dishonestly inducing delivery of property), 120B (punishment of criminal conspiracy), and 34 (common intention) of the IPC.<sup>40</sup>

### **IMPROVING FREEDOM OF PRESS IN INDIA**

As we have already discussed the challenges faced by the press and Journalism in India with relation to its freedom and over the years how there has been several setbacks and instances which portrays how brazenly the government has tried to control the media to aid its own agendas and shield itself and the regime from criticism of any sort. The Constitution as we know protects media freedom through article 19(1)(a) stating all citizens have the right to freedom of speech and expression and the press freedom is encompassed within the ambit of the same. Despite there being such a definitive statute in form of the fundamental right , unfortunately India still ranks 142<sup>nd</sup> out of the 180 countries present as per the list given out by World Press Freedom Index by Reporters without Borders. Hence, We therefore find ourselves

---

<sup>39</sup>Shift from Voice of the People to Voice of Governance <https://fourthambit.com/fa/blogs/102048>

<sup>40</sup>Sonam Saigal, The Hindu

<https://www.thehindu.com/news/cities/mumbai/fake-trp-case-republic-tv-arnab-goswamy-move-bombay-high-court-to-quash-fir/article32883022.ece>

asking a very legitimate and reasonable question “That how our Country endowed with the spirit of democracy finds itself struggling to enforce such salient and key values”

This is a very grave and serious problem and is absolutely in breach of the very thing Our country being the world’s largest democracy stands for, that is Freedom for the people, of the people and by the people. So if the Media and press itself is not free from any sort of authoritarian control by the Government then how can we claim this to be true and pride ourselves on the very essence of it. There must be a balance and harmony maintained through independency between the government and Media/Press Outlets. There must not be any controlling of the press by the government unless the Press produces news which propagates Hatred or negativity within the society and communities. Just the mere fact that a Press agency has criticized the Government and some of its agendas should not qualify as Anti-national and against public interest and does not give the government any right to exercise control qualifying such news as that.<sup>41</sup>

#### **INDIA’S LEGAL FRAMEWORK REGARDING MEDIA/PRESS FREEDOM**

Fundamentally we have just one Article in our constitution (Article 19 (1) (a)) that grants the citizens freedom of speech and expression. Relying on this particular legislation and legal basis the Indian legislative institutions claim to be committed to the much broader context of the term Freedom of expression. Most of the Indian laws regarding the media are essentially of hybrid nature, advocating for an intrinsic balance between freedom of press and maintaining social order by the government. The Indian Press council is a statutory body which is present to implement and propagate more freedom of the press and create a balance with the government and its control with the government accredited with the power to moderate the freedom and oversee with “reasonable restrictions in the Interest of 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” as mentioned in the Article 19(2) of the Indian constitution.<sup>42</sup> Therefor the government is within its power to intervene when a speech or expression is made causing disruption in social order and peace. There are also more radical and extreme legislation which criminalizes any such speech that the government feels is limited under the article 19(2) of the Indian Constitution. One such law is the Sedition law which is probably the most radical of the legislation relating to freedom of speech and expression and basically it condemns any speech which is excessive

---

<sup>41</sup>Baba, J. (2014). Press Commission and Press Council of India, wecommunication, [Online], Available at: <http://wecommunication.blogspot.fr/2014/09/press-commission-and-press-council-of.html>

<sup>42</sup><http://www.cfom.org.uk/wp-content/uploads/2017/08/Student-Comp-2016-17-Final-India-case-study.pdf>

and is limited as per the article, the extent of this is not only any remark or expression by media or press so as to incite or create violence and public disorder but causes any disaffection of any kind or active discontent or estrangement against the government. This is extremely radical and the government has from time to time taken undue advantage of it by putting sedition charges against any press or media matter which criticizes the actions of the government. The importance of Journalism and press is to act as a watchdog and supervise the actions of the government and whether their actions live upto their campaigns and promised agendas, however with legislation in place such as the sedition law, the government is curtailing the media and its main function to represent the common consensus of the people by actively criticizing and asking questions about unresolved issues. This showcases that the legal framework of India is failing to vouchsafe for the journalists. The Journalists are threatened from several angles including the military in certain cases the Police and the administrative authorities that are in place. In Jammu & Kashmir the media is put to several restrictions and the military in place makes it impossible for the media to cover any issues near the areas of Kashmir and POK.<sup>43</sup>

