

## CHAPTER—II

### FREEDOM OF PRESS: THE CONSTITUTIONAL PERSPECTIVE.

*“Freedom of Press is an article of Faith with us, sanctioned by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation.”*

: Former Prime Minister Rajiv Gandhi

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## **Introduction**

For the democratic functioning of a society, freedom of expression has always been emphasized as an essential and fundamental base of the society. Freedom of speech and expression which includes the freedom of press<sup>28</sup> is considered as the backbone of the democratic society. The extent of the freedom press enjoyed by the press is regarded as the parameter or credentials of democracy of a state. The Press plays an important role because it provides all comprehensive and objective information of all aspects of the country's Economic, Political, Social, and Cultural aspects.

If the democracy has to be meaningful and function effectively, then a free press is a *sine qua non*. Which is why very often the freedom of press is described as the oxygen of democracy; and without which a democratic society cannot survive. It is visibly evident, especially since Independence, a free and vigilant Press has acted as a vital agency to curb corruption and injustice. In addition, another important role, the press plays is to formulate the public opinion which helps on one hand imparting the knowledge to the society and on the other hand restraining the tyrannical actions of the government.

Right of freedom of speech and expression is incorporated in Article 19 of the Universal Declaration of the Human Rights, 1948. It states that everyone has a right to hold opinion without interference. This right of freedom of expression includes the right to hold opinions to receive and impart information either orally or in writing or in any other form through any of the agencies of the media. Article 19 of the International Covenants on Civil and Political Rights 1976 also incorporates the right of freedom of speech and expression. In India the right of freedom of speech and expression is incorporated in 19(1)(a) of the Indian Constitution. This right of freedom of speech and expression is a fundamental right in the Indian legal system. The right to free press does not exist independently and is incorporated in the right of freedom of speech and expression; and hence the right to free press is regarded as a fundamental right.

The press is regarded as the fourth pillar of democracy, as it is a potent check on the policies of the government, which are formulated with malafied intentions. The press also acts as a means for keeping the elected officials responsible to the people who are

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<sup>28</sup> *Infra*; p. 37

supposed to serve. The press not only brings to the notice of the society, the crimes, which otherwise would have gone unnoticed; but also plays a crucial role in initiating legal proceedings in such crimes, thereby ensuring justice<sup>29</sup>.

The literal meaning of 'Freedom' means absence of control or lack of interference from any authority; so also it means no restrictions. Here freedom of press means the right or the liberty to print, publish, or paint without any interference from the state or any other public authority. But according to the principles of Jurisprudence, no right or freedom or liberty can exist absolutely without restrictions; hence freedom of press is also demarcated by number of restrictions.<sup>30</sup> So here freedom of press means the liberty to print, publish, or paint within the ambit of rational and reasonable restrictions. The whole game is that, what should be the sphere or area of freedom and what should be the demarcating lines of that freedom. When it is said that the freedom of press prevails, then it means that liberty of the press exists within the brackets of restrictions. The crucial aspect is where one should draw the demarcating lines of restrictions; and how much sphere should be allowed for the freedom of press.

## **1. History of the press**

### **(a) Aspects related to the freedom of press**

Expressing oneself is inherent in a human being, which is beyond the scope of any legal parameters and hence the freedom of press in a crude form has always prevailed since ancient times. To put it in other words freedom of press has not prevailed because of any legal sanctions, but is born with the human being. The very first signs of the press are visible in the writings and paintings on stones, woods and walls several centuries before Christ. In India many great Emperors had carvings, like Emperor Ashoka's edicts on stone which are seen even today. After the invention of paper, freedom of press started getting a concrete shape in the form of state records pertaining to the messages from the spies. However this was a rudimentary form of press. Later not only the messages were being sent, but important messages were being sent throughout the region with the help of some crude method of communication. Letters, bringing news are considered to be the first form of

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<sup>29</sup> *Infra*; p. p.136-149

<sup>30</sup> *Infra*; p. 59

newspapers. Such letters bringing news were called as 'Newsletters' and were regularly issued during the Mughal and the Hindu regime. This practice has continued until the East India Company arrived on the soils of India.

**(b) Existence of Press in Pre- British era**

In India the first reference of press can be traced to the Muslim era. The Mughal rulers used to select efficient people and hire them for reporting to them the position of their kingdom. Such hired reporters had to send to their king, the messages regarding the grievance of the masses and the expectations of the people. They also had to inform to their king about the corruption and injustice prevailing in his court and region. Even the wants, needs, necessities, desires, aspirations had to be reported to king by such informants. So the king became aware of these issues through the messages sent by those informants. This can be regarded as the form of press prevailing in India. Even in those times independency of the informants (press) needed to be secured, and hence these people were directly appointed by the king. They were not only highly paid but also their tenure was secured as they could be removed only by the king himself and no one else. Hence they could not be influenced by any court officer, irrespective of his rank, and could report freely and fearlessly. This policy played a significant role in maintaining the empire for centuries and can be regarded as the foundation of free press.

If compared to the modern era, the press prevailing in Mughal period can be termed as an in house circulation rather than public circulation. This in house circulation served an important function that is, to give guidelines to the king for better administration. Giving guidelines to the government for better governance is the most essential and fundamental function of the press, which was fulfilled by the role of informants during that era.

Here it is important to note that this informal press in pre-British period was not intended for the circulation of the general public. The only purpose of this system was to provide information to the king, and enable him for better administration. The major difference was that such reports were not accessible to general public but were prepared exclusively for the king.

**(c) Status of press in British era.**

It is already been seen in the previous pages that the essence of press prevailed even before the Britishers came to India. Nevertheless, the Britishers developed the concept of press to a great extent. The establishment of the system of press became more refined after the industrial revolution. In 1674, the first printing press was established in Bombay. In 1772 the second printing press was established in Madras.

In 1776 William Bolts, a former employee of the East India Company had simply expressed his intention to start a newspaper. To further his intention he only pasted a notice on the gates of the Council Hall intimating the people, that he had in his possession 'in manuscript', and had many things to communicate which were of utmost concern to every individual. William Bolts had to face the axe of censorship, even before he actually started the newspaper since he was asked to leave Calcutta and proceed to Europe.

In Calcutta first printing press was started in 1779, and the first newspaper was started in 1780 by James Augustus Hickey, an Irish person. Hickey wanted it to be known to the society that this paper was free from any political influence and hence he named it as "A Weekly Political and Commercial Paper open to All Parties but Influenced by None". In his weekly, Hickey had criticized the policies of Lady Warren Hastings. Warren Hastings was the then Governor General of India. He immediately used his powers and issued an order for seizure of the printing types. Thus in March 1782 the paper was closed. The life of this paper was very short because the executive authority had cut the throat of freedom of press. The battle between the free press and its suppression by the executive authority has become the bone of contention since then till to date.

For the first time the censorship was introduced in the year 1795. The classic example of the pre censorship can be seen in the case of the 'Madras Gazette', wherein it was asked to submit to the Military Secretary all the general orders of the Government for censorship before publication. The British Government resorted to three methods to curb the right of free press.

- (i) Pre-censorship
- (ii) The denial of postal privileges
- (iii) Deportation of the editor and publisher.

The first Regulations of censorship were promulgated by Marquess of Wellesley which continued until 1799. The Wellesley regulations involved the following aspects

- (i) It required the newspapers to print the names of the printers, publishers and editors.
- (ii) It also required to submit all the material for pre-censorship by the Secretary to Government of India.

Warren Hastings abolished all these above regulations.

The Bengali newspaper Samachar Darpan was published in 1818. The year 1822 is a landmark year because the Bombay Samachar was published in this year. The Bombay Samachar is very famous and is still prevalent today and is the oldest newspaper in Asia.

