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THE EVOLUTION OF PRESS FREEDOM AND FREEDOM OF SPEECH IN INDIA: FROM THE EAST INDIA COMPANY TO THE PRESENT.

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ABSTRACT

This study is an extensive and analytical examination of press freedom and free speech in India from the colonial period of the East India Company to today with regard to the digital age. The study delineates how the British used the law increasingly as an instrument of political repression through such acts as the Press Censorship Act, the Licensing Regulations of 1823, the Vernacular Press Act of 1878 and Section 124 A (Sedition) of the Indian Penal Code, that were specifically created to silence Indian nationalistic voices and reduce anti-colonial consciousness and thereby maintain the power of the Empire.

At the same time, the study demonstrates how journalists, social activists and freedom fighters in India turned newspapers into prominent vehicles of political awareness. Newspapers such as Kesari, Young India, Harijan, Amrita Bazar Patrika, etc., not only provided news coverage and analysis of events occurring in India, but they also helped create the foundation of nationalistic ideology, inspired the emotions of the nation, and sought to oppose the British Empire. The works of such individuals as Bal Gangadhar Tilak, Mahatma Gandhi, Raja Ram Mohon Roy, Annie Besant, etc., legitimized the press as a means of democratic resistance. This research investigates the provision by the Constitution of India regarding individual freedom of speech and expression (art. 19(1)(a)) and its limited limits of reasonable restrictions (art. 19(2)). The leading cases from India's Supreme Court that help to illustrate the judiciary's role in upholding democratic discourse and Constitutional values are 'Romesh Thappar v State of Madras, 1950', 'Bennett Coleman & Co. v Union of India, 1973', 'Indian Express Newspapers v Union of India, 1985', and 'Shreya Singhal v Union of India, 2015'¹. The research explores the conforming principles under the Constitution and applies current events that affect press freedom in India, e.g. media corporatisation, government interference, internet shutdowns, digital surveillance, misinformation, hate speech management, and a shrinking space for dissent in the digital world. Through the analysis of these examples, the research explores how

¹ SHREYA SINGHAL V. UNION OF INDIA, AIR 2015 SC 1523. (IND.)

changing technology has an overall impact on the way freedom of speech is interpreted and how the balance between national security and individual rights is being put under pressure. The goal of this research is to demonstrate that the history of press freedom in India can be understood more broadly as an examination of how India's democracy has grown and continued to evolve. Ultimately, the study demonstrates that protecting dissent, guaranteeing autonomy of journalism, and affirming that freedom of expression constitutes a substantive constitutional right, rather than being a mere symbolic constitutional dedication, are critical factors in the ongoing viability of constitutional democracy in India. The experience of moving from colonial subjugation to constitutional freedom indicates that democracy does not flourish through the suppression of dissent; rather, it flourishes when the government has the capacity for moral courage to acknowledge and engage with dissenting perspectives.

Keywords: - Freedom of Speech and Expression, Press Freedom in India, Constitutional Democracy, Sedition Law (Section 124A IPC), Judicial Activism and Civil Liberties

INTRODUCTION: FREEDOM, DEMOCRACY, AND THE CONSTITUTIONAL VALUE OF DISSENT.

The freedom to speak and express oneself holds a pivotal role in the philosophical foundation of democratic rule. A democracy cannot truly endure if its citizens are not allowed to criticize authority, question public policies, share ideas, or express opinions without fearing repercussions. The media, frequently referred to as the “Fourth Estate of Democracy,” serves the crucial role of connecting the government and the citizens. It educates citizens, reveals power misuse, enhances public responsibility, and guarantees that governance stays transparent instead of authoritarian. In India, the story of press freedom is intertwined with the larger political narrative of colonialism, nationalism, constitutional development, and democratic change. The Indian experience shows that freedom of speech was not willingly given by those in power; instead, it developed through ongoing struggles against censorship and political domination. The development of free expression in India mirrors a broader historical conflict between imperial control and democratic ambition.

Ironically, colonial oppression bolstered rather than diminished Indian journalism. Newspapers slowly transformed into tools for political awareness and national identity. Figures like Bal Gangadhar Tilak, Mahatma Gandhi, Surendranath Banerjee, and Annie Besant acknowledged the significant influence of journalism in molding public sentiment. Newspapers emerged as

channels that allowed the freedom of movement to connect everyday people across linguistic, regional, and social divides.

After independence, the framers of the Constitution understood that democracy could not survive without protecting civil liberties. Therefore, Article 19(1)(a) guaranteed freedom of speech and expression as a Fundamental Right. Although the Constitution does not explicitly mention “freedom of the press,” the Supreme Court repeatedly interpreted press freedom as an inseparable component of free speech.

PHILOSOPHICAL FOUNDATIONS OF FREEDOM OF SPEECH.

