

CHALLENGES TO FREEDOM OF THE PRESS IN INDIA

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Abstract

“The freedom of the press is one of the greatest bulwarks of liberty and can never be restrained; but by despotic governments”, said George Mason

The Press is regarded as the fourth pillar of democracy and has acted as ‘vox populi’ or the ‘voice of the people’. The right to free speech and expression is pre-eminent among all basic rights. A free press with its undoubted powers and resources to speak on important issues of the day, to enlighten people on matters of general importance, as also to champion the cause of the weak and oppressed, to point out the shortcomings of the government of the day and to help development of a clean, healthy, competent, candid and critical yet having a constructive bent of mind is a desideratum in modern democracies. Thus, we may argue that a free press is essential to a democracy’s ability to endure and flourish as well as to uphold the principles of open and honest government. Members of a democratic society must actively and intelligently participate in community affairs. In order for people to effectively participate in social, cultural, and political processes, the press must present an accurate and transparent account of events as well as a platform for debate and well-informed critique. The only way for people to rule themselves effectively is through the fair presentation of opposing viewpoints and the collective wisdom that comes from the best available information. Dr. B.R. Ambedkar said, “freedom of speech and expression, must include freedom of the press, guaranteed under Chapter III (Fundamental Rights), Article 19(1)(a) of the Indian Constitution”. However, there were issues with how this was actually implemented. The Supreme Court of India through legal pronouncements and judgements, clarified that the freedom of the press was included in freedom of expression. Evidently, a free and open debate and discussion, are not possible, unless there is a free, open and independent press. Some claim that the government suppresses the media by using existing laws, and that press freedom has been deteriorating. The community benefits from the freedom to voice candid and reasonable opinions on issues of public interest, and the press, as a potent medium for mass communication, ought to be allowed to fulfil its function. Denying citizens their right to freedom of the press will inevitably weaken their ability to shape public opinion and be against democratic ideals. The several obstacles to press freedom in India that have contributed significantly to the country’s dropping position in the World Press Freedom Index will be mentioned in this article.

Keywords: *Freedom of Speech and Expression, Press freedom, World Press Freedom Index.*

Introduction

There does not seem to be any consensus amongst the journalists, jurists and social scientists about the meaning and concept of freedom of the press. Newspapers, magazines, journals, reports, audio, video (news channels, over-the-top platforms like You Tube), and other electronic media (news apps, social media feeds, etc.) are all examples of print media that are not heavily regulated by the state. This is known as freedom of the press. Since the press serves as a channel for knowledge acquisition and the dissemination of important information about events, developments, and incidents of national interest to the entire country, its free and fair operation forms the foundation of civil society, which can

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think critically and independently and form opinions about the government and the nation after carefully examining the available facts. Freedom of Press under Article 19(1)(a) includes freedom to spread information, freedom to criticize, freedom to receive information, freedom to report court proceedings, freedom to attend and report legislative proceedings, freedom to act as an advertising platform, freedom to conduct interview freedom to broadcast etc.

Most studies acknowledge that freedom of the press and freedom of expression are the most valued principles, values which are a part of common heritage of mankind in a democratic world, values without which life would lose all meaning and bereft of all decencies. To different people it means different things. A few emphasise the freedom of owners and corporates to market their publications, some view it as freedom of individuals to address the public through the press and some others focus upon the freedom of editors to decide what shall be published. Still, to others, it's a vehicle that is used to gather information and inform public about the true happenings without fear or favour. To many, it means freedom of information, dissemination, investigation, truth verification, public discussion, without prior restraints.

India has a large and diverse press landscape, with 20,821 daily newspapers and 1,25,767 periodicals published in more than 100 languages as on 31st March 2022. Despite the remarkable growth of the newspaper industry, the issue of the freedom of the press was never seriously debated in political arena. It gained particular significance following the 1976 emergency and the ensuing implementation of press censorship. It's crucial to remember that India has had subpar press freedom for a very long time—it has been ranked over 100 since 2003. But in recent years, press freedom has dramatically declined; this year, India was placed 161 out of 180 countries in the World Press Freedom Index. This index assesses the ability of journalists to work and report freely and independently and India's ranking reflects a situation where the freedom of press is seriously threatened. At present in 2022, India stands at 161st position out of 180 countries, whereas its neighbours fare better, with Bhutan at 90 and Sri Lanka at 135, Pakistan at 150 and even Afghanistan at 152.

Challenges to Freedom of the Press

Thomas Jefferson said "Our liberty depends on the freedom of the press, and that cannot be limited without being lost." Justice V.R. Krishna Iyer, a prominent Indian jurist, strongly advocated for press freedom, viewing it as an essential aspect of a democratic society and a crucial tool for citizen education and holding power accountable. He believed that a free press is the "Ark of the Covenant of Democracy". He believed that the freedom of the press is essential because the power of censorship should lie with the people, not the government, and that the press is a voice for the people to speak against power.