The main focus of the Indian newspapers was in those days was mainly the following

- (i) To unite the Indians and form groups
- (ii) To awaken the notions of nationalism among the Indians.
- (iii) To inspire the people to join the freedom movement.
- (iv) To highlight and criticize the discriminating policies of the British Government.
- (v) To demand the civil rights for the Indians.

The paper Indian Mirror was in line with the above objectives and was popular. Girish Chandra Gosh started the newspaper, Hindi Patriot which strongly demanded the appointment of Indians at high posts. The proprietors of Amrita Bazaar Patrika which was a weekly, were tried and convicted for sedition because it was very critical of the policies of the government.

British rulers imposed a number of legal restrictions on the press mainly to curb the freedom movement. As J. Natrajan says, “the first two decades of the 19<sup>th</sup> century saw the imposition of a rigid control of the press by Lord Wellesley and Warren Hastings<sup>31</sup>.” The newspaper regulations not only controlled the circulations but even a strict watch on the content of newspapers was kept for example the Adams Regulations of 1818 controlled the content of the newspapers. Crown rule in India also imposed restriction on newspapers.

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<sup>31</sup> Jain M.P ., *Legal History*

Gangadhar Bhattacharya started the first Indian owned newspaper, the Bengal Gazette. Inspired by this newspaper, several newspapers were published, and hence the press had started making rapid strides. Vernacular papers started receiving wide appreciation and readership like Urdu and Persian papers in north-west India, the Marathi in Maharashtra, and Gujarati in Gujarat press had started to make their presence felt. By 1850, newspapers in Hindi and Malayalam, Kannada, Tamil, Oriya, Assamese and Punjabi appeared.

The 1857 revolution had tremendous limiting impact on the freedom of press in British India.

Lord Lytton, knew that the foundation of the freedom movement was the press and was worried over the increased impact of the writing in the press, especially the language press. Hence he passed the draconian legislation to almost uproot the right of free press. With this view he enacted the Vernacular Press Act on March 1, 1878. This Statute came down heavily on the press. Under this regulation, any District Magistrate or a Police Commissioner was empowered to take any of the following action

- (i) To force the printer and publisher of a newspaper to agree not to publish certain kinds of material,
- (ii) To demand security,
- (iii) To confiscate any printed matter, if it was deemed to be objectionable.

Because of such wide powers granted to the District Magistrate and also to police commissioners, The Vernacular Press Act, 1878 was the greatest blow to the freedom of the Press in India. This is why the Vernacular Press Act has been nick named as the Gagging Act, as it gagged the voice of the free press.

In the later years the freedom of press had to face a lot of hurdles because of many legislations passed by the British government. To name a few - Sections 124-A and 505 of the Indian Penal Code, 1860, the Press and Registration of Books Act, 1867 the Indian Official Secrets Act, 1889.

A famous leader of Maharashtra, Mahadev Govind Ranade, awakend the consciousness of downtrodden masses by writing in *Gyan Prakash* as well as in *Indu Prakash*. In 1881, Bal Gangadhar Tilak started another Marathi weekly, *Kesari* which became very famous. Another weekly journal, *Maratha* in English, was started

by Tilak along with Agarkar and Chiplunkar. Nam Joshi the editor of the '*Daccan Star*' also joined them and his paper was incorporated with *Maratha*. In his paper, Tilak wrote very strongly against the British government and Diwan of *Kolhapur*. Hence Tilak and Agarkar were convicted for such writings. Tilak's *Kesari* became one of the leading newspaper to propagate the message of swaraj movement. *Kesari* highlighted the anti-partition movement of Bengal and presented it as a national issue. The Sedition ordinance was also opposed in 1908 by Tilak, and hence he was exiled from India for six years. Later Hindi edition of *Kesari* was started from Nagpur and Banaras<sup>32</sup>.

As the revolts against the British government were on the rise the British government wanted to put its axe on the ambit of freedom of speech and expression. With the object to curb the revolution movement, Lord Morley Minto had promulgated the Newspapers (Incitement to Offences) Act 1908. This ordinance empowered the local British Authorities to penalise the editor of a newspaper who published such matter which would constitute an incitement to rebellion.

From the above discussion it is evident that the British government exercised stringent control on the freedom of press to retain their power and to restrain the freedom movement. It is to be noted that the British Government was in the favour of curtailment of freedom to press; because it wanted to curb, prohibit and suppress the independence movement.

## **2. Freedom of press – Constitutional status.**

Every legal system is founded on constitutional principles. The same is true with the Indian legal system, as it is based upon the Indian Constitutional law. To put it in other words, every right, liberty, power, immunity or liability has to be rooted in the constitution, only then, it can be invoked. Similarly freedom of press has been incorporated in the constitution and hence this right can be invoked by the citizens of India.

The constitution of India incorporates the freedom of press in two aspects.

- (i) Preamble
- (ii) Article 19(1)(a)- Right to freedom of speech and expression

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<sup>32</sup> <http://www.congress.org.in/new/role-of-press.php>

**(a) Preamble**

The Indian Constitution opens with the preamble. The preamble is considered to be the essence and the spirit of the Constitution, and hence it is considered to be a very vital part of the Constitution.

The citizen is guaranteed the liberty of expression by way of Preamble of the Indian Constitution. It states that the citizen has the liberty of thought, expression, belief, faith and worship. The liberty of thought and expression includes the right of free press. The right to free press is impliedly included in the ambit of liberty of thought and expression. The aspect of human liberty is regarded as the cardinal principle of human life, hence liberty occupies a special place in the Indian Constitution.

Similar provision regarding the freedom of the press was already included as part of freedom of speech and expression under the Article 19 of the Universal Declaration of Human Rights (1948). The heart of the Article 19 says that everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>33</sup>The freedom of press in India is on similar lines of Article 19 of the Universal Declaration of Human Rights (1948). It is to be noted that freedom of press was considered to be so important by our founding fathers that it found place in the preamble itself.

**(b) Constitutional provision – Article 19(1) (a)**

After independence when the new constitution was being framed, the question before the framers of the constitution was that, whether to have a separate legislation just like the first amendment of USA<sup>34</sup>, or to follow the English way, where freedom of press is included in freedom of speech and expression. Chairman of the Drafting committee Dr. Babasaheb Ambedkar strongly argued that *“The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editors of press or the manager*

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<sup>33</sup> Manoj Kumar Sadual, Freedom of Press in Indian Constitution: A Brief Analysis, International Journal of Applied Research 2015; 1(8): 194 -198

<sup>34</sup> The First Amendment guarantees freedoms concerning religion, expression, assembly, and the right to petition

*are all citizens and therefore when they choose to write in news paper they are merely exercising their right of freedom of speech and expression and in my judgment therefore no special mention is necessary of the freedom of press at all.*"<sup>35</sup>

In India therefore there is no separate law relating to the press prevails, and the same is protected under Article 19(1) (a) of the Constitution of India.

Article 19(1) (a) guarantees six freedoms in all, which are as follows.

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) Right to property (deleted) now incorporated in Article 300A.
- (g) to practise any profession, or to carry on any occupation, trade or business<sup>36</sup>

One of the fundamental principles of jurisprudence states that for any right to be effective has to be bridled with limitations, and so is the case with six freedoms. So Article 19(1) confers six freedoms on the citizens, and from Article 19(2) to 19(6) limitations are imposed on the six freedoms mentioned in Article 19(1)<sup>37</sup>.

Freedom of press is impliedly included in the freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. Some legal experts have opined that there is a hairline difference between the four notions of, right to speech, right to expression, right to freedom of press, and right to information.

For the perusal of academic interest let us examine the subtle difference between these four aspects.

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<sup>35</sup> Constituent Assembly Debates, Vol. VII p 780 (2<sup>nd</sup> December 1948)

<sup>36</sup> <http://indiankanoon.org/doc/1142233/>

<sup>37</sup> *Infra*;p 59

(i) Freedom of speech

Freedom of speech essentially denotes the ability to communicate the ideas and information to other persons. The wide meaning of freedom of speech includes freedom of writing, speaking, printing, or publication.