Before examining the historical development of press freedom in India, it is essential to understand the philosophical principles underlying freedom of speech itself. The idea that individuals possess a natural right to express opinions emerged prominently during the Enlightenment period in Europe. Philosophers such as John Locke, Voltaire, and John Stuart Mill argued that intellectual freedom was indispensable for human progress and democratic governance.

In India, however, the philosophical development of free expression emerged within a different historical context. Indian political thought traditionally emphasised Dharma, justice, public morality, and ethical governance. Ancient texts such as the Artha Shastra and the Shanti Parva of the Mahabharata acknowledged the importance of counsel, criticism, and accountability in governance. Although ancient Indian society did not conceptualise “free speech” in the modern constitutional sense, it recognised that rulers must remain answerable to moral and social principles. Modern Indian constitutionalism, therefore, combines Liberal democratic ideas from the West, anti-colonial political struggle, and indigenous traditions, emphasising ethical governance and public accountability. This philosophical synthesis shaped India’s understanding of press freedom after independence.

COLONIAL INDIA AND THE BEGINNING OF PRESS REGULATION

The history of the Indian press began during the late eighteenth century with the emergence of printed newspapers under British colonial rule. The first newspaper published in India was Hickey’s Bengal Gazette in 1780, founded by James Augustus Hickey in Calcutta. Although primarily intended for Europeans, the newspaper frequently criticised East India Company officials and exposed corruption within the colonial administration. Alarmed by such criticism, the colonial government quickly realised the political power of journalism. Governor-General

Wellesley introduced the Censorship of Press Act of 1799 during the Napoleonic Wars. The regulations required newspapers to obtain prior government approval before publication. This marked the beginning of institutional censorship in India. Subsequently, the Licensing Regulations of 1823 imposed strict licensing requirements on printers and publishers. Raja Ram Mohan Roy strongly opposed these restrictions and argued that press freedom was necessary for social reform and political accountability. His resistance represents one of the earliest Indian defences of civil liberty and intellectual freedom.

As literacy expanded during the nineteenth century, Indian-owned newspapers began emerging across different regions and languages. Publications such as Kesari, Mahratta, Samvad Kaumudi, and Amrita Bazar Patrika started criticising colonial exploitation and racial discrimination.

PRESS AS AN INSTRUMENT OF NATIONAL CONSCIOUSNESS AND ANTI-COLONIAL RESISTANCE.

The evolution of the Indian press represented the birth of political consciousness that fundamentally challenged the legitimacy of colonial rule. Newspapers gradually transformed from informational publications into ideological weapons of resistance. Through editorials, pamphlets, political essays and national reporting, the press became one of the most influential institutions in India's struggle for independence. Unlike the colonial administration, which perceived journalism as a threat to state security, Indian nationalists viewed the press as a democratic instrument capable of politically educating the masses. The rise of nationalist journalism, therefore marked a decisive shift in Indian political history.

- **Bal Gangadhar Tilak and the Politics of Nationalist Journalism:**

One of the first and most impactful nationalist journalists was Bal Gangadhar Tilak. Using his newspapers Kesari (Marathi) and Mahratta (English), Tilak changed journalism into a tool for political mobilisation. His work openly condemned economic exploitation from colonialism, racial bias, and bureaucratic suppression.

Tilak's journalism established a fresh political lexicon focused on: Swaraj (self-governance), National honour, Political engagement, and opposition to colonial control.

The British government deemed Tilak's writings provocative and threatening. He faced multiple prosecutions under Section 124A of the Indian Penal Code for sedition. In a prominent sedition trial in Indian legal history, the colonial government contended that criticising state policies equated to disloyalty to the Crown.

Tilak's trial exposed the real character of colonial free speech law: dissent was treated as a crime not due to threats to public safety, but because it opposed political power. The sedition of law thus transformed into a tool for stifling democratic dissent instead of safeguarding social stability. Nonetheless, Tilak's struggles also turned him into an emblem of press defiance. His statement that "Swaraj is my birthright and I shall have it" emerged as one of the key slogans of the nationalist movement.

- Mahatma Gandhi and the Ethical Philosophy of Journalism:

No conversation about press freedom in India can be thorough without considering the impact of Mahatma Gandhi. Gandhi saw journalism not just as a job; he regarded it as a moral and political duty. Via publications like *Young India*, *Harijan*, and *Indian Opinion*.

- *Young India*: *Young India* was among the most significant newspapers linked to the Indian independence struggle. Initially established by various nationalist figures, it eventually fell under the editorial guidance of Mahatma Gandhi in 1919. Published in English, the newspaper served as a crucial medium for Gandhi to convey his political beliefs and social reform initiatives to inform Indians.

- *Harijan*: The word "Harijan," which translates to "Children of God," was utilized by Gandhi to describe groups that have historically faced untouchability. Mahatma Gandhi started *Harijan* in 1933 as a component of his extensive effort against untouchability and social inequality in India. In contrast to *Young India*, which emphasized political nationalism and anti-colonial struggle, *Harijan* delved more into social reform, rural progress, ethical values, and constructive nationalism.