- **Constitutional Foundation**

Unrestricted freedom or liberty without reasonable limitations often undermines the very purpose of granting that freedom. "The constitution makers realized that no freedom could be absolute; therefore, they limited freedom of the press with certain restrictions. Article 19(2) of the Indian Constitution states that reasonable restrictions on the freedom of the press may be imposed in the interests of the 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".(Constitution of India)

- **Freedom of the Press vis-à-vis Privileges of the Parliament**

"It is a highly debated issue that garners significant attention. Journalists' attempts to cover selected portions of debates, or omitted segments, have raised a delicate issue of breach of privilege and contempt of the House. Press members assert their right to report on the proceedings of Parliament or the State Legislature under Article 19(1)(a) of the Constitution, while Parliament asserts its authority to punish individuals for breach of privilege and contempt under Articles 105(3) and 194(3) of the Constitution. The Constituent Assembly debates indicate that the framers of the Constitution could not find a solution to this problem and consequently left it unresolved".(Constitution of India)

- **Contempt of Court**

The courts have often punished pressmen for publications which interfere or obstruct the course of justice, as contempt of the court. A journalist may be guilty of contempt of court in several ways, more often, by scandalising the court, by interfering with judicial proceedings, by publishing material that is intended to prejudice a pending trial as well as not disclosing the information when required to do so. On

the other hand, the press asserts its inalienable right to comment fairly on every matter of public importance. Shouldn't the press have a right to publish its report on a pending trial? Shouldn't the press expose a corrupt judge through its columns? What is the privilege of the press where a court issues a gag order or decides to hold proceedings in camera?

- **Colonial Era Laws Continue to Restrict the Freedom of the Press**

- **Sedition Laws:** Section 124A of the Indian Penal Code penalizes anyone who tries to bring disaffection, hatred or contempt against the government. This colonial era sedition law was retained post-independence.
- **Defamation:** Defamation means to destroy the reputation of a person or organisation by means of speech, libel(written)or by any means. In India defamation can be a civil or a criminal offence, under Section 499 and 500 of the IPC. Defamation is a restriction on freedom of speech and expression under Article 19(2). Defamation also censors Internet. The State uses Defamation as a means to coerce the media into adopting self-censorship and unwarranted self-restraint. It's used as an instrument to silence the dissent.
- **Anti-State Activities:** Anti-terrorism laws are also used against journalists. Reporters believe that censorship and self-censorship, the number of journalists killed, banished, or harassed, and the state's monopoly on radio and television all serve as barriers to press freedom. It's alleged that the media and press have fallen into an 'unofficial state of emergency'. Additionally, Kashmiri authorities are employing preventive detention against journalists under the Jammu and Kashmir Public Safety Act, which permits them to hold anyone without cause or a judicial review.

- **Government Control and Censorship**

There are concerns that the government is introducing laws that would give it exponential power to control the media or censor news and ability to silence critics by limiting advertising budgets. Authorities can either reward media that supports their opinions or penalise those that disagree, so influencing how the media reports events and undermining the editorial independence of media organisations.

Under the Information Technology Act and the IT Rules of 2021, journalists and online critics who publish critical content about the government risked the possibility of being prosecuted. The Telecommunications Act of 2023, the 2023 draft Broadcasting Services (Regulation) Bill, which aims to subject news content producers, including digital platforms, to a highly controlled regulatory framework, has raised concerns about the government's increasing meddling with media freedom and online expression. Also, the 2023 Digital Personal Data Protection Act has provisions intended for data protection. All of these, raise concern about press freedom by potentially hindering journalistic activities, especially investigative reporting, through requirements for consent and data erasure, and the lack of a specific journalistic exemption. This can curb civil liberties, including freedom of the press and media as it grants to empower the Union Government to block access to information in "the interest of the general public" if requested by the Data Protection Board, which raises the question regarding the scope and extent of information restriction.

- **Corporate Influence**

The rising trend of corporate ownership in media has sparked concerns regarding its effects on press freedom. Due to the acquisition of significant media outlets by business conglomerates, the media landscape has seen significant change in recent years. Concerns have been raised by this change over the possible impact of corporate agendas on editorial choices, ability of the press to act in public interest or bias in reporting. Also regulatory frameworks, including media ownership laws and regulations can greatly influence press freedom. Media ownership and concentration in the hands of a small number of people or organisations (corporate and political takeover of media institutions) can result in a lack of diversity of opinions and the possible domination of particular narratives or agendas. It can also restrict the plurality of voices, which makes it more difficult for journalists to report freely.

The Times of India and Bennett, Coleman & Co. Ltd., India Today and Living Media India Ltd., Zee News and Essel Group, The Hindu and Kasturi & Sons Ltd., NDTV and Reliance Industries Ltd are a few examples of corporate takeover of media groups.

