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# **MEDIA, THE FOURTH PILLAR OF DEMOCRACY: A CRITICAL ANALYSIS**

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LLM II (2022-2023)

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## **Media, the Fourth Pillar of Democracy: A Critical Analysis**

**ABSTRACT:** The phrase "Freedom of Press" is not specifically mentioned in the Indian constitution, but it is implied in Article 19(1)(a), which states that every person has a basic right to free speech and expression, and that media outlets are also allowed to exercise this right. According to the Indian Supreme Court, even if freedom of speech and expression in the media is not explicitly protected as a basic right, such freedom is implicit in the Constitution. All democratic and civilised nations have traditionally valued press freedom, and Edmund Burke once referred to it as the Fourth Estate of Democracy. But due to its negative effects in recent years, the fourth pillar urgently has to be restored. The media used to be widely respected as the voice of the people, but today it is synonymous with lies, hostility, propaganda, blackmailing, etc. This perception suggests that the quality of the media has declined dramatically. Therefore, new laws, norms, frameworks, or guidelines are urgently needed to limit the negative effects of the media, restore its former splendour, and bring it back into the mainstream, which seems lost in modern India.

**Key Words:** Freedom of Speech, Media, Democracy, Rights, Restrictions, Regulations, Expressions, Communications

## Introduction

The plural of "medium" is "media," which, in general, denotes any form of communication. This comprises information on art, the news, education, and a wide range of other topics, and it encompasses everything from printed paper to electronic data. Two examples of the physical and virtual media that are used to transmit the intricately encoded signals that make up digital media, which comprises an ever-increasing portion of modern communications, are fibre optic cable and computer networks.

Edmund Burke asserts that the media is the fourth estate of democracy and is acknowledged as such<sup>1</sup>. The media has a greater reach and a direct impact than any other medium, making it easier to persuade people. Additionally, it has the power to change people's perspectives in whatever way they desire. To obtain unfair advantages and boost their financial earnings, the media now manipulates public opinion. The same media that formerly acted as society's eyes, ears, and mouth is now putting the public in the dock with its created and fabricated information that passes for news.

The Indian Constitution does not expressly mention the media in particular, but it is implied by Article 19(1)(a). A vital component of civil society is a free and impartial media, and any form of media repression is unfair, intolerable, and poses a danger to the right to free speech and expression in a civilised society. Media speaks for the general public. It is the platform where voices are created, disseminated, and heard because of how widely they reach. It links people together and is beneficial in many ways. There is another side to a medium that is highly unrealistic in relation to it, and many people will never accept the negative aspect of it. The fight for market control and competitiveness can also be exceedingly brutal in the media, which has greatly harmed its reputation. A few examples of the media's ugly side include its propensity to incite hatred, its dissemination of false information and the manipulation of facts, as well as its security of public information in the public domain. The media is a multibillion dollar industry, and with better connectivity and reach, the uncanny and ugly side are exposed to the general public. If we consider the media's positive aspects, it does play a significant role as well, but the downsides have become so prominent that the benefits are no longer visible. Media is still seen as a necessity of the hour, and no one disputes its significance. However,

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<sup>1</sup> <https://www.thoughtco.com/what-is-the-fourth-estate-3368058>.

the question of whether it is the same media that gave rise to the proverb "a pen is mightier than a sword" or whether it is merely a puppet of the ruling party or those with money remains.

## **Emergence of Media in India: Brief History**

Television, radio, movies, newspapers, magazines, and Internet-based Web sites/portals are just a few of the various forms of media that make up Indian media. Since the late 18th century, there have been media outlets in India. Print media was established in 1780, radio transmission began in 1927, and Auguste and Louis Lumière motion pictures were first screened in Bombay in July 1895. It is one of the biggest and oldest forms of media in existence. Even before Ashoka the Great founded the Indian empire on the principles of justice, transparency, morality, and spirituality, the media in India has been free and independent for the majority of its history. Prime Minister Indira Gandhi established a state of emergency from 1975 to 1977, which was the brief time when the Indian media had to worry about possible government retaliation.

### **Laws Governing Media in Pre and Post Independent India Pre- Independence Legislations- The Censorship of Press Act, 1799 –**

The law was passed by Lord Wellesley in advance of the French invasion of India. It had virtually enacted pre-censorship and other press restraints throughout the conflict. Under Lord Hastings, who held progressive views, these limitations were loosened, and pre-censorship was abolished in 1818.