- *Indian Opinion*: Established by Mahatma Gandhi in 1903 in South Africa, *Indian Opinion* emerged during his fight against racial discrimination experienced by the Indian population. Released in various languages, such as English, Gujarati, Hindi, and Tamil. Significantly, *Indian Opinion* served not just as a newspaper but also as a political tool for community groups and democratic opposition.

- Annie Besant, Surendranath Banerjee, and Political Mobilisation:

The nationalist press initiative gained additional support from figures like Annie Besant and Surendranath Banerjee. Annie Besant's publication, 'New India', emerged as a significant venue for promoting Home Rule and constitutional changes. Using impactful editorials, she condemned colonial policies and called for increased political involvement for Indians. In the same vein, Surendranath Banerjee employed journalism to promote nationalist awareness and highlight administrative bias. His publication, 'The Bengalee', significantly influenced political discussions in the late nineteenth century. These reporters

collectively turned the Indian press into: a venue for democratic discussion, an outlet for political awareness, a means of opposing colonial oppression.

COLONIAL LAWS AND THE CRIMINALISATION OF DISSENT.

The British colonial administration gradually developed an elaborate legal framework designed to regulate speech, suppress dissent, and maintain imperial authority. These laws reflected the colonial belief that unrestricted political expression threatened state stability.

Consequently, the colonial state developed an extensive framework of restrictive laws designed to criminalise dissent and silence anti-colonial voices. These laws reflected the authoritarian belief that criticism of government authority endangered public order and weakened imperial control. In practice, however, these legislations were often used not to maintain peace, but to suppress democratic expression and prevent political mobilisation.

The criminalisation of dissent during the colonial period had long-lasting consequences for Indian constitutional history. Many colonial legal structures continued even after independence, creating an enduring tension between state authority and civil liberty within Indian democracy.

- **Sedition Law and Criminalisation of Political Expression and Its legacy:**

One of the most controversial colonial laws regulating speech was Section 124A of the Indian Penal Code, commonly known as the Sedition Law. Introduced in 1870 by the British colonial government, the provision criminalised any words, writings, signs, or expressions that brought the government into “hatred,” “contempt,” or “disaffection.” The language of the provision was intentionally broad and vague, allowing colonial authorities to interpret criticism as sedition whenever it challenged imperial policies or questioned governmental legitimacy. The law effectively transformed political opposition into a criminal offence.²

The provision was deliberately vague and broad, enabling colonial authorities to prosecute:

- **Journalists:** Journalists were among the primary targets of colonial censorship because newspapers had become one of the most effective mediums for spreading political awareness among the Indian population. The colonial government feared that such reporting could encourage anti-colonial sentiment and weaken imperial authority. As a result, journalists were often arrested, prosecuted, fined, or imprisoned for publishing articles critical of the government.

² INDIAN PENAL CODE, NO. 45 OF 1860, § 124A, INDIA CODE (1860).

For example, Bal Gangadhar Tilak faced sedition charges for articles published in his newspaper, Kesari. The British authorities claimed that his writings promoted hatred against the colonial administration and encouraged rebellion among Indians.

- Freedom Fighters: Freedom fighters involved in the nationalist movement were systematically targeted through sedition laws, preventive detention, censorship regulations, and emergency powers. The British administration feared that nationalist leaders could unite people across regional, linguistic, and religious boundaries against colonial rule.

The colonial government attempted to weaken the freedom movement by suppressing its leaders and preventing the spread of nationalist ideas. However, these prosecutions often produced the opposite effect by increasing public sympathy towards freedom fighters and strengthening anti-colonial resistance.

In many cases, sedition trials became political symbols exposing the authoritarian nature of colonial governance.

Newspaper editors occupied a particularly important position because they controlled the publication and circulation of political information. Colonial authorities considered editors responsible for any content viewed as critical of the government. Editors faced Confiscation of printing presses, Cancellation of licenses, Financial penalties, and preventive censorship orders.

Ultimately, the suppression of journalists, writers, activists, freedom fighters, and editors revealed that colonial censorship aimed to eliminate organised political consciousness itself. The British administration understood that ideas possess the power to challenge authority, unite people, and inspire democratic resistance. Therefore, the law became a tool for preserving imperial control by criminalising dissent and restricting freedom of expression.

Colonial laws regulating speech fundamentally transformed the relationship between the state and the citizen. Under colonial governance, political criticism was frequently treated as disloyalty, and dissent became associated with criminality rather than democratic participation. This criminalisation of dissent produced several long-term consequences: fear of political expression, state surveillance over communication, and the normalization of censorship within governance structures.