(ii) Right to expression.

Right to expression is a very broad term and includes many aspects such as all actions of expression which include speaking, writing, printing, singing, dancing, painting, carving etc. It is true that right to expression is very broad, and may include right to speech.

(iii) Freedom of press

Freedom of press includes right of printing and publishing. It means that individual expresses his views in the form of printing. Hence freedom of press includes freedom of speech which is expressed in the form of printing and publishing. The essence of freedom of press lies in the wide circulation and its access to mass media. In the cases of newspapers, or journals, television or radio network, the managers or the proprietors have the last word in the broadcasting or publishing the contents.

(iv) Right to information

Right to information is at right angle with the freedom of speech and expression. The right to information is not concerned with the aspect of expressing that is giving but emphasis on gathering or taking information. So the right to information deals with the aspect of getting access to information. The term “Freedom of information” was invented by United States. The right to information is incorporated in the freedom of information Act. A similar provision prevails in Canada under the Access to Information Act. In India, the right to information is an upcoming right, incorporated in the Right to Information Act 2000.

These four terms are neither synonym of each other nor are they completely distinct from each other; but they are correlated to one another. The core is the

freedom of speech, and the fringe is freedom of expression which includes freedom of speech. The freedom of press includes both freedom of speech and expression, whereas the right to information overlaps to a certain extent over the right to freedom of press.

**(c) Importance of freedom of speech and expression and freedom of press.**

Freedom of speech and expression is an essential aspect of liberty as stated in *Maneka Gandhi v Union of India*.<sup>38</sup> The founding fathers of the Indian Constitution have laid much importance on the fact that freedom of speech and expression should be one of the fundamental rights of an individual. So they have placed the freedom of speech and expression in the Article 19(1)(a) which is a constituent part of the chapter on fundamental rights incorporated in the Indian Constitution. There are six freedoms secured in the Article 19(1)(a), and the freedom of speech and expression is ranked first among the six freedoms incorporated in the said Article of the constitution. To express oneself, is an inborn instinct of every human being, and it would not be wrong to say that deprived of freedom of speech and expression a human being would not be a human being. Speech and expression is not only the liberty of an individual but it is one of the basic necessities of the human being. It is because of speech and expression that the human being can not only be developed but also are capable of expressing other emotions and feelings. The freedom of press is one of the most important agency of communicating one's speech and expression. Hence the freedom of press performs very vital functions of the society.

- (i) The freedom of press is denoted as the backbone of the democracy. This is the most basic functions performed by the freedom of press. It is because of the freedom of press that the democracy survives. Democracy means the government of the people, by the people and for the people. The press makes it possible for the government to know the moods and necessities of the people. Simultaneously the press communicates to the whole society, the intention, policy and measures of the government.

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<sup>38</sup> AIR 1978 SC 597

- (ii) The press is considered to be the most influential medium of communication, because of its very wide horizons. That is why freedom of press is a very precious freedom.
- (iii) The freedom of press assists to uncover the truth.
- (iv) The press today is considered as an instrument of imparting education.
- (v) The press helps in creating, moulding and commuting public opinion. That is why the press is considered to be an instrument of change.
- (vi) As the press makes the government action public, it is responsible to make the government officers responsible and accountable.
- (vii) The press plays the role of public vigilance and acts as effective checks on the malpractices and corruption, not only on the government officers but also on the private individuals.
- (viii) The language press strengthens the bonds of the community within the state and thus helps in achieving stability and solidarity in the nation.
- (ix) The press and the digital media are very useful and popular because they deliver and circulate accurate news at a lightning speed.
- (x) Last but not the least the press and the media act as an eye opener of the society.

**(d) Rights of press**

Before one moves to the intricate issues of the freedom of press, one has to have clear understanding of the word press. The word press has got two meanings as follows:

- (i) The core or common meaning – strict interpretation
- (ii) The wider horizon of the word press.
- (i) The core or common his meaning – strict interpretation.

The core meaning or the common meaning of the word press means the printing press. It includes all the physical aspects of the printing press. It is clear from this meaning that is very narrow meaning or a very strict interpretation of term press. This meaning is not sufficient to understand the various aspects of the freedom of press; so one has to turn to the wider meaning of the term press.

- (ii) The wider horizon of the word press

The word press in its wider perspective includes all printed material printed in the printing press, like newspapers, journals, magazines, periodicals, pamphlets, leaflets, books, handbills, documents or any other printed material. Further the term press includes within its ambit agencies, feature agencies, press and syndicates,

Newspaper constitutes a major part of the term press. Newspaper is sometimes used as a synonym for press. The tussle between the freedom of press and the restrictions imposed by the state is due to this newspaper which is considered as a vital ingredient of press.

The term 'Newspaper' includes "any printed periodical work. It includes the following;

- (i) Public news
- (ii) Criticism, comments or analysis of public news
- (iii) Statements of facts or the interpretation of facts
- (iv) Opinions of various people or opinion through editorials
- (v) Advertisements

Newspaper performs extremely important functions in the society such as

- (i) Imparting and circulating news
- (ii) Creating and moulding of public opinion
- (iii) Imparting education and is considered to be a source of enlightenment.
- (iv) It is source of entertainment
- (v) It is considered as a medium of advertisement and publication<sup>39</sup>.

Since the newspaper performs these vital functions it is considered as the life of the society. As the newspaper creates and moulds the public opinion, it is considered to be a very very powerful instrument in the hands of the editor or the publisher. So the first aspect of the press is occupied by the newspapers.

Since freedom of expression includes the freedom to proliferate one's own views as well as of others.<sup>40</sup> It also includes communicating those views to others. Freedom of the Press includes the following rights;

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<sup>39</sup> Dr. S.R. Myneni, *Media Law*, (Asian Law House,2013),pp.32-37

<sup>40</sup> *Express News papers v. Union of India*. AIR 1958 SC 578 (614)

- (i) Printing and publication of news. In *Re Daily Zemmeedar*<sup>41</sup>, it was stated by the judiciary that the printing and publication of the news was the essential right of the press. Further it was also stated by the court that it is the right of the press to print the facts of contemporary history<sup>42</sup>
- (ii) The second right of the press includes to print views or opinions. The Supreme Court of India has laid down in *Gopal Dass v. D.M*<sup>43</sup> the freedom of press includes printing of editor's or author's views. Further the Supreme Court has also held in *Sharma v. Srikrishna*<sup>44</sup> that printing of views not only includes the editors or authors views but also the views of any other people who have printed the views under the directions of the editor, author or the publisher.
- (iii) The right to free press not only includes to publish views but it also includes to dispense and circulate those views in the entire society as was decided in *Romesh Thappar, v. State of Madras*<sup>45</sup>
- (iv) The freedom of press includes within its ambit the right to discuss and publish the views pertaining to such information which is necessary for the members of the society to cope up with any urgent need or demand of that period. This information may not be related to any political or public matter or issues<sup>46</sup>.
- (v) Another dimension of the right to press includes the right to comment on public affairs as was stated by the Supreme Court in *Bennett Coleman v. State of J. & K.*<sup>47</sup> This right to comment on public affairs includes the right to criticize people holding public post and also to criticize the public policies.<sup>48</sup> This right also includes the right to analyse and to criticize not only the Government, but also its policies such as the defence policies and even the conduct of the Armed Forces<sup>49</sup>. However this right of criticizing the

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<sup>41</sup> AIR 1947 Lah 340

<sup>42</sup> *Ibid.*

<sup>43</sup> AIR 1974 SC 213.

