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HISTORY, CONCEPTS, SCOPE OF FREEDOM OF SPEECH AND EXPRESSION

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INTRODUCTION

The declaration of rights of man and of citizen adopted during the French revolution in 1789 specifically affirmed freedom of speech as an inalienable right. The declaration provides for freedom of expression in Article 11, which says that –

“The free communication of ideas and opinions is one of the most precious of the rights of man. All people may, accordingly, speak, write and print with freedom but shall be responsible for such abuses of his freedom as shall be defined by law.”¹

The Universal Declaration of Human Rights' Article 19 recognizes the right to freedom of expression as a human right, and the ICCPR further affirms this recognition. Article 19 of the ICCPCR states that-

“Everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers either orally or in writing or print, in the form of art, or through any other media of their choice”.

MEANING AND CONCEPT OF MEDIA TRIAL

¹ Denis Ramond, Freedom of expression: what are we talking about? In *Raisons politiques* Volume 44, Issue 4, 2011

Media trial refers to the phenomenon where news media outlets, particularly television, newspapers, and online platforms, engage in extensive coverage and commentary on legal cases, often before or during court proceedings. In a media trial, the media plays an important role in shaping public opinion, influencing perceptions of guilt or innocence, and potentially impacting the outcome of legal proceedings.²

The concept of media trial encompasses several key elements:

Intensive Coverage: Media trials involve extensive and sometimes sensationalized coverage of legal cases, often focusing on high-profile or controversial incidents. Media outlets may dedicate significant airtime, column inches, or digital space to reporting on the case, sometimes at the expense of other news topics.

Public Opinion Influence: Media coverage of legal cases can shape public opinion and perceptions of the individuals involved, comprising defendants, victims, witnesses, and other parties. Biased or one-sided reporting can influence how the public views the case and the individuals involved, potentially prejudicing the outcome of legal proceedings.

Interference with Due Process: Media trials can interfere with the due process of law by potentially prejudicing jurors, witnesses, and other participants in the legal system. Pre-trial publicity can make it challenging to select an impartial jury and make sure a fair trial. In addition, media commentary on ongoing cases may impact the decisions of judges, prosecutors, and defense attorneys.

Ethical Considerations: Media trials raise ethical considerations for journalists and media organizations, comprising concerns about impartiality, accuracy, and the presumption of innocence. Journalists should balance the public's right to know with the rights of individuals involved in legal proceedings, comprising their right to a fair trial and protection from undue prejudice.

Social Impact: Media trials can have significant social and cultural impacts, influencing public discourse, perceptions of justice, and attitudes toward the legal system. They can also shape public policy debates and contribute to broader discussions about ethics, media responsibility, and the role of journalism in society.

Media trial is a term used for those cases which are still under consideration in courts. The verdicts on these cases have not been given yet by the courts but widespread coverage is

² Trial by Media, Is it fair? <http://www.civilserviceindia.com/subject/Essay/trial-by-media6.html>

given by the media which by adding a pinch of sensation, try to influence the decisions made by the judges involved. It is nothing but a pre trial by the media based on materials collected by it, without scrutinizing its evidentiary value required under law for its acceptance, and pronouncing judgment before the law takes its course.³ Such trial by media can cause irreparable, irreversible and incalculable harm not only to the person subjected to trial but also to the institution administering justice.⁴ In the vibrant democracy of India, freedom of speech and expression, enshrined in Article 19(1), stands as a cornerstone of individual liberties and democratic governance. This fundamental right empowers citizens to express their thoughts, opinions, and beliefs, fostering a robust public discourse essential for a thriving democracy. However, the exercise of this right is not without its complexities and limitations, particularly in the context of media trials.

In India, the ideals of a fair trial and justice have been seriously threatened by media trials, which are marked by sensationalized coverage, biased commentary, and a trial by public opinion. The media is essential for spreading information, holding authorities accountable, and influencing public opinion, but when its influence is unbridled, it can occasionally violate people's rights and threaten the rule of law.