Importantly, many colonial legal concepts survived after independence. Laws relating to sedition, public order, criminal defamation, and preventive detention continued within post-colonial India, leading to ongoing constitutional debates regarding civil liberties and state power. The colonial experience ultimately demonstrates that democracy cannot flourish

when governments treat criticism as criminal behavior. A constitutional system committed to liberty must recognize dissent not as a threat to the nation, but as an essential feature of democratic governance and public accountability.

- The Vernacular Press Act, 1878:

The Vernacular Press Act represented one of the most oppressive attacks on Indian-language journalism. The colonial government feared vernacular newspapers because they could reach ordinary Indian citizens and spread nationalist ideas beyond elite English-speaking circles. The Act authorised magistrates to: demand securities from publishers, seize printing equipment, prohibit publications, and suppress newspapers without judicial oversight.

The discriminatory nature of the law was evident because English newspapers were exempted from its provisions. Indian journalists strongly condemned the Act, arguing that it violated principles of equality and justice. Many newspapers responded creatively by shifting publication languages overnight to avoid restrictions. Amrita Bazar Patrika, for example, converted from Bengali to English publication to escape the law's application. The resistance against the Vernacular Press Act strengthened the nationalist movement and demonstrated that attempts to suppress ideas often produce greater political awareness.³

- The Press Act of 1910 and Preventive Censorship:

As revolutionary nationalism expanded during the early twentieth century, the British administration introduced even stricter controls through the Press Act of 1910. The colonial government feared that newspapers and pamphlets were encouraging revolutionary activities and spreading anti-British sentiments across the country.

The significance of the Press Act lies in its transition from punitive censorship to preventive censorship. Earlier colonial laws mainly punished publications after they criticized the government. However, the Press Act sought to prevent criticism from emerging in the first place. Nationalist leaders strongly condemned these measures and argued that suppressing journalism weakened democratic accountability and encouraged arbitrary governance.

The Press Act also revealed the colonial state's fear of public opinion. Newspapers had become sufficiently influential to challenge imperial legitimacy and politically mobilise Indian society.⁴

³ VERNACULAR PRESS ACT, NO. 9 OF 1878 (INDIA).

⁴ INDIAN PRESS ACT, NO. 1 OF 1910 (INDIA).

CONSTITUENT ASSEMBLY DEBATES AND THE CONSTITUTIONAL VISION OF FREE SPEECH

The Constituent Assembly debates reveal intense discussion regarding the scope of free speech and the role of the press within Indian democracy. The framing of the Constitution of India represented one of the most significant democratic exercises in modern constitutional history. After centuries of colonial rule and political repression, the members of the Constituent Assembly recognised that the protection of civil liberties would form the foundation of the newly independent Indian Republic. Among these liberties, freedom of speech and expression occupied a particularly important position because newspapers, political writings, public debates, and resistance against colonial censorship had deeply shaped the Indian freedom struggle itself.

- **Article 19(1)(a): Freedom as a Fundamental Right:**

The framers ultimately incorporated freedom of speech and expression within Article 19(1)(a) of the Constitution of India. This provision guaranteed citizens the right to freely express opinions through Writing, Printing, Publication, Artistic expression, and other forms of communication.

The inclusion of free speech within Fundamental Rights reflected the belief that democracy depends upon informed public participation. Citizens cannot effectively participate in governance if they fear punishment for criticising authority or expressing unpopular opinions. Dr. B. R. Ambedkar emphasized that constitutional democracy requires an atmosphere where public criticism and opposition are tolerated. According to Ambedkar, democracy is not merely a form of government but a culture of discussion and accountability.

- **Why “Freedom of Press” Was Not Explicitly Mentioned:**

An important constitutional question during the debates concerned whether the Constitution should explicitly mention “freedom of the press.” Ultimately, the framers decided not to create a separate constitutional provision specifically for the press because they believed that freedom of the press was already included within the broader guarantee of freedom of speech and expression under Article 19(1)(a). The reasoning behind this approach was that:

- the press is simply one medium of expression,
- and granting special constitutional privileges exclusively to newspapers could create unnecessary distinctions among citizens.

Later, the Supreme Court of India repeatedly confirmed that freedom of the press is an essential part of Article 19(1)(a). Judicial interpretation, therefore, expanded constitutional protection for journalism and media institutions even without explicit constitutional wording. This demonstrates how constitutional interpretation played a major role in strengthening democratic freedoms after independence.

JUDICIAL EVOLUTION OF PRESS FREEDOM IN INDEPENDENT INDIA

After the adoption of the Constitution in 1950, the judiciary emerged as one of the most important institutions responsible for protecting freedom of speech and press freedom in India. Although Article 19(1)(a) guaranteed freedom of speech and expression as a Fundamental Right, the actual scope and meaning of this freedom were not fully defined within the constitutional text itself. Consequently, the Supreme Court of India played a transformative role in interpreting constitutional provisions and expanding democratic protections through judicial decisions. Over time, the judiciary gradually developed a strong constitutional philosophy recognising that freedom of speech is not merely an individual privilege but a foundational requirement for democratic governance. The courts repeatedly emphasised that without a free press, citizens cannot remain informed; governments cannot be held accountable, and democracy itself becomes vulnerable to authoritarian tendencies.