<sup>44</sup> AIR 1959 SC 395

<sup>45</sup> (1950) SCR 594

<sup>46</sup> *Thornhill v. Alabama*, (1950) 310 US 88 (102); *Time, Inc., v. Hill*, (1967) 385 US 374 (388)

<sup>47</sup> (1975) Cr LJ 211

<sup>48</sup> *Baumgartner v. O.S.*, (1944) 322 US (673-74)s

<sup>49</sup> *Hartzel v. U.S.* (1944) 322 US 680 (690).

government policies has got a severe limitation that is , it should not endanger the national security.<sup>50</sup> Now dealing with the Indian situation, this right is not permitted in ordinary situations, in other words it is reserved by virtue of section 124A, of the Indian Penal Code.

(vi) The corollary right of gathering information is the right to get access to the sources of such information. The Supreme Court has clearly stated in *Prabha v. Union of India*<sup>51</sup> that the right to collect information would be meaningless if the right of access to the sources of such information would not be granted. The right of access to the sources of such information is not without limitation and it has been stated by the judiciary in *Branzburg v. Hayes*<sup>52</sup>, that the press does not have a constitutional right of access to secret information. Further the court in *Pell v. Procunier*<sup>53</sup> held that the government is not under any duty to give access to the sources of such secret information to any person from the press.

(vii) The press also enjoys one very potent right that is to collect the diversified information from hostile sources on the ground of competitive market. In such a situation press is free from any monopolistic control from the government as has been reiterated by the Supreme Court of India in many cases<sup>54</sup>.

(viii) The last is the residuary right of the press which includes refraining from publishing any news or any matter or any other co related matter to any news. The freedom to publish any news includes the freedom not to publish. So also this right includes declining to publish any news under the dictation of any authority. It also includes the right to publish any matter according to the newspapers policy and plan. This residuary right also includes the power of

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<sup>50</sup> *Gravel v. United States*, 408 U.S. 606 (1972)

<sup>51</sup> AIR 1982 SC 6

<sup>52</sup> (1972) 408 US 665

<sup>53</sup> (1974) 94 S Ct 2800

<sup>54</sup> *Express Newspapers v Union of India*, (1959) SCR 12: *Himmat Lal v . Police Commr.* AIR 1973 SC 87: *Associated Press v. US.* (1945) 326 US 1

the press to organize its activities and formulate its plan for publication in respect of its readers, its address and to set the price of the paper.

However the government does not allow the press to use its residuary power very often, and tries to impose some restrictions or limitations.

The rights which are enumerated above can be regarded as very essential rights of the press. For the press to survive and healthily flourish, the rights of the press have to be protected. It must be remembered that a free press is a sign of a good, progressive and democratic society. Hence the press and all its attributes must be secured and protected to the maximum extent. But it is also true that the press must not be left without fetters on its freedom otherwise the chances would be that the press oversteps its powers and causes injustice.

**(e) Scope of the powers of the press**

According to Hohfeld<sup>55</sup>, rights in the wider sense include powers, immunities, privileges and liberties. These powers which are enumerated in the forthcoming pages can be describes as rights or immunities, privileges or liberties

It is true that there is no separate freedom for press in the Indian constitution. But it is not the case that the press and media do not get any rights. On the contrary, various rights of press are not only recognized, but also protected. It is the judiciary who protects the rights of the press and media through its various thoughtful judgments. The judiciary has time and again upheld the freedom of expression of media from the arbitrary actions of the state who has tried to curtail the freedom of press taking various defences.

The difficulty in protecting the press is that, there are various components of press, these components cannot be limited, and the new components keep on evolving with the development in technology. Though it is not possible to discuss all the components, a few are discussed.

**(i) Power to circulate the information:**

This right is the cornerstone of freedom of press. The freedom of press will not be of any significance without this right. Without the right to circulation,

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<sup>55</sup> Dias RMW; *Jurisprudence.*,(Butterworth&co.1994)

one cannot say that the freedom of expression is being enjoyed at all. For the press this right is of great significance. It is through circulation that the press reaches to the masses. The right to circulation was implied in the right to press and no specific mention was felt necessary, till the case of *Romesh Thappar v State of Madras*.<sup>56</sup> Romesh Thappar, the publisher, editor and the printer of an English Journal called Cross Roads had printed in his journal very critical appraisals of the policies of the Nehru government. So also the journal Cross Roads was known for its critical and leftinian approach. At the same time the Madras Government had declared the Communist parties illegal. In this background the government of Madras under section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposed a ban on circulation of 'Cross Roads'. Romesh Thappar filed the petition in the Supreme Court of India. He stated that his right to freedom of speech and expression guaranteed under 19(1)(a) of the Indian Constitution was violated by the Madras Government by imposing the ban on his movement of circulation of his journal. The question before the Court was:

- (i) Whether the freedom of speech and expression of the petitioner was violated by the Madras Government's actions of imposing the ban?
- (ii) Whether the ban imposed by the Madras Government was justified under the limitations enumerated in Article 19(2) of the Indian Constitution?
- (iii) The Madras Government could issue a ban on the circulation only for public safety under the Madras Maintenance of Public Order Act, 1949; however Article 19(2) does not contain the phrase public safety or public order. Hence whether the ban falls within the purview of Article 19(2) of the Indian Constitution.

The Argument of the government was this that the 'public safety' mentioned in the Madras Maintenance of Public Order Act, 1949 was relating to the security of the province, thereby meaning the security of the state. Hence it would be covered by the ambit of Article 19(2) which also speaks about the security of the state.

The Supreme Court held that the state within the meaning of Article 12 does include the provinces, but the phrase public safety would not fall

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<sup>56</sup> AIR 1950 SC 124

within the scope of security of the state. Public safety would deal with much minor matters and cannot be said to include grave issues relating to the security of the state. It further stated that, for a law to be valid according to Article 19(2) should be to protect and preserve the security of the state and not just for public safety. Therefore it follows that the Act imposing the ban falls outside the scope of the restrictions mentioned in Article 19(2). The consequence being that the action of the government to impose the ban was hit by Article 19(1) and hence was void and unconstitutional. The Supreme Court further clearly stated that the freedom of press includes the right to circulate. It is opined here that first of all the freedom of press is implied in the freedom of speech and expression and secondly the right to circulation is implied in freedom of press. Therefore *Romesh Thappar's* case becomes the landmark judgment as it makes the right to circulation somewhat explicit.

This was further endorsed by the Supreme Court in the *Sakal News papers v Union of India*<sup>57</sup> wherein the court has expressly held that any law which curtails the sphere of circulation of papers would be deemed as a clear cut violation of the fundamental right of freedom of speech and expression incorporated in Article 19(1) (a). The court in this case struck down the Newspaper (price and pages) Act 1956 as this Act empowered the government to regulate the space for advertisement. It further stated that such an action of the government would have disastrous effect on the circulation of the paper and is violative of Article 19(1) (a) of Indian Constitution.

**(ii) Power to project criticism.**

The right to criticize is of such a nature that one cannot survive without it and neither can one bear it. This right is a very potent right and has to be exercised with utmost care and caution. On the basis of this right the press gets the authority to criticize the government, its officials, its policies or its plans. However the press cannot take undue advantage of this right and cannot entice

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<sup>57</sup> AIR 1962 SC 305

the people against the government or cannot lay foundation for any rebellion or mutiny or insecurity of the state or the government. In such a case the press would be acting outside the scope of its constitutional right of freedom of speech and expression.

On the other hand the government should be open and appreciate the criticisms projected by the press. So also the right to criticize of the press helps the society to know the demerits, faults or the shortcomings of the government. In other words, this right acts as an eye opener to the society. In a healthy society on one hand the right to criticize should be exercised fairly, rationally, and objectively by the press and on the other hand the government should accept the criticisms with an open mind and make an attempt to improve upon them.

**(iii) The power to receive information**

The entire spirit of the Article 19(1)(a) will collapse if the right to receive the information is not granted. The role of the media is to empower the masses by knowledge, but if the right to receive information is taken away then, the press cannot empower the citizens with knowledge and the society will fail to keep pace with the changing world.