In a country like India, where Article 19(1) itself is still essential for widespread involvement in a democratic setting, the media is seen as one of the most unfettered entities in terms of legal constraints. The freedom of speech and expression guaranteed by the Constitution has aided the media in carrying out their duties effectively. But at the same time, the media has become a "Public Court" and started interfering in court cases. The two guiding principles of "guilty beyond reasonable doubt" and "presumption of innocence until proven guilty" have also been overlooked, along with the important distinction between a person who has been convicted and one who has been accused. These days, they have developed a completely new idea called a "Media Trial," in which the media conducts its own investigation and shapes public opinion against the accused before the court ever considers the case. The public and occasionally even judges are prejudiced in this way, leading to the accused being considered guilty and deprived of all his rights and freedoms.

Now, excessive media coverage of a suspect or accused person prior to trial compromises a fair trial or portrays him as having committed the crime; it amounts to excessive interference

³ Abhitosh Pratap Singh and Madan Mohan, Media: Facilitating Justice or Hampering Justice?, Indian Bar Review, 2006

⁴ A.Raghunadha Reddy, Trial by Media- A Critique From Human Rights Angle, Nyaya Deep, 2010

with the administration of justice and would be grounds for contempt of court against the media. The unfortunate thing is that the laws intended to control journalistic behavior are insufficient to stop civil rights violations.

Article 19(1)(a) of India guarantees freedom of speech and expression and Article 19(2) permits reasonable restriction to be imposed by the statute for the purpose of different matters comprising 'contempt of court'. Article 19(2) does not refer to administration of justice but interference in the administration of justice is clearly referred to in the definition of criminal contempt in Section 2 of the Contempt of Courts Act, 1971 and in Section 3 thereof as amounting to contempt. Therefore, the provision of that Act imposes reasonable restriction on freedom of speech, such restriction would be valid.

FREEDOM OF SPEECH AND EXPRESSION

ARTICLES 19(1) (A) & 19(2)

Meaning and scope

Article 19(1)(a) protects the freedom of expression and speech. It says:

"(1) All citizens shall have the right

(a) to freedom of speech and expression;"

This provision guarantees that all people of India has the liberty to express their opinions, beliefs, ideas, and thoughts without fear of censorship or reprisal from the government. It encompasses different forms of expression, comprising verbal, written, artistic, and symbolic expressions.

However, this right is not absolute and is subject to reasonable restrictions under Article 19(2). Article 19(2) states:

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause 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."

This provision gives the government the authority to restrict free speech and expression when it comes to public order, decency or morality, security of the State, friendly relations with other countries, India's sovereignty and integrity, or in connection with contempt of court, defamation, or incitement to crime. These limitations are subject to court review to make sure they are necessary and reasonable, and they are meant to strike a balance between individual liberty and larger society interests.

Overall, Article 19(1)(a) guarantees the right to freedom of speech and expression as a fundamental right in India, while Article 19(2) allows for reasonable restrictions on this right to protect different public interests. These provisions form the cornerstone of India's constitutional system for protecting freedom of speech and expression while also guaranteeing the maintenance of public order and the preservation of broader societal interests.

NEW DIMENSIONS OF FREEDOM OF SPEECH AND EXPRESSION

Government has no monopoly on electronic media: The Supreme Court expanded the definition of the right to freedom of speech and expression, ruling that the government does not control electronic media and that citizens have the right, under Art. 19(1)(a), to broadcast any significant event to the public via electronic media, including radio and television. Such a right may only be restricted by the government for the reasons listed in Art. 19(2), and not for any other reason. A citizen has a fundamental right to communicate via the most effective medium available, and as such, they have access to telecasting for this purpose.

Commercial Advertisements: The court ruled that the right of speech and expression includes commercial speech, or advertising. However, the court clarified that the government could control commercial ads that are unfair, misleading, deceptive, and untrue. The Court ruled that the general public had a right to hear the "Commercial Speech" when seen from a different perspective. In addition to guaranteeing freedom of speech and expression, Article 19(1)(a) safeguards a person's right to hear, read, and receive the aforementioned speech.