The Courts are also not able to provide shelter for the journalists and Press groups as the Process dealing with any case involving the Freedom of speech is extremely slow and inefficient, along with this The procedure followed by the Supreme Court and other courts to deal with these issues when it comes to it is also very complicated and inefficacious and slow-moving in nature. All these factors make the independency and freedom for the Journalists and Press Outlets extremely difficult and restrictive in nature. Despite having an active body like “Press Council of India” and several other bodies with framework claiming to protect the right and freedom of the press we are still faced with such a situation and as a result India is ranked so low in the press freedom index.<sup>44</sup>

#### **HOW TO IMPROVE THIS SITUATION?**

To resolve this would require an active effort from the part of everyone, the Journalists and their union, The Judiciary of our Country, The Government and above all in our opinion The People. The people have a big part to play here and can also help actively in creating a better situation with relation to more freedom in press. The Scandinavian Countries and the western European countries mostly are doing quite well when it comes to freedom of press and this is because in countries such as Sweden and Norway etc there is transparency and the government

---

<sup>43</sup><http://www.cfom.org.uk/wp-content/uploads/2017/08/Student-Comp-2016-17-Final-India-case-study.pdf>

<sup>44</sup>Zittrain, J. (2010), 'The Internet and Press Freedom', *Harvard Civil Rights-Civil Liberties Law Review*, Vol.45, 563-576.

there are actively trying to update and provide detailed regulations dealing with any form of media present there be it internet news, TV news, Radio etc. I think Primarily India has to follow in the model of these countries and adhere to the overall standards and benchmarks put up by the Press Freedom Index with increased transparency with more systematic cogent and structured balance between the journalism/ press outlets and the government regulating bodies and also be transparent by providing all the information to the people themselves because essentially Journalism is aimed at representing people and voice their interests and demands.

The legal framework relating to freedom of press, from legislation to executive principles and rules in place by the administrative bodies present locally, everything has to uniformly change for the better and some of the radical laws must be altered and amended so as to improve transparency and decrease oppressive control by the government. New laws must be passed so as to improve the reasonableness when it comes to judging whether a speech or expression is seditious or not. Also any media agency or Journalism body which has a evident and clear political affiliation or any political interest vested through funding or financial backing etc. must be absolutely prohibited and disallowed to function as “News Carriers”.<sup>45</sup>

The Courts will have to be more expeditious when it comes to matters relating to freedom of speech and must have efficient and productive procedures in place and make the entire system less complicated and backlogged in nature.

Another way which could aid in improving and safeguarding the Freedom of press is if, NGO’s can engage local reporters not everything should be approached to the top news outlets there are many local reporters which are linguistically more appropriate and can be faster in reaching news matter to the targeted audience.

Internet is a Huge opportunity to further develop journalism and make the coverage wide and less prone to restrictions , The more the number of internet users the more the extent and reach of the media , therefore media should also diversify from their earlier traditional means and use Internet and Social media to their use to reach people, this would also make it less difficult for government bodies from restricting the same, and also bypass some of the extreme and radical legislation which make it extremely arduous and risky for the Journalists and press bodies. Therefore, Media Companies and Agencies should train their Journalists effectively by safeguarding them from not only physical but even psychological harm. Therefore, the paramount necessity is to increase the reach of Internet users and their numbers as in our

---

<sup>45</sup><https://www.theguardian.com/global-development-professionals-network/2015/may/12/12-ways-ngos-can-strengthen-press-freedom>

Country there are millions of people without any access to Internet or any know-how for as to how to use it effectively and know the truth of the social situation and not be blinded sometimes by the shadow cast by the government and political parties through their political campaigns before election time.<sup>46</sup>

The UN should exercise its power by creating necessary positive changes in Developing Countries like India for eg., as it is the global Standard bearer of Press Freedom and through UNESCO it should try to actively try and help the local level journalists and Press bodies to be empowered and safeguard them from their respective Governments.

To Conclude, It is Imperative that in a Democratic Country like India , there exists reasonable transparency when it comes to Freedom of press as the most paramount requirement is that the people of the country find out the truth and anything which affects this negatively and causes there to be lack of transparency and clarity must be unclogged and freed.<sup>47</sup> It is the Right of the People to Find out the truth and it is the primary function and duty of the Press to provide the same, no one can interfere and affect this harmony be it the government or any other institution.

\*\*\*\*\*

---

<sup>46</sup><https://theconversation.com/dear-foreign-secretary-heres-how-to-protect-journalists-and-press-freedom-111128>

<sup>47</sup><https://theconversation.com/dear-foreign-secretary-heres-how-to-protect-journalists-and-press-freedom-111128>