**(iv) The power of press to conduct and hold interviews.**

The press has this right to conduct interview. However this right is not absolute. There are three limitations imposed on this right

- (i) The interview will only commence if the interviewee gives his consent.
- (ii) The interview shall stop on the will of the interviewee. After the famous Ramleela Maidaan episode where Baba Ramdeo was lathi charged, when he gave the interview for the first time after the incident, after some time, Baba wanted to stop, but the interviewer had some questions. The interviewer could not ask because of this limitation.
- (iii) The interviewer cannot compel the interviewee to give any answer, which the latter does not want to answer.

**(v) The power to report the court proceedings.**

According to Bentham ‘publicity is the very sole of justice’<sup>58</sup>. Bentham has said this because he felt that, if the government is allowed to function in a secretive manner then there is lot of scope for the miscarriage of Justice. Therefore all the actions of the government including the judicial proceedings have to be made public or transparent. When the court proceedings are held in the open there is less scope for any bias to prevail. Hence any individual as well as the press can attend the court proceedings. The only difference between the individual and the press is that the press enjoys more liberty or rights as compared to the individuals. The press enjoys the privilege of sitting in the press bench and also receives any information regarding any proceedings on account of the citizens right to be informed on matters of public importance. The Supreme Court in *Sahara India Real Estate Corpn ltd v SEBI*<sup>59</sup> has held that there is no doubt that it is the media’s right to report the proceedings of a case and the superior courts could not postpone the said reporting of the case for some duration without reasonable cause or in the interest of justice.

In *Saroj Iyer v Maharashtra Medical (Council) of Indian Medicine*<sup>60</sup>, the court held that the right to publish a faithful report of the proceedings witnessed is available even against quasi judicial tribunals.

As far as the proceedings in camera are concerned the judiciary is of the firm opinion that the power to exercise the proceedings in camera has to be sparingly used and that too with great care and caution. So also the court in *Naresh Shridhar Mirajkar v State of Maharashtra*<sup>61</sup> has held that the power to hold the proceedings in camera should be invoked only if the court is satisfied; that, it would result in injustice if the matter was tried in the open court.

**(vi) The power to attend and report legislative proceedings.**

Article 361 of the Indian Constitution confers the right of publishing a true report of the parliamentary proceedings. The limitation of this right is that the

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<sup>58</sup> *Scot v. Scot* 1913 AC 417

<sup>59</sup> AIR 2012SC 3829

<sup>60</sup> AIR 2002 Bom 97

<sup>61</sup> AIR 1967 SC 1

publication of these legislative proceedings he should not be done with malicious intentions. This right of reporting the legislative proceedings has been frequently curtailed by the legislative privileges and contempt of parliament. Hence right of reporting the legislative proceedings is circumscribed by the legislative privileges as is evident in the *Searchlight case*<sup>62</sup>. In this case the editor of the searchlight had published the portion of proceedings of the Bihar state assembly. The Supreme Court held that the publication amounted to the breach of parliamentary privileges and hence the publication was held to be illegal and malicious. Further in *re powers, Privileges, and Immunities of State Legislatures case*<sup>63</sup> The Supreme Court held that the parliamentary must be subject to the fundamental rights of the citizens. Where the right of speech and expression which includes the right of reporting of legislative proceedings is in conflict with legislative privileges, the right of speech and expression shall prevail over the legislative privileges. Today in the scene of mandatory live telecast of the legislative proceedings, the concept of legislative privileges really remain a question.

**(vii) The power to act as an advertising medium.**

The businessmen or traders who advertise are no different than the newspaper or media who also work with profit motive.

However in *Hamdard Dawakhana v Union of India*<sup>64</sup> The Supreme court held that advertisement were made with intention to have commercial gains hence they cannot avail the benefit of freedom of speech and expression. The Court observed: *Freedom of speech goes to the heart of the natural right of an organized freedom loving society to' impart and acquire information about that common interest'. If any limitation placed which results in the society being deprived of such right then no doubt it would fall within the guaranteed freedom under Article 19(1) (a). But if all it does it deprives a trader from commending his wares, it would not fall within that term*<sup>65</sup> Hence it was held

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<sup>62</sup> AIR 1959 SC 395

<sup>63</sup> AIR 1965 SC 745

<sup>64</sup> AIR 1960 SC 554

<sup>65</sup> *Ibid*, para 18, p 564.

that the right of advertisement was not covered by the right of freedom of speech and expression.

Till the case of *Tata Press v Mahanagar Telephone Nigam*<sup>66</sup> the advertisements were kept out of the purview of free speech. One thing is noteworthy here is that the advertisement was just like a newspaper or other media which is involved in profit making. Still the right to advertisement was not granted the protection of Article 19(1)(a). However after the *Tata Press* case, it was acknowledged by the Supreme Court that even advertisements were covered under Article 19(1)(a) of the Constitution.

In the instant case it was the MTNL who was publishing and circulating the telephone directory with white pages up to 1987. After 1987 the contracts were given to outsiders to publish its directory, the outsiders were allowed to publish their advertisement in directory and earn income.

The Tata Press Ltd also published the Tata Press Yellow Pages. The MTNL and the Union Government filed a case before the Bombay Civil Court that it has a monopoly in printing and publication of list of telephone subscribers and that Tata Press Ltd. has no right to do the same. It was pointed out that Tata Press was violating the provisions of the Indian Telegraph Act, 1885. The court rejected the MTNL plea and an appeal reached the High Court. The High Court ruled in favour of MTNL, following which Tata Press Ltd challenged the High Court's decision before the Supreme Court. The Supreme Court ruled that the MTNL has no right to hold back Tata Press Ltd. from publishing 'Tata Yellow Pages.'<sup>67</sup>

This case changed the approach of the court towards the advertisements. The courts then incorporated the right to advertisement as a part of freedom of speech and expression.

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<sup>66</sup> (1995) 5 SCC 139

<sup>67</sup> <http://www.lawisgreek.com/constitution-india-advertisements-and-freedom-speech>

### **(viii) The power to Broadcast**

21<sup>st</sup> century witnessed the rapid growth of the technology and along with the technology the concept of broadcasting also emerged. Right of broadcasting was also considered to be the part of free speech and expression.

In general, to broadcast means to cast or throw forth something in all directions at the same time. A radio or television broadcast, is a program, they are transmitted over airwaves for public reception by anyone with a receiver tuned to the right signal channel.

The term is sometimes used in e-mail or other message distribution for a message sent to all members, rather than specific members, of a group such as a department or enterprise.<sup>68</sup>

### **Types of electronic broadcasting**

There are different types of electronic media broadcasting, some of them are mentioned below.

- One of the earliest forms of electronic broadcasting was the telephone broadcasting. The telephone broadcasting had started somewhere around the year 1881. In 1881 a French inventor Clément Ader invented a system of Théâtrophone ("Theatre Phone"). By this system the subscribers listened to the live opera and theatre performances over telephone lines. This was a very elementary method of broadcasting. Later in the year 1890, newspapers were also were broadcasted with the help of telephones. Such telephones-based subscription services were the first examples of electrical or electronic broadcasting. This telephone-based subscription offered a wide range of programming.
- The radio broadcasting on experimental basis started from 1906 and started operating on commercial scale from 1920. the radio broadcasting is an audio (sound) broadcasting service, broadcast through the air as radio waves from a transmitter to an radio antenna and, thus, to a receiver. Stations can be linked

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<sup>68</sup> <http://searchcio-midmarket.techtarget.com/definition/broadcast>

in radio networks to broadcast common radio programs, either in broadcast syndication, simulcast or sub channels.