- **Early Constitutional Interpretation and Protection of Press Freedom**

In the years immediately following independence, the judiciary faced the difficult task of defining the scope of freedom of speech within a newly independent nation experiencing political instability and communal tensions. The Supreme Court quickly recognised that democracy depends upon free political discussion and public criticism. Therefore, the Court adopted a liberal interpretation of Article 19(1)(a) during its early years. One of the first major judgments was *Romesh Thappar v. State of Madras*.⁵

In this case, the government of Madras prohibited the circulation of a political journal called *Crossroads* on the grounds of public safety and public order. The Supreme Court struck down the ban and held that freedom of speech and expression lies at the foundation of democratic governance. The Court emphasized that public criticism of government policies cannot be suppressed merely because authorities consider such criticism inconvenient or politically uncomfortable. The judgment established several important constitutional

⁵ ROMESH THAPPAR V. STATE OF MADRAS, AIR 1950 SC 124. (IND)

principles:

- freedom of circulation is part of press freedom,
- political discussion is essential for democracy,
- and restrictions on speech must be narrowly interpreted.

This case became historically significant because it demonstrated that the judiciary was willing to protect civil liberties against executive overreach.

One of the most significant judgments regarding press freedom was *Bennett Coleman & Co. v. Union of India*⁶. The government introduced a Newsprint Policy limiting the number of newsprints available to newspapers. Authorities argued that the policy promoted equality among large and small newspapers. The petitioners challenged the policy, arguing that it restricted newspaper growth and circulation, thereby violating press freedom.

The Supreme Court ruled in favour of the newspapers and held that:

- freedom of the press includes the right to circulation,
- restrictions on newspaper growth affect democratic communication,
- and the state cannot control public opinion indirectly through economic policies.

The judgment emphasised that press freedom is essential for maintaining an informed citizenry and democratic participation. Importantly, the Court declared that: “Freedom of the press is both qualitative and quantitative.” This meant that constitutional protection applies not only to the content of expression but also to the ability of newspapers to expand and reach readers effectively. The Bennett Coleman case significantly strengthened constitutional jurisprudence on media independence.

- Judicial Response During the Emergency

The Emergency period (1975–1977) represented one of the most difficult phases in the constitutional history of press freedom. The judiciary’s role during this period remains controversial. In cases such as *ADM Jabalpur v. Shivkant Shuklathe*, the Supreme Court failed to adequately protect civil liberties against executive power. The Court held that during the Emergency, citizens could not seek judicial enforcement of certain Fundamental Rights. This judgment was heavily criticised because it weakened constitutional protections and allowed authoritarian governance to expand. However, the Emergency also produced a long-term positive consequence: after 1977, the judiciary adopted a far more activist approach toward protecting civil liberties and democratic rights. The experience convinced courts that constitutional freedoms require strong judicial protection against executive

⁶ BENNETT COLEMAN & CO. V. UNION OF INDIA, AIR 1973 SC 106. (IND.)

abuse.

THE EMERGENCY (1975–1977): CONSTITUTIONAL BREAKDOWN AND THE DARKEST ERA OF PRESS CENSORSHIP.

The declaration of the Indian Emergency remains one of the most controversial and traumatic episodes in the constitutional history of independent India. It represented a period during which democratic institutions were subordinated to executive authority; civil liberties were suspended, political opposition was suppressed, and the press was subjected to systematic censorship.

For students of constitutional law and political science, the Emergency serves as a historical reminder that constitutional rights are only meaningful when institutions possess the courage and independence to protect them. The period demonstrated how quickly democratic structures can weaken when state power becomes concentrated and unchecked.

- **Background of the Emergency:**

The Emergency was proclaimed on 25 June 1975 by Prime Minister Indira Gandhi under Article 352 of the Constitution on the grounds of “internal disturbance.” The Allahabad High Court had invalidated Indira Gandhi’s election on grounds of electoral irregularities, significantly weakening the government’s legitimacy. Instead of resigning, the executive invoked Emergency powers and centralised authority. The Emergency marked the transition from constitutional democracy toward authoritarian government.

- **Press Censorship During the Emergency:**

One of the first targets of the Emergency regime was the press. The government recognised that independent journalism could expose state excesses and mobilise public resistance. Consequently, strict censorship mechanisms were imposed across the country. Electricity supply to newspaper offices was reportedly interrupted to prevent publication. Journalists, editors, activists, and opposition leaders were arrested under preventive detention laws such as the Maintenance of Internal Security Act (MISA). Several newspapers complied with censorship due to fear of state retaliation. Others attempted to resist through symbolic protest and editorial silence. A famous observation made during this period stated: “The press was asked to bend, but it chose to crawl.”