Telephone Tapping: Invasion on right to privacy: Unless it falls within one of the restrictions outlined in Article 19(2), telephone tapping is prohibited by Article 19(1)(a). According to the rules established by the Court, only an order for telephone tapping may be issued by the federal Home Secretary and state governments. A higher power review committee may examine the order, and unless authorized by the review authority, the telephone tapping time cannot be longer than two months.

The freedom of speech and expression can be studied under two heads:

- 1) *Freedom of press*
- 2) *Right to information*

FREEDOM OF PRESS IN DEMOCRACY

“It is the primary duty of all the national courts to uphold the freedom of the press and invalidate all laws and administrative actions which interfere with such freedoms against constitutional mandate”, observed the Supreme Court in *Indian express newspaper Vs Union of India*⁵, While highlighting the importance of the freedom of the press in a democracy. To arrest the malpractices of interfering with the free flow of information, the democratic constitution all over the world provided guarantee of freedom of speech and expression underlying the circumstances under which restrictions are imposed.

Freedom of press in India and U.S.A-- There is no clause in the Indian constitution that guarantees press freedom, but in Sakal Papers v. Union of India, the Supreme Court broadly construed art. 19(1)(a) to encompass press freedom, which is considered a "species of which freedom of expression is a genus." As a result, in India, press freedom is derived from freedom of speech and expression and is not given any more privileges than these rights.

Freedom of Circulation –the Indian Constitution does not use the expression ‘freedom of press’ in art 19 but it is included in one of guarantees in art 19(1)(a). Justice Venkataramiah in **Indian Express Newspapers pvt ltd Vs union of India** ⁶(1985) observed that the freedom of press is one of the items around which the greatest and betters of constitutional struggles have been waged an all countries where liberal constitution prevails.

The effect of art 29 on the freedom of press was analyzed by the apex court in **Express newspaper Vs Union of India**⁷ and **Brij Bhusan Vs State of Delhi**⁸ Romesh Thapar, the editor of the journal "Cross Roads," challenged the Madras government's decision to ban the publication under the Madras Maintenance of Public Order Act, 1949, which provided for pre-censorship of newspapers and magazines. The central issue was whether the pre-censorship law violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a). The SCI held that the pre-censorship law was

⁵ AIR 1962 SC 305

⁶ AIR1985

⁷ AIR 1986

⁸ AIR 1950

unconstitutional as it imposed a blanket restriction on the freedom of speech and expression without adequate safeguards. The judgment reaffirmed the importance of a free press in a democracy and established that restrictions on speech should be reasonable and not arbitrary. The Supreme Court declared the provision for forfeiture unconstitutional, holding that it violated the freedom of speech and expression. The judgment emphasized the need for reasonable restrictions on speech and the importance of guaranteeing that laws aimed at maintaining public order did not unduly curtail fundamental rights..

Right to Privacy –publication of autobiography of a condemned prisoner-prior restraint- the question concerning the freedom of press vis a vis the right of the citizen and the scope of prior restraint by the government and the parameters of the right of the press to criticize was considered by the Supreme Court in **S. Rangarajan Vs P. Jagjivan Ram**⁹. This is an important legal landmark in Indian jurisprudence concerning freedom of speech and expression, particularly in the context of censorship and public order. The central issue in the case was whether the ban on the film violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a). The Supreme Court held that the ban on the film was unconstitutional as it amounted to an unreasonable restriction on the freedom of speech and expression. The court emphasized that freedom of speech and expression includes the right to express unpopular or controversial opinions, and restrictions on such expression should only be imposed if they are necessary to prevent public disorder or incitement to violence.

The judgment highlighted that the possibility of a film causing communal disharmony or public disorder cannot be a ground for restricting freedom of speech unless such danger is clear and present. The court stressed the importance of open dialogue and the free exchange of ideas in a democratic society, noting that the state's role is not to suppress dissenting voices but to ensure that diverse viewpoints can coexist peacefully.

However, in the interest of decency an exception should be carved out to this rule.