- The experiments regarding the televisions had commenced from 1925 and after about six years that is in 1930s the production of television on commercial scale started. The medium of television was long awaited by the people and soon it became very popular among the general public. In short span of time the television was competing with its older sibling that is radio-broadcasting.
- In the year 1928, the Cable radio also termed as "cable FM", started. In the year 1932 cable television commenced. Both cable radio and cable television were transmitted via coaxial cable. Both served principally as transmission mediums for programming produced at either radio or television stations. At that time the production of cable-dedicated programming was limited.
- Before 1974 there was no direct-to-home broadcasting, and studio network uplinks and downlinks had to be used. In 1974 Direct-broadcast satellite (DBS) came into vogue. It was a mixture of traditional radio or television station broadcast programming and the internet radio-webcast programming.

In today's time the electronic broadcasting has made tremendous progress and visible in the forms of cable television, direct to home telecast, mobile networks, wifi etc. These forms of electronic broadcasting are serving the society by receiving and imparting the information and hence have tremendous utility.

Even the films were the part of freedom of speech and expression. In *Bobby Art International v Om Pal Singh Hoon*<sup>69</sup> The Court held that the film must be judged in its entirety from point of view of its overall impact.

The Court however has clearly accepted the fact that though the motion picture is nothing but a medium of speech and expression, still it has to be kept on different footing. In case of *K.A Abbas v Union of India*<sup>70</sup> The petitioner had challenged the validity of prior censorship of the films. Under the Cinematograph Act the films are

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<sup>69</sup> (1996) SCC 1

<sup>70</sup> AIR 1971 SC 481

divided into two categories, one is 'U' and other is 'A' 'U' is for general public, while 'A' is for adults only. The petitioner's movie was given 'A' certificate. The contention of the petitioner was that, the film was nothing but a medium of speech and expression. There are other means of speech and expression also but none of them have any prior restraint, and hence there should be equality of treatment.

The court rejected the contention of the petitioner and held the pre- censorship of the films valid; the court was of opinion that the films have to be treated separately as the motion pictures could stir the emotions more deeply in the heart than any other art.<sup>71</sup>

**(f) Restrictions on the freedom of press and media.**

According to Hohfeld every right has a corresponding duty. It means that if 'A' has the right of freedom of speech and expression, then others have the duty not to commit any act which would prohibit 'A' from exercising his speech and expression. This is absolutely true because if the duties are not performed then the rights cannot prevail. Another parallel principle of jurisprudence which prevails is that no concept can exist without limitations. To put it in other words every legal concept is demarcated by limitations or restrictions. The role of restrictions is very important for the individuals as well as the state. The functions of limitations or restrictions are twofold.

- (i) When the scope or the sphere of the right is demarcated by limitation then the individual gets a clear idea about the extent of his right. That means he knows what he can do and what he cannot do.
- (ii) The second function of the limitation is that the state can restrict the individual's action which is beyond the scope of the right. The limitations or the restrictions in such a case amount to the power of the state to curtail the right which is exceeding its scope.

Under the Indian Constitution right to six freedoms are enumerated in Article 19(1), and the restrictions are mentioned from Article 19(2) to 19(6). So actually Article 19 on one hand confers the rights to the individuals under Article 19(1), and on the other hand Article 19 confers power to the state to

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<sup>71</sup> <http://en.wikipedia.org/wiki/Broadcasting>

curtail these rights under 19 (2) to 19(6). So Article 19 simultaneously confers the right and powers to take away the right. The best method to understand the nature and scope of a right is to understand the restrictions or limitations placed on that right.

### **Reasonable restriction**

The right to freedom of speech and expression is limited by the restrictions imposed by that right, and the restriction imposed by the state is also curtailed by the factor of reasonability. So even if the state is empowered to restrain the freedom, this restraintment is not absolute and is subject to the limitation of reasonability. So every restriction has to be reasonable restriction to be valid under the constitution.

The Supreme Court in *Papnasam Labour Union v. Madura coats Ltd*<sup>72</sup> has laid down the reasonability of the restrictions under Articles 19(2) to 19(6).

- (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 analyse the social control before any restrictions can be imposed on the fundamental rights.

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<sup>72</sup> AIR 1995 SC 2200

- (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.

The restrictions mentioned under Article 19 (2) are as follows:

**(i) *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.

Any speech or any expression made in any form which tries to damage the sovereignty or integrity of the state would be covered by this restriction. The right of speech and expression cannot be exercised to prejudice the sovereignty or integrity of the state. It is important to make a note of an important fact that ‘sedition’ is not a ground of reasonable restrictions incorporated in Article 19(2) of the Indian Constitution.

**(ii) *Security of the state***

The freedom of expression cannot be exercised in such a manner so as to endanger the security of the state in any way. Any speech which incites the people to be rebellious or to cause a mutiny would be hit by this restriction.

In *State of Bihar v Shailabala Devi*<sup>73</sup> The Supreme Court held that the speeches made by individuals which encouraged and incited the people to commit crimes like murder, dacoity, robbery etc would definitely endanger the integrity of the state.

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<sup>73</sup> AIR 1952 SC 329

Hence such a speech would amount to prejudicing the sovereignty or integrity of the state, and the order of ban would be covered by reasonable restrictions.

**(iii) Public Order.**

The word public order was inserted by Constitutional (First Amendment) Act 1951. This clause was inserted to reduce the effect of *Romesh Thappar v State of Madras*<sup>74</sup>, where the court had held that the right to circulation is a part of Right to freedom of Speech and expression.

The term Public order has a wide meaning and includes a variety of acts which may endanger the security of the state. In *Madhu Limaye v Sub Divisional Magistrate Monghyr*<sup>75</sup> the Supreme Court held that public order means absence of insurrection or riot or disturbance to public peace.

In *Ramji Lal Modi v State of UP*<sup>76</sup> The validity of the section 295A of the Indian Penal Code was challenged. It was contended that this section violates the right to freedom of speech and expression guaranteed under Article 19(1)(a) under the Indian Constitution. The petitioner who was the printer, publisher and the editor was convicted under section 295A of the Indian Penal Code. He further contended that section 295A of the Indian Penal Code was not covered by the reasonable restrictions of the Constitution. The court rejected this argument and stated that if a person by exercising his right of the freedom of speech and expression caused public disorder could be penalized under the said section which fell within the ambit of reasonable restrictions.

**(iv) Decency or morality:**

Decency or morality is a ground for the state to limit the right of freedom of speech and expression. The elaboration of this ground is reflected in Sections 292 to 294 of the Indian Penal Code. These sections enlists some acts as offences such as selling obscene books or things to young persons, making indecent gestures in Public places

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<sup>74</sup> *Supra*; p. 45

<sup>75</sup> AIR 1971 SC 2486

<sup>76</sup> AIR 1957 SC 620

etc. In *Ranjit Udeshi v State of Maharashtra*<sup>77</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. Further in *Chandrakant Kalyandas Kakodkar v state of Maharashtra*<sup>78</sup> the court held that while dealing with the question of decency and morality, the court has to give emphasis as to whether the indecent or immoral action was capable to corrupt the mind of the young people or there is a possibility that they would become depraved or their minds would become impure.

**(v) Contempt of Court:**

There is no denying the fact that freedom of speech and expression is very vital for the society, but at the same time securing and preserving justice is equally important. So the freedom of speech and expression prevails but it cannot be exercised to undo an action of the court of justice.

The Supreme Court under Article 129 and the High Court under Article 215 of the Indian Constitution are empowered to punish for contempt of court. So also in *C.K. Daphtary v O.P. Gupta*<sup>79</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.

**(vi) Defamation:**

The right to freedom of speech and expression does not include in any way to cause harm to the reputation to a person. Causing harm to a person's reputation is called as defamation and is a severe limitation on the right of freedom of speech and expression.

No person can by expression signs or gestures can expose a man to hatred, ridicule or contempt. Defamation is considered to be a very serious act and hence is prohibited by the civil law of torts, it is also a criminal offence under section 499 of the Indian Penal Code and defamation is also covered within the reasonable restrictions of Article 19(2) of the Constitution.