This statement reflected the extent to which fear weakened journalistic independence during the Emergency.⁷

⁷ *PRESS FREEDOM AND CONSTITUTIONAL DEMOCRACY*, HARV. L. REV., [HARVARD LAW REVIEW](#).

- ADM Jabalpur and Judicial Failure:

The Emergency also exposed weaknesses within the judiciary itself. In *ADM Jabalpur v. Shivkant Shukla*, commonly known as the Habeas Corpus Case, the Supreme Court held that during the Emergency, citizens could not approach courts for enforcement of fundamental rights, including protection against unlawful detention.

This judgment is widely regarded as one of the gravest judicial failures in Indian constitutional history. Justice H.R. Khanna's dissent, however, became legendary. He argued that the right to life and liberty cannot entirely disappear even during constitutional emergencies. His dissent later became a symbol of constitutional courage and judicial independence.

- Legacy of the Emergency

The Emergency fundamentally altered Indian constitutional consciousness. It demonstrated that:

- democracy can weaken from within,
- constitutional rights require institutional protection,
- and press freedom remains essential for preventing authoritarianism.

After the Emergency ended in 1977, public opinion strongly favored stronger safeguards for civil liberties. The experience also influenced later judicial activism and expanded interpretation of Fundamental Rights under Article 21. Most importantly, the Emergency established that a free press is not merely a professional institution; it is a constitutional safeguard against abuse of power.

POST-EMERGENCY JUDICIAL ACTIVISM AND EXPANSION OF CIVIL LIBERTIES

The period following the Indian Emergency marked a major turning point in the constitutional and judicial history of India. The Emergency exposed the vulnerability of democratic institutions and revealed how easily civil liberties could be suspended when executive power became excessive and unchecked. During this period, censorship, preventive detention, political arrests, and restrictions on freedom of speech significantly weakened constitutional democracy. The judiciary's inability to effectively protect Fundamental Rights during the Emergency—particularly in cases such as *ADM Jabalpur v. Shivkant Shukla*—generated widespread criticism against the courts. Many scholars, jurists, journalists, and political thinkers argued that the judiciary had failed in its constitutional duty as the guardian of civil

liberties. As a consequence, the post-Emergency period witnessed the emergence of a far more active and rights-oriented judiciary. The Supreme Court gradually adopted an approach known as judicial activism, under which courts interpreted Fundamental Rights more broadly and intervened more actively to protect constitutional freedoms against arbitrary state action.⁸

- **Meaning and Emergence of Judicial Activism:**

Judicial activism refers to an approach in which courts actively interpret constitutional provisions to protect democratic values, individual rights, and constitutional morality. Rather than limiting themselves to narrow technical interpretation, judges began viewing the Constitution as a living document designed to respond to changing social and political realities.

After the Emergency, the judiciary recognized that excessive judicial restraint had allowed executive authoritarianism to expand.

This shift transformed the Supreme Court from a relatively conservative institution into an active constitutional guardian. The judiciary increasingly emphasized that: the Constitution exists not merely to establish government power, but to limit governmental abuse and protect citizens' liberties.

- **Expansion of Article 21 and Human Liberty:**

One of the most important developments of the post-Emergency era was the judicial expansion of Article 21 of the Constitution, which guarantees: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Initially, Article 21 was interpreted narrowly. However, after the Emergency, the Supreme Court adopted a much broader understanding of personal liberty and human dignity. A landmark judgment in this transformation was *Maneka Gandhi v. Union of India*⁹. The Supreme Court's declaration that Fundamental Rights must be interpreted together rather than separately became one of the most transformative principles in Indian constitutional law. Before this judicial development, Fundamental Rights were often interpreted narrowly and in isolation, with each constitutional provision treated independently, without regard to its relationship to other rights. This approach limited the protection available to citizens because the state could technically follow one provision while indirectly violating another.

However, in *Maneka Gandhi v. Union of India*, the Supreme Court fundamentally changed this approach. The Court held that:

⁸ *FREEDOM OF SPEECH AND EXPRESSION IN INDIA: A STUDY OF JUDICIAL INTERPRETATION*, INDIAN LAW INSTITUTE JOURNAL, [INDIAN LAW INSTITUTE](http://www.indianlawinstitute.com).

⁹ *MANEKA GANDHI V. UNION OF INDIA*, AIR 1978 SC 597(IND.)

- Article 14 – Equality Before Law: equality before the law and equal protection of the laws.
The Court explained that any law affecting personal liberty must not be arbitrary, discriminatory, or unreasonable. Government's actions cannot simply rely upon legal authority; they must also satisfy principles of fairness and equality.

Before Maneka Gandhi, it was possible for the state to argue that as long as a procedure existed in law, deprivation of liberty was constitutionally valid. However, the Court clarified that even legal procedures must comply with constitutional standards of equality and fairness under Article 14.