- **Economic Dependency and the Legitimacy of Journalism may be Affected because of Media Outlets**

The media sector in India is under pressure from economic concerns and problems because there aren't enough advertisements available in the worldwide market and emerging media, as digital technology are competing with it. The independence and legitimacy of journalism maybe affected because media outlets may prioritise profits over the reporting of their reporters. Journalists are struggling, which results in fewer jobs and less funding for independent reporting.

- **Decline in Press Freedom Ranking**

Sir Ivor Jennings said, "Without freedom of speech, the appeal to reason which is the basis of democracy cannot be made." India is the world's largest democracy and its position in the World Press Freedom Index out of 180 countries is at 161, which is an issue of concern. World Press Freedom Index is an extensive, inclusive, exhaustive global assessment of the freedom of the press across the world, consolidated by Reporters Sans Frontiers (2002 onwards). The Parameters considered are the social, political, economic and cultural environment, safety, and legal framework. It is seen that press freedom is strong in countries of European Union. India is ranked at a very low level alongside Turkey, UAE and Russia. Indian Government has defended its position citing that Article 19(2) allows reasonable restrictions. The conclusions are based on a small sample and methodology adopted is unreliable.

- **Threat to Female Journalists**

Female journalists are at the receiving end and suffer worse treatment in the form of threats of violence, doxing, cyberbullying, attacks on personal information and on their families etc. Women journalists are often targeted with smear campaigns aimed at silencing and discrediting them particularly when reporting on polarizing topics. Rana Ayyub, a prominent Muslim journalist, has been charged with money laundering and tax evasion cases. She has been trolled on social media by several Hindu nationalists. Supriya Sharma was harassed during COVID-19 coverage. Concern over privacy and press freedom has also been highlighted by instances of state espionage and the deployment of spyware to follow journalists' movements. Latest being the Pegasus, an Israeli software allegedly being installed in the mobiles of several journalists, by the government.

Solutions and Strategies to Revamp the Freedom of the Press

In the 1950 decision of **Romesh Thapar v. State of Madras**, the Indian Supreme Court upheld the Indian Constitution's guarantee of the fundamental right to freedom of speech and expression, which includes freedom of the press. It was believed that this independence was essential to the creation of a robust, independent press that is frequently called the "Fourth Estate". People can get a range of information and view points on issues of public interest via an independent press. Regulatory bodies like the **Press Council of India**, established in 1978, can serve as a custodian to promote freedom of the press and ethical standards in journalism. An affirmative role can be performed by **Ministry of Information and Broadcasting**, a government agency responsible for formulating rules and regulations pertaining to the Indian media industry.

- The Editors Guild of India, should emphasise the rights and obligations of journalists and protects press freedom. It is made up of editors from well-known newspapers and news magazines.
- Justice J.S. Verma Committee(2012), National Human Rights Commission, Press Council of India suggested implementing ethics and legal education for reporters, encouraging openness and responsibility in media organisations, and to make sure that constitutional protections for press freedom are upheld through international collaboration and legal actions.
- Article 19(1)(a) of the Indian Constitution, protects the right to free speech and expression, particularly for journalists and other media workers. Upholding press freedom is a major responsibility of the Press Council of India (PCI). It requires greater independence and the authority to deal with infractions.
- The RTI (Right to Information Act) of 2005, grants citizens the right to access information held by public authorities, thus promoting transparency and accountability in governance.
- The laws that are employed to control and block content that reinstates reasonable and equitable limitations on the right to free expression must be modified. Since it will reduce the possibility of bias and increase the accuracy of journalism and news reporting.

- Many lawmakers are of the view that media owners should disclose their identities and ownership shares.
- Fair and objective reporting can be ensured by establishing independent and autonomous regulatory agencies to monitor media operations/
- Social media should push down on fake news websites and boost support and financing for independent fact-checking groups to stop the spread of false information.
- Protection of Whistleblowers should be proposed for journalists and media persons also.
- By adopting International Best Practices and Standards, India may learn a lot from nations that have effectively protected press freedom. We can learn how to create strong mechanisms that defend and preserve press freedom by researching global norms and best practices.

Conclusion

Hence, we can conclude by saying “there should be rule of law and not the rule of noise.” Press helps in highlighting truth and has become the voice of the people in the digital world. As a vital watchdog entrusted with examining the government's operations and drawing attention to any perceived injustices or wrongdoings committed by any state institution, body or state actor, the press is essential in a democracy like India in elevating the voices of the people and illuminating government actions. In addition to serving as a conduit for the free exchange of information between the people and the government, the press occasionally speaks for the mostly silent populace. India's media and press sector is remarkably diverse and undergoing significant transformation, yet journalists are nonetheless subjected to pressure, threats, and intervention, underscoring the need to preserve press freedom.

Lack of press freedom can cause chaos in a Welfare state and lead to a gradual transition from a democratic republic to a monarchy or dictatorship.

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