### **The Licensing Regulations, 1823-**

The regulation was passed by John Adams, the acting governor general at the time, who held reactionary views (to what?). Without a licence, it was against the law to create or operate a press, according to these restrictions. These limitations were mostly aimed at newspapers published in Indian or edited by Indians. Because of this act, Rammohan Roy's Mirat-ul-Akbar had to cease publication.

### **The Press Act of 1835 or Metcalfe Act-**

The offensive 1823 ordinance was abolished by Metcalfe Governor-General (1835–1866), earning him the moniker "liberator of the Indian press". A printer or publisher was obligated by the new Press Act (1835) to provide a specific account of the location of a publication and halt operations if

compelled by a similar statement. A liberal press policy led to the quick expansion of newspapers.

### **The Licensing Act, 1857-**

Due to the emergency created by the 1857 uprising, this Act added licencing requirements to the Metcalfe Act's already established registration process. It also reserved the government's right to halt the publication and distribution of any book, newspaper, or printed material as it saw fit<sup>7</sup>. This statute, which was of a regulatory rather than a repressive nature, replaced Metcalfe's statute of 1835. According to the Act, (i) every book and newspaper had to include the name of the printer and publisher as well as the location of publishing; (ii) a copy had to be given to the local government within a month of a book's publication.

### **The Vernacular Press Act, 1878-**

The racial animosity between the ruler and the ruled was a painful legacy of the 1857 uprising. In political issues after 1858, the European press consistently supported the government while the local press was critical of it. Strong popular opposition to Lytton's imperialist tactics existed, and it was exacerbated by the dreadful famine of 1876–1877 and wasteful spending on the imperial Delhi Durbar. The Vernacular Press Act (VPA) was created to more effectively penalise and suppress seditious material as well as "better control" the vernacular press.

### **The Newspaper (Incitement to Offences) Act, 1908 -**

The act, which was designed to combat extreme nationalist activity, gave magistrates the authority to seize press assets that published unacceptable content that would promote violence or murder.

### **The Indian Press Act, 1910-**

The worst aspects of the VPA were reinstated by this Act, which gave local governments the authority to forfeit or deregister newspapers that violated the law, demand security from printers and publishers at registration, and require printers to give free copies of each issue of their publications to local governments.

### **The Indian Press (Emergency Powers) Act, 1931-**

This Act gave sweeping powers to provincial governments to suppress propaganda for the Civil

Disobedience Movement. It was further amplified in 1932 to include all activities calculated to undermine government authority.

## **Post-Independence Legislations-**

### **The Press Enquiry Committee, 1947-**

The Committee was established to look at press regulations in light of the fundamental rights established by the Constituent Assembly. It suggested changes to the Press and Registration of Books Act, the Indian Emergency Powers Act of 1931, Sections 124-A and 156-A of the IPC, among other things..

### **The Press (Objectionable Matters) Act, 1951-**

The Constitution's Article 19 (2) was amended at the same time as the Act. According to the Act, the government had the right to request and forfeit security for the publication of "objectionable matter". Owners and printers who were upset were given the option to request a jury trial. It was still in effect in 1956.

### **The Press Commission under Justice Rajadhyaksha in 1954-**

The commission recommended in 1954 that the All India Press Council be established, that presspage schedules be fixed for newspapers, that crossword puzzle competitions be outlawed, that strict guidelines be developed for newspaper advertisements, and that it would be wise to avoid concentration in the ownership of Indian newspapers.

Additionally, the Working Journalists (The Conditions of Services and Miscellaneous Provisions Act, 1955; The Newspaper (Price and Page) Act, 1956; and The Parliamentary Proceedings (Protection of Publications) Act, 1960; delivered books and newspapers to public libraries.

### **Various Dimensions of Media**

**Media as a Player-** Man has always communicated his ideas using a variety of means, including symbols, signals, speech, script, print, and now computer language, dating back to the beginning of legal history and beyond. A free and democratic society needs ideas and information to flourish and survive, thus achieving this goal would be impossible without ensuring that each and every individual

has the freedom to express their thoughts and opinions. The ability to speak and express oneself freely became known as this. The Preamble to the Indian Constitution makes the commitment to ensuring the freedom of thought, speech, and religion for all Indian people.

The Preamble guarantees every citizen of India the freedom of speech and expression, religious freedom, and the ability to follow one's own beliefs, focusing on the fundamental goal of the Indian Constitution. The Indian Constitution's Part III addresses fundamental rights. Under order to protect individual rights that the Constitution's framers deemed essential, the right to freedom is guaranteed under Articles 19, 20, 21, and 22 of the Constitution. The first of the six freedoms guaranteed by the right to freedom in Article 19 is the freedom of speech and expression.