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<sup>77</sup> AIR 1965 SC881

<sup>78</sup> AIR 1970 SC 1390

<sup>79</sup> AIR 1971 SC 1132

***Friendly relations with Foreign states.***

This ground was inserted in the Article 19(2) of the Constitution by way of 1<sup>st</sup> Amendment in 1951. This ground of restriction was inserted to prevent the hostile and malicious propaganda against any foreign state which has friendly relations with the state of India. Such an activity may tend to jeopardize the efforts of the government of India to promote and maintain friendly relations other nations. In *Jagan Nath v Union of India*<sup>80</sup> the Supreme Court held that any Common Wealth country is a foreign country for the purpose of Article 19 (2) of the Constitution

However it shall be noted that members of common wealth including Pakistan is not a member of foreign state for purpose of this constitution.

**(vii) *Incitement to an offence:***

According to the criminal jurisprudence incitement and abetment to an offence is an independent offence itself. Freedom of speech and expression by way of incitement to any offence would endanger the public order. This ground of reasonable restriction was inserted in the constitution by way of 1<sup>st</sup> Amendment in 1951. In *State of Bihar v Shailabala Devi*<sup>81</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.

These seven grounds of reasonable restrictions act as line of demarcation of the right to freedom of speech and expression inclusive of right to free press. So one can say that, the right to free press prevails within the four corners of reasonable restrictions mentioned in Article 19(2) of the Indian Constitution.

**(g) *Press Commissions***

The law relating to the press is a very ancient law and a need was felt to update these laws with the help of independent body. After 1947 the need was felt that the state of the press should be examined by an authority. With this object the Press Commission was appointed in India. This Press commission had to scrutinize the structure, the

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<sup>80</sup> AIR 1960 SC 675

<sup>81</sup> *Supra*; p. 55

organs, powers and functions of the press and had to submit the report to the parliament.

### **The First Press Commission Report, 1954:**

The first Press Commission was established in the year 1952. The Secretary of the first Press Commission was Mr. S. Gopalan who was an eminent scholar. Along with Mr. S. Gopalan ten other members were also appointed in the Commission. This first Press Commission took two years to table its report before the Parliament, and the report was submitted on July, 17, 1954.

The objects of the first Press Commission were the following;

- (i) Enquire into the status of the press in India
- (ii) Suggest measures for the future development of the press.
- (iii) To scrutinize the ownership and financial structure of the press.
- (iv) To assess the control and management of press, periodical press, news agencies and press syndicates.
- (v) This Commission had to analyse the functioning of the monopolies; and also assess their impact on the accuracy and fairness of the news.
- (vi) The impact of holding companies on fair news.
- (vii) Assess the distribution of advertisements
- (viii) Suggest methods to control the external influence on the development of healthy journalism.

The highlights of the first Press Commission are as follows

- (i) It was suggested that the press council shall be established so that it could look into the problems and the other related aspects
- (ii) The Commission had observed that there was a decline in the status of the editors of the daily newspapers. It had suggested steps to improve the status of the editors.
- (iii) It recommended the appointment of the Wage Board for fixing the wages of the journalists.
- (iv) It also recommended the registrar of news papers.
- (v) It also suggested some steps to encourage the growth of the sense of responsibility among the journalists.

Many of the suggestions made by the first Press Commission were accepted and incorporated by the parliament of India.

### **Second Press Commission**

The Second Press Commission was appointed in 1977. The esteemed and renowned Justice P.K. Goswamy was appointed as the Secretary of the Second Press Commission. During this time there were many disturbances in India as there was a change in the government. Due to some internal differences he resigned. The Commission was reconstituted in 1980 with Justice Mathew as Chairman. The report was published in 1982 with the following suggestions.

- (i) It suggested the codification of parliamentary privileges. It was of the view that the parliamentary privileges were a threat to the free functioning of the press and was of the opinion to curtail some of these parliamentary privileges.
- (ii) It was of the view that the publication of corrupt or improper judicial conduct should be non punishable. If this corrupt or improper judicial conduct was the true fact then truth should be a valid defence available to the press.
- (iii) The present law of defamation should be amended and should be parallel to the British Defamation Act 1952. It also suggested that unintentional defamation should not be made punishable.
- (iv) It also recommended the establishment of Newspaper Development Commission. This Commission should aid and assists the small newspaper agencies. It should also distribute fairly and equitably the government advertisements as well as the private advertisements.

The recommendations made by the Second Press Commission were only partially accepted by the parliament of India. One can say that the appointment of the commissions is definitely one step ahead in the direction of development of the press. The press commission at least ensures an objective parameter to assess the pros and cons of the press. The present researcher humbly puts forwards following suggestions regarding the press commission.

- (1) The appointments of press commissions should be free from the political influences. The press commission should have an independent status; so that the press commission can function impartially and fearlessly.
- (2) The reports submitted by the press commission should be implemented by the government to the maximum extent. The submission of the report of the press commission should not be regarded merely fulfillment of a technical formality.

#### **4. Judicial activism and the press.**

The freedom of speech and expression is no doubt a fundamental right incorporated in Article 19(1)(a) of the Indian Constitution; but it has been developed and tailored by the judiciary. The free press many a times is considered to be a thorn in the throat of the government. Hence the government is constantly scheming to clip the wings of the press by various orders and statutes. It is this judiciary which has to act as the guardian of the free press and protect it against the arbitrary action of the government. But sometimes it also happens that the press in its zeal and enthusiasm crosses its limits of freedom; then also the judiciary has to keep the press within its prescribed ambit of freedom. The judiciary thus plays a pivotal role in protecting and limiting the right of free press. This aspect has been elaborated with the help of some of the landmark judicial precedents.

In *Naresh Mirajkar v State of Maharashtra*<sup>82</sup> the Supreme Court held that, an order of the court prohibiting the publishing of the evidence in the newspapers is not an infringement on the fundamental right of freedom of press.

In the famous case of the *Sakal papers v Union of India*,<sup>83</sup> the legislature had enacted the Newspaper (Price and Pages) Act 1956, under which the government enacted the Newspaper (Price and Pages) Order 1960. By this order the government regulated the price and printing of the newspaper,

- (i) By fixing the maximum number of pages that might be published by a newspaper.

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<sup>82</sup> *Supra.*, p. 48

<sup>83</sup> *Supra.*, p. 46

- (ii) Fixed the price according to the number of supplements and number of pages of the newspapers.

By this order the circulation of the paper was hampered, as a result of enhanced price in relation to the number of pages of the newspaper.

This order of the central government was challenged on the ground that, it violated the fundamental right of speech and expression as the speech and expression incorporated in the newspaper whose circulation was curtailed due to the price fixation by the said order. The government's defence was that the said order was covered under Article 19(2) of the Indian Constitution which empowered it to place a restriction on right of freedom of speech and expression. Further it stated this order was in pursuance to protect the general interest of the public.

The Supreme Court in its judgment stated the following aspects

- (i) The right of free press is an implied right in Article 19(1)(a) of the Indian Constitution. Freedom of speech and expression is a genus and the freedom of press which flows from it is the species of it. As the freedom of press flows from the freedom of speech and expression, enjoyed by any citizen, the freedom of press is on the same footing of the freedom of speech and expression. Thus the press is not placed on either a higher pedestal, or on a lower pedestal as compared to any citizen enjoying his freedom of speech and expression.
- (ii) The Supreme Court stated that the regulation of the price which curtailed the pages of the Sakal newspapers was definitely an infringement on the right to freedom of speech and expression. The defence of the government of the regulation being based on the public interest was not accepted by the court. Hence the said order was not within the purview of the restriction of Article 19(2) of the Indian Constitution. The court therefore struck down the order.