- Article 19 – Freedom and Democratic Participation: The Court recognised that personal liberty under Article 21 cannot be separated from the freedoms guaranteed under Article 19. If the state restricts liberty in a manner that destroys democratic freedom, such restrictions become unconstitutional.¹⁰

The Court therefore emphasised that constitutional freedoms must be interpreted broadly to preserve democracy and human dignity. This interpretation was greatly strengthened:

- freedom of speech,
- press freedom,
- political dissent,
- and protection against excessive governmental control.

The judiciary recognised that democracy cannot function if citizens fear punishment for exercising constitutional freedoms.

- Article 21 – Life and Personal Liberty:

Article 21 states: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Before Maneka Gandhi, courts interpreted this provision narrowly, meaning that any procedure enacted by law could justify restricting liberty, even if the procedure was unfair or oppressive.¹¹

DIGITAL REVOLUTION AND THE TRANSFORMATION OF FREE SPEECH

The digital revolution has radically transformed the meaning, scope, and practice of freedom of speech in India and across the world. Unlike earlier forms of communication that depended

¹⁰ INDIA CONST. ART. 19(1)(A).

¹¹ *THE EXPANDING SCOPE OF ARTICLE 21 AFTER MANEKA GANDHI*, SCC ONLINE J., [SCC ONLINE](#).

primarily upon newspapers, radio, and television, the emergence of the internet created a decentralised and highly interactive system of communication where every individual gained the ability to produce, share, and access information instantly. This transformation fundamentally altered the relationship between citizens, media institutions, and the state. In earlier decades, public communication remained largely controlled by governments, newspaper organisations, and broadcasting institutions. However, the rise of digital technology shifted communication power into the hands of ordinary citizens, thereby democratizing access to public discourse and political participation.

In India, the expansion of internet services, smartphones, and social media platforms has dramatically increased public engagement in democratic discussions. Citizens from different social, economic, linguistic, and geographical backgrounds gained the ability to express opinions, criticise governmental policies, organise protests, and participate in constitutional debates through digital platforms. This development strengthened democratic participation because individuals no longer depended entirely upon traditional media institutions for representation. The digital sphere became an alternative public space where ideas could circulate rapidly and where citizens could directly engage with political and social issues affecting the nation.

The transformation of communication through digital technology also gave rise to citizen journalism. Earlier, journalism was largely confined to professionally trained reporters working within established newspapers and television channels. The internet, however, enabled ordinary people to report events, upload videos, share photographs, and communicate information instantly through online platforms. This expanded the flow of information within society and reduced the monopoly traditionally held by mainstream media organizations. During protests, social movements, natural disasters, and political events, digital platforms frequently became the primary source of real-time information and public engagement. The digital era also introduced emerging technologies such as Artificial Intelligence, algorithmic moderation, and deepfake systems, which further complicated constitutional discussions relating to free speech. AI-generated misinformation and manipulated digital content possess the potential to distort democratic processes, influence elections, and create public confusion regarding truth and authenticity. Therefore, constitutional democracies increasingly face the challenge of regulating technological misuse without suppressing legitimate expression and innovation.

In the twenty-first century, freedom of speech can no longer be understood solely through the framework of traditional press freedom. It now involves complex interactions between

democracy, technology, constitutional law, private corporations, and global communication networks.

Ultimately, the digital revolution demonstrates that freedom of speech remains a dynamic constitutional principle continuously shaped by social, political, economic, and technological transformation. While digital technology has greatly expanded opportunities for democratic participation and public expression, it has also created new risks involving surveillance, misinformation, corporate control, and online harm. Therefore, preserving constitutional liberty in the digital age requires continuous judicial vigilance, ethical governance, technological accountability, and strong democratic institutions capable of balancing freedom with responsibility.¹²

COMPARATIVE PERSPECTIVE: INDIA AND GLOBAL DEMOCRACIES

The study of freedom of speech and press freedom in India becomes more meaningful when examined in comparison with other democratic nations. Although freedom of expression is recognised as a fundamental democratic value across most constitutional systems, the extent of protection and the nature of restrictions vary significantly from country to country, depending upon historical experiences, political traditions, constitutional structures, and social conditions.

India's constitutional approach toward free speech reflects a unique combination of Liberal democratic principles, Colonial legal legacy, Social diversity, and constitutional regulation.

Unlike some Western democracies that provide near-absolute protection to speech, the Indian Constitution permits reasonable restrictions under Article 19(2). Therefore, comparing India with other global democracies helps in evaluating the strengths, limitations, and challenges of the Indian constitutional model.¹³

- **United Kingdom: Parliamentary Sovereignty and Press Regulation**

The United Kingdom developed its approach toward free speech differently because it does not possess a single written constitution like India or the United States. Historically, British law strongly influenced colonial censorship policies in India. During earlier periods, the British Crown imposed licensing systems and restrictions upon newspapers. However, democratic reforms gradually expanded press freedom within the United Kingdom.