The freedom to express one's beliefs, thoughts, and convictions is guaranteed to all Indian citizens by the constitution. They have the right to look for, receive, and share information and ideas for this reason. Since the exercise of freedom of expression necessitates a means of communication for ideas and information, it stands to reason that the means of communication must likewise be free. The freedom of the press is implicit in Article 19 (1) (a) of the Indian Constitution, unlike the US Constitution, which expressly mentions it.

The freedom of the press is included in the guarantee of the right to free expression, which also includes the ability to publish and distribute, according to a very explicit ruling by the Supreme Court. Therefore, the Apex Court determined that it was unnecessary to create a distinct clause for press freedom.<sup>2</sup>

### **The Freedom of Media**

Free speech and expression are essential components of democracy. In addition to the Universal Declaration of Human Rights and other international charters and treaties that have been adopted to guarantee the protection of human and fundamental rights, it is guaranteed by the Indian Constitution. It follows from these assurances that the public has the right to acquire information and opinions without hindrance and to propagate them internationally, as this is a crucial component of the democratic process. In reality, this right is daily exercised by the media. Thus, the right to free speech

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<sup>2</sup> AIR 1978 SC 597.

and expression involves two important fundamental rights: the right to receive news and opinions, as well as the freedom to impart news, information, and opinions. These rights essentially rely on everyone who uses the media having the freedom to exercise their right to unrestricted news gathering and opinion communication.

**Right to freedom of speech and expression not confined to national boundaries** In the case of *Maneka Gandhi v. Union of India*, the Supreme Court reviewed whether an Indian citizen's right to freedom of speech and expression extends outside of India's borders. In this historic decision, the Supreme Court ruled that a citizen's right to freedom of speech and expression extends both domestically and internationally, with no geographical restrictions on information gathering and thought-exchange.

The court noted that the right to freedom of speech and expression includes the freedom to talk and express oneself both at home and abroad, as well as the freedom to share views and ideas with others both inside and outside of India. The Court noted that by omitting the phrase "in the territory of India" from the conclusion of Article 19(1)(a), the Constitution's drafters had chosen to purposefully avoid restricting the freedom.

**Press as the Mother of all Other Liberties** One of the most exhaustive and illuminating exposition of the importance of the press and its being regarded as "The mother of all other liberties" in a democratic society is contained in the judgment of Venkataramiah, J. in *Indian Express Newspaper v. Union of India*<sup>3</sup>.

This case brought up significant issues regarding journalistic freedom and the government's ability to tax. Newspaper-owning firms filed a number of writ petitions in the Supreme Court challenging the legality of the Customs Act of 1962's application of a levy on newsprint. The petitioners who used a lot of newsprint to publish newspapers, periodicals, magazines, and other publications argued that the tax had the "direct effect of crippling the freedom of speech and expression as guaranteed by the Constitution as it led to the increase in newspaper prices and the inevitable reduction in their circulation."

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<sup>3</sup> (1985) 1 SCC 641.

"Freedom of expression has four broad social purposes to serve: (i) it helps an individual to attain self-fulfillment, (ii) it aids in the discovery of truth, (iii) it strengthens the capacity of the individual to participate in decision-making, and (iv) it provides a forum for the free exchange of ideas," said Venkataramiah J., who in this case believed that the press plays a very significant role in the democratic machinery. Everyone in society should have the freedom to develop their own opinions and express them openly.

The basic tenet is, therefore, the right of the people to information. Therefore, everyone who supports citizens' engagement in government should show their support for freedom of speech and expression. While acknowledging the significance of the right to freedom of the press, the Court ruled that there could be no immunity from taxation because the Constitution's authors declined to include a provision for such immunity. By deciding to give Parliament alone, rather than the State Legislatures, the authority to charge taxes on publications, they had also taken care to safeguard the press against local pressures.

the media's tax obligations The freedom of speech and expression given by Article 19 (1) (a) and the freedom to engage in any profession, vocation, trade, industry, or business granted by Article 19 (1) (g) both apply to the newspaper industry. While the right to exercise freedom of expression cannot be taxed, there are leviable taxes on professions, occupations, trades, businesses, and industries. As a result, the newspaper sector is subject to tax. However, a tax becomes unlawful when it infringes on the right to free speech and muzzles that right. It won't be in violation of Article 19 (2)'s restrictions as long as it stays within acceptable bounds and doesn't inhibit freedom of expression.