In *K.A Abbas v Union of India*<sup>84</sup> the constitutional validity of the censorship of the films was challenged. It was contended that the film was a medium of speech and expression. No other medium of speech and expression had a prior restraint. Only the movies or the films had a prior restraint in the form of pre censorship. The court rejected the petitioner's contention and stated that the pre censorship was very much necessary because the movies have a very deep and lasting influence on the young mind as compared to any other mode of speech and expression. The characters in the movie are very glamorous and are very potent source of imitation. Hence the need of pre censorship to access and evaluate and categorize the film is necessary. Hence it was decided that pre censorship was constitutional, and so did not infringe the fundamental right of freedom of speech and expression incorporated in Article 19 (1) (a) of the Indian Constitution.

Further in *Bennett Coleman and Co. v Union of India*<sup>85</sup> In order to meet the requirement of the shortage of news print, the government enacted a policy to regulate the pages of the newspapers in accordance with its circulation. Thus the big newspapers could not increase their page area or periodicity in order to meet with the quota of the newsprint. This policy was challenged in the Supreme Court. The majority bench of the Supreme Court has laid down the following principles related to the right of freedom of speech and expression.

The Supreme Court stated that the policy of allotting the newsprint was certainly violating the right of freedom of press, as it was clearly out of the scope of the restrictions mentioned in Article 19(2) of the Indian Constitution. Further the court stated that this policy was actually a garb or coverage to curtail the circulation of the newspapers. The government evolving a policy of allotting the news print should be fair, reasonable and equitable. The said policy of limiting all the newspapers without any consideration of their size was held to be discriminatory and also this restriction had hit the root of the freedom of speech and expression. Freedom of speech and

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<sup>84</sup> *Supra.*, p. 52

<sup>85</sup> AIR 1973 SC 106

expression involves the aspects, circulation and content. So only it is said that the freedom of press is both qualitative as well as quantitative.

A very important aspect in the light of preservation of Human Rights was laid down by the Supreme Court in *Smt. Prabha Dutt v Union of India*<sup>86</sup>. It has been held that the journalists can interview a prisoner who has been sentenced to death punishment, if he has given his consent to be interviewed. If the conducting of the interview is prohibited by the prison authorities, then, the prison authorities have to record the reasons in writing, and it for the court to justify those reasons.

In another very significant case, *Indian Express Newspapers (Bombay) Pvt. Ltd. V. Union of India*<sup>87</sup> The central government issued a notification of March 1<sup>st</sup> 1981, by which it imposed auxiliary duty on the news print which was imported by the various categories of the newspaper. This was an additional levy of duty which was to be paid by the press. The Indian Express along with several other newspapers challenged the validity of the notification in the Supreme Court.

The Supreme Court has made certain observations regarding the right of freedom of press. It has stated in crystal clear words, that the press constitutes the Fourth Estate of the Country and hence the government cannot curtail the right to freedom of press by any unreasonable and arbitrary action. Levying a duty or imposing a tax on the newsprint amounts to imposing tax on the knowledge and information which would be a burden on an individual for being literate. The Supreme Court has highlighted the importance of the press in a socially developed democratic state. Further the court has stated that 'in fact' the freedom of press is the heart of social and political intercourse.<sup>88</sup> However the court did not squash the impingent notification, but directed the government to consider the question of levying the auxiliary duty within the period of six months.

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<sup>86</sup> AIR 1982 SC 6.

<sup>87</sup> AIR 1986 SC 515

<sup>88</sup> *Ibid*;527.

Here the Supreme Court has followed Roscoe Pound's theory of balancing the conflicting interests. The Supreme Court has protected the right of freedom of press by saving the press from not paying the duty; and simultaneously, by not governments notification, has protected the government's interest also. By this way, the Supreme Court has beautifully balanced the two conflicting interests.

In *R Rajagopal v State of Tamil Nadu*<sup>89</sup>, a very unique aspect was settled by the Supreme Court. The court has broadened the horizons of the freedom of press and by allowing the press to criticize and comment on the acts of the public officials. It has stated that the freedom of the press extends to engaging in an objective and candid debate of public issues and events of public figures. However an important caution has been stated by the Supreme Court that in this intricate matter one has to maintain a proper balance of freedom of press and the right to privacy of the public figures.

The verdict of the Supreme Court in *Hindustan Times v State of UP*<sup>90</sup> The court has stated that the executive action of deduction of 5% of the bills payable to newspapers was hit by Article 14 of the Constitution, and hence such an order was void.

As far as the protection of advertisements in a newspapers under Article 19(1)(a) of the Constitution, has changed its traditional view. In the *Hamdard Dawakhana v Union of India*<sup>91</sup> the court had emphatically stated that a commercial advertisement has an intention of promoting trade and commerce and hence does not falls strictly within the ambit of freedom of speech and expression. A commercial advertisement does not in any way circulate, any social, economical or political ideas or views, and neither does it offer any nourishment to the literate minds of the humans. Later on in the *Indian Express Newspapers* case, the Supreme Court has diluted the ruling of *Hamdard Dawakhana*. The court has stated that commercial advertisement is a part of freedom of speech and expression because of the fact that the advertisements fetch subsidies and in the absence of such commercial advertisements the price of the newspapers will rise, and hence the circulation will be affected.

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<sup>89</sup> AIR 1995 SC 264

<sup>90</sup> AIR 2003 SC 250

<sup>91</sup> *Supra.*, p49

Still further the Supreme Court has developed the same line of thought in *Tata Press v Mahanagar Telephone Nigam Ltd*<sup>92</sup>. It was held here that the commercial speech is also a part of freedom of speech and expression.

From the above cases it is evidently clear that the government in some way or the other is constantly in an attempt to curb the right of the press, and hence the constant intervention of the judiciary becomes mandatory. The right to free press is the founding stone of the democracy and the judiciary has to preserve, protect and promote it.

### **3. Concluding remarks**

The researcher has made an humble attempt in the preceding pages to give a bird's view regarding the meaning of freedom of press, the historical aspect of press, (pre British era, and the British era.), the constitutional status of freedom of press, the rights and the scope of powers of the press, the restrictions on the scope of freedom of press, the recommendations of the press commissions and the role of the judiciary in protecting and circumscribing the scope of freedom of press. The freedom of speech and expression inclusive of freedom of press has secured a coveted place in the chapter of fundamental rights in the Indian Constitution. The importance and significance of the press is profound. The press is considered as the fourth estate of the democracy. In fact the freedom of press reflects the credentials of democracy. The press performs a twofold duty because on one hand it communicates to the government the mood, aspirations, thoughts, and needs of the people; and on the other hand it communicates to the society the intentions, actions, and measures of the governments to the people. The press is considered to be the most effective medium, to feel the pulse of the society and communicate it to the government. The press is considered to be a link between the different regions of the entire nation as the freedom of speech and expression knows no geographical boundaries. The freedom of speech is the core and freedom of expression is the fringe; and freedom of press includes both these aspects.

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<sup>92</sup> AIR 1995 SC 2438

It is the cardinal principle of jurisprudence that no right can prevail in absolute terms; and the freedom of press is no exception. Some restrictions are placed on this right as well. The right to speech and expression prevails within the demarcation of restrictions placed under Article 19(2) of the Indian Constitution. The government by various statutes, orders, regulation has tried to clip the wings of the press. In fact the battle between the free press and its suppression by the executive authority has become the bone of contention. The judiciary being the guardian of the fundamental right of the citizens has tried to protect them zealously. Sometimes it also happens that in its over enthusiasm, the press goes beyond its prescribed arena and then the judiciary has to reprimand it, not to overstep its limitations. A humble attempt has been made to give a brief account of the judicial activism related to the freedom of speech and expression inclusive of freedom of press.

After the perusal of the Constitutional provisions and the restrictions placed upon them as far as the freedom of speech and expression is concerned the researcher has tried to assess and evaluated the role of media in the forth coming chapter.