¹² *DIGITAL RIGHTS AND ONLINE FREEDOM OF EXPRESSION IN INDIA*, ECON. & POL. WKLY., [ECONOMIC AND POLITICAL WEEKLY](#).

¹³ REPORTERS WITHOUT BORDERS, *WORLD PRESS FREEDOM INDEX 2025*, [RSF INDEX](#).

The British media system also includes regulatory institutions responsible for maintaining ethical journalism standards. The UK, therefore, represents a model where free speech exists alongside stronger regulatory mechanisms and social responsibility principles. This approach resembles India more closely than the American model because both systems recognize that freedom of expression may be subject to reasonable constitutional limitations.

- **India's Constitutional Position in Comparative Perspective**

India's constitutional model occupies a middle position between near-absolute free speech systems such as the United States and more restrictive systems emphasizing collective constitutional values.

Article 19(1)(a) guarantees freedom of speech and expression, while Article 19(2) permits reasonable restrictions in the interests of: sovereignty and integrity, public order, national security, decency and morality, defamation, and prevention of incitement.

Unlike the United States, India recognises that unrestricted speech may sometimes contribute to communal violence or social instability. However, unlike authoritarian systems, India constitutionally protects political criticism and democratic dissent. The judiciary plays a crucial role in maintaining this constitutional balance through judicial review and interpretation of Fundamental Rights.¹⁴

- **Conclusion of Comparative Analysis**

The comparative study of India and global democracies demonstrates that there is no single universal model of free speech regulation. The United States prioritises individual liberty and minimal state interference, whereas countries such as Germany and France impose stronger restrictions to protect democratic order and social harmony. The United Kingdom adopts a balanced regulatory approach emphasising both liberty and responsibility. India's constitutional model reflects its own unique democratic journey shaped by colonial repression, constitutional pluralism, social diversity, and nation-building challenges. Indian constitutional law attempts to protect democratic dissent while also maintaining public order and constitutional stability.

Ultimately, the comparative perspective reveals that freedom of speech remains one of the most complex and evolving constitutional issues within modern democracies. Every democratic society must continuously negotiate the relationship between liberty, responsibility, security, and democratic accountability in changing social and technological

¹⁴ FREEDOM HOUSE, *FREEDOM ON THE NET REPORT*, [FREEDOM HOUSE REPORT](#).

conditions.

CONCLUSION

The evolution of press freedom and freedom of speech in India reflects the larger democratic and constitutional journey of the country. From the colonial period to the present digital age, there has always been a continuing tension between state authority and individual liberty. While governments have often justified restrictions in the name of public order, security, and political stability, the demand for free expression has remained central to the idea of democracy in India. The study shows that during British rule, censorship was not introduced merely to regulate the press but to protect imperial control. Laws such as the Vernacular Press Act of 1878, the Press Act of 1910, and Section 124A of the Indian Penal Code were used to suppress criticism and silence nationalist voices. The colonial administration viewed newspapers and political writings as dangerous tools that could influence public opinion and challenge British authority. As a result, freedom of speech during this period was treated more as a threat to governance than as a democratic right.

At the same time, colonial repression unintentionally strengthened the nationalist movement. Indian leaders and journalists used newspapers as instruments of political awakening and public mobilisation. Journalism became closely connected with the struggle for Swaraj, social reform, and constitutional rights. Leaders such as Bal Gangadhar Tilak, Mahatma Gandhi, and Annie Besant transformed the press into a powerful democratic platform that united people across regions and communities.

After independence, the Indian Constitution recognised the importance of free expression by guaranteeing freedom of speech and expression under Article 19(1)(a). Although freedom of the press was not separately mentioned, the judiciary gradually interpreted press freedom as an essential part of this constitutional guarantee. At the same time, Article 19(2) allowed the State to impose reasonable restrictions in matters relating to sovereignty, security, public order, morality, and national interest. This reflects the Indian constitutional approach of balancing individual liberty with social responsibility.

Over time, the judiciary has played a major role in defining the scope and limits of free speech in India. Courts have repeatedly emphasised that democracy cannot function without an independent press and the free exchange of ideas. However, judicial decisions have also recognized that freedom is not absolute and may sometimes come into conflict with broader state interests. Therefore, the development of press freedom in India has largely been shaped through a continuous constitutional balancing process.

Ultimately, freedom of speech and freedom of the press are not only legal protections for journalists or political activists; they are essential for the functioning of a healthy democracy. A society that suppresses criticism weakens democratic institutions and constitutional values, whereas a society that protects dissent encourages accountability, transparency, and public trust. The history of press freedom in India, therefore, demonstrates an enduring constitutional principle: democracy survives and grows through open discussion, criticism, and the fearless exchange of ideas.¹⁵



¹⁵ AMNESTY INT’L, *HUMAN RIGHTS REPORT ON INDIA*, [AMNESTY INDIA REPORT](#).