## Constitutional Perspective of Media

Freedom of speech and expression is an essential aspect of liberty as stated in *Maneka Gandhi v. Union of India*<sup>4</sup>. In *Tata Press v. Mahanagar Telephone Nigam Ltd*<sup>5</sup>.

This court ruled that freedom of speech and expression includes commercial communication as well. Part III of the Indian Constitution's Fundamental Rights Chapter was left out in response to

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<sup>4</sup> AIR 1978 SC 597.

<sup>5</sup> AIR 1995 SC 2438.

popular demand and the popularisation of human rights discourse following the end of World War II. In the Constitution of India Bill, often known as the Swaraj Bill and inspired by the famous jurist and freedom fighter LokmanyaTilak, the demand for constitutional safeguards of human rights for Indians was first expressed as far back as 1895. This bill proposed a constitution for India that would guarantee the freedom of the press to each and every individual, among other rights. One may say that the Indian press made its debut.

It was one of those British tools that the Indians later used to further their own agendas. As the press's function changed significantly, it quickly emerged as one of the most potent tools the Indians had at their disposal in their fight for independence from the British. The firm has traditionally controlled the press, but after it reversed that power, it became urgent to impose strict limits. There have been judgements and repressive laws limiting journalistic freedom. The "Founding Fathers and Mothers" of the Indian Constitution placed a high value on press freedom as well as freedom of speech.

They held the opinion that a democratic system cannot function without the freedom of the press and of speech. They held that the right to criticise the government is at the heart of political opinion freedom, which is vital to the idea of a free press. They agreed with Jawahar Lal Nehru's perspective when he said, "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press"<sup>6</sup>

This freedom is guaranteed by Article 19(1)(a) of the Indian Constitution, which also ensures the right to free speech and expression. It has been ruled that press freedom is a part of this right to freedom. It is an underlying or inferred right. The economic and commercial aspects of the press are governed by Article: 19(1)(g), which guarantees freedom of profession, occupation, trade, or business, which is constrained by Article: 19(6), which contains provisions for the public interest, professional and technical qualifications, and state nationalization-complete or partial.

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<sup>6</sup>[https://www.academia.edu/34368018/Freedom\\_of\\_Press\\_in\\_India\\_\\_Constitutionality\\_and\\_Scientific\\_Development](https://www.academia.edu/34368018/Freedom_of_Press_in_India__Constitutionality_and_Scientific_Development)

## Reasonable Restriction by Constitution of India on Media.

The constraints placed on the right to freedom of speech and expression, as well as the restrictions placed by the state, are both constrained by the concept of reasonability. Therefore, even while the state has the authority to restrict freedom, this restriction is subject to reasonable limits and is not absolute. Therefore, for a restriction to be legal under the constitution, it must be reasonable. The Supreme Court ruled on the reasonableness of the limits under Articles 19(2) to 19(6) in *Papnasam Labour Union v. Maduracoats Ltd.*

- i. The restriction in order to be reasonable must not be excessive that is, it should not go beyond the need to avoid the mischief or injustice. It should not be arbitrary.
- ii. The restriction should have a direct or proximate or reasonable connection or link between itself and the object sought to be achieved.
- iii. The restriction to be reasonable should not be abstract. But no fixed principles can be laid down and the standards of reasonability would vary from case to case and time to time.
- iv. While interpreting the term reasonable, the court should keep in mind the complex issues of the society and the intention of the legislature of the statute in question.
- v. The term reasonable is of dynamic nature and hence the judiciary should keep an elastic and practical approach while interpreting the term.
- vi. It is imperative for the court to analyze the social control before any restrictions can be imposed on the fundamental rights.
- vii. For the interpretation of term reasonable, it is necessary for the court to examine the social welfare and the need of prevailing social norms and values.
- viii. The word reasonable has to satisfy the test of procedural reasonability as well as substantive reasonability.
- ix. For a restriction to be reasonable must be in conformity with the test of Article 14 of the Constitution. It means the restrictions should not be excessive or discriminatory.
- x. While interpreting the term reasonability the courts have to keep in mind the Directive principles of the state policy.

Following are the reasonable restrictions provided by the Constitution of India under Article: 19(2) related to freedom of speech and expression:

**Sovereignty and integrity of the state**- This ground was inserted by an amendment to curb the tense reaction of the people, who were demanding separate entity of the different regions of India.

**Security of the state** - The right to free speech cannot be used in a way that jeopardises the state's security in any way. The Supreme Court ruled in *State of Bihar v. Shailabala Devi* that remarks made by people encouraging and inciting others to commit crimes like murder, dacoity, robbery, etc. would unquestionably jeopardise the state's integrity.

**Public Order** -The word public order was inserted by Constitutional (First Amendment) Act 1951. This clause was inserted to reduce the effect of *RomeshThappar v. State of Madras*<sup>7</sup>, where the court had held that the right to circulation is a part of Right to freedom of Speech and expression.

**Decency or morality**- The elaboration of this ground is reflected in Sections 292 to 294 of the Indian Penal Code. In *RanjitUdeshi v. State of Maharashtra*<sup>8</sup>, the Supreme Court stated that the section 292 of Indian Penal Code is constitutionally valid as it prohibits obscenity and promotes public decency and morality.

**Contempt of Court**- In *C.K. Daphtary v. O.P. Gupta*<sup>9</sup>, it was held that the Section: 228 of the Indian Penal Code and Article: 129 of the constitution are valid and fall under the ambit of reasonable restrictions mentioned in Article: 19(2) of the Constitution. So the freedom of speech and expression are subject to Articles: 19(2), 129, and 215 of the Indian Constitution.

**Defamation**- The right to freedom of speech and expression does not, in any manner, encompass the ability to damage someone's reputation. Defamation is a serious restriction on the freedom of speech and expression since it results in injury to someone's reputation.

**Incitement to an offence**:- In *State of Bihar v. Shailabala Devi*<sup>10</sup> it was decided that any speech which amounts to incitement of any offence could be banned and the order of ban would fall within the reasonable restrictions mentioned in Article 19(2) of Indian Constitution

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<sup>7</sup> 1950 AIR 124, 1950 SCR 594

<sup>8</sup> AIR 1965 SC881.

<sup>9</sup> AIR 1971 SC 1132.

<sup>10</sup> AIR 1952 SC 329.

## **Defamation: The demeaning aspect of Media-**

Writing, publishing, and uttering a false statement that harms someone's reputation or good name for personal gain is defamation in India, which is both a criminal and civil offence. The Law of Torts governs the civil defamation remedies. A victim of civil defamation may file a lawsuit in high court or a lower court to get monetary damages from the accused. The victim has the option to file a criminal complaint for defamation against the defendant in accordance with Sections 499 and 500 of the Indian Penal Code, 1860.

Criminal defamation carries a simple imprisonment sentence that can last up to two years, a fine, or both. It is a compoundable, non-cognizable offence under the criminal code. In *Subramanian Swamy v. Union of India*<sup>33</sup>, the Supreme Court provided an explanation of the constitutional legitimacy of defamation laws and regulations, concluding that these laws and regulations do not violate the freedom of speech. The Supreme Court further stated that while one must tolerate criticism, dissent, and discordance, defamatory attacks are not something that must be tolerated.

### **Media Trial**

In recent times there have been numerous instances in which media has conducted the trial of an accused and has passed the verdict even before the court passes its judgment. Trial by Media it is the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. This phenomenon is popularly called a media trial. In *State of Maharashtra v. RajendraJawanmal Gandhi*<sup>11</sup> the Supreme Court observed: "The trial of a person accused of a crime is conducted in accordance with a legal process. A trial driven by the press, electronic media, or public outcry is utterly opposed to the rule of law. It might result in a justice miscarriage. Again, it cannot be ruled out that the public growing accustomed to the routine spectacle of mock trials in the news media may, in the long term, have negative effects on the public's support of the legal system as the correct venue for dispute resolution.

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<sup>11</sup> CrI.A. No. 838 of 1997 (Arising out of SLP (CrI.) No. 1560 of 1997

## **Conclusion**

Unquestionably, Indian media is experiencing the wrath of society. The media industry was formerly seen to be the most crucial component for getting heard and raising awareness, but shifting attitudes and financial support are seriously undermining its credibility. To limit the detrimental effects of media, laws and regulating organisations appear a little cavalier. The media circulates and has the ability to alter a person's perception on anything. It has a great deal of power to affect people's thinking and the ability to change the entire dynamic through individuals who take different perspectives from it. The media should place greater focus on fair reporting in order to regain its lost trust. The wrong needs to be denounced and the good must be valued. Since the media is an essential component of the populace, it should place greater emphasis on societal problems and convey them to the public in a form that is more accurate and devoid of the negative impacts that modern media bears. The media must recognise its essential independence and must uphold the law; it must not supplant the judicial and executive branches of government or stray from its commitment to honest, objective reporting. The law must be applied in a way that takes into account how society has changed and ensures that the media is aware of its obligations without violating any current laws of the land. It must also be understood that any unwelcome restrictions on the media in a democracy will also endanger society as a whole.