Right of press - interview and photograph of under-trial prisoners- conditions- The press should be free from government censorship or undue restrictions on content, allowing journalists to report on matters of public interest without fear of reprisal. Journalists should be able to protect their sources of information, safeguarding whistleblowers and guaranteeing the free flow of information. The press should operate independently from government

⁹ AIR 1989 SCC 574

influence or commercial interests, guaranteeing a diverse range of viewpoints and opinions in the media landscape.

While enjoying freedom, the press also bears the responsibility to adhere to ethical standards, accuracy, and fairness in reporting. In India, the freedom of the press is protected under Article 19(1)(a), which guarantees the right to freedom of speech and expression. However, this right is subject to reasonable restrictions under Article 19(2), which include concerns like public order, defamation, incitement to an offense, and defamation. Over the years, Indian courts have played an important role in interpreting and upholding the freedom of the press, often reaffirming its importance in a democratic society while also acknowledging the need for responsible journalism. Overall, the right of the press is essential for the functioning of democracy, guaranteeing transparency, accountability, and the protection of individual liberties. It serves as a bulwark against tyranny and corruption, empowering citizens with information and enabling them to participate meaningfully in public life.

Should the journalist reveal its source- The Press Council Act, 1978, aims to strike a balance between preserving the freedom of the press and guaranteeing accountability and ethical conduct within the media industry. It provides a mechanism for redressing grievances and upholding standards of journalism while recognizing the importance of a free and responsible press in a democratic society.

RIGHT TO INFORMATION

Freedom of speech – right of voters, antecedents of candidates:- Freedom of speech encompasses different aspects of democratic participation, comprising the rights of voters and the antecedents of candidates. In the context of elections, these rights are crucial for guaranteeing transparency, accountability, and informed decision-making. Access to Information: Freedom of speech guarantees that voters have access to diverse sources of information, enabling them to make informed decisions about candidates and political parties.

Voters have the right to freely express their opinions, whether through public discussions, social media, or other forms of communication. This includes expressing support for specific candidates, criticizing government policies, or advocating for electoral reforms.

Freedom of speech encourages active political participation among voters, allowing them to engage in debates, attend rallies, organize protests, and campaign for candidates of their

choice. Freedom of speech includes the right of citizens to know about the antecedents of candidates standing for elections. This may include information about their educational qualifications, criminal records, financial assets, and past conduct. Freedom of speech empowers the media to scrutinize the backgrounds and track records of candidates, guaranteeing transparency and accountability in the electoral process. Journalists play a crucial role in investigating and reporting on the antecedents of candidates, helping voters make informed choices. Candidates are often required to disclose certain information about themselves, like financial assets and liabilities, criminal records, and educational qualifications. Freedom of speech protects the right of candidates to provide this information to the public and guarantees that voters have access to relevant data when casting their votes. In summary, freedom of speech plays a vital role in safeguarding the rights of voters and guaranteeing transparency in the electoral process. It enables voters to access information, express their opinions, and participate actively in democratic decision-making. Similarly, it allows for scrutiny of the antecedents of candidates, promoting accountability and integrity in elections. Overall, freedom of speech is essential for upholding the principles of democracy and guaranteeing the legitimacy of electoral outcomes..

The Supreme Court in **Association for Democratic Reforms Case**¹⁰ has **Held** that “article 19(1) (a) which provides for freedom of speech and expression would cover in its fold right of the voter to know specified antecedents of a candidate , who is contesting elections.”

Also in *K. Krishnamurthi vs Union of India*¹¹ This case is an important legal precedent concerning the right to freedom of speech and expression in India. Following the publication of the article, criminal defamation charges were filed against Krishnamurthy and two others under Sections 500 and 501 of the IPC, which deal with defamation and printing or engraving matter known to be defamatory.

Krishnamurthy challenged the constitutional validity of Sections 499 and 500 of the IPC, arguing that they violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a). The main issue before the Supreme Court was whether criminal defamation laws infringed upon the right to freedom of speech and expression and whether they were consistent with the restrictions permitted under Article 19(2) . In its judgment delivered in October 1991, the Supreme Court upheld the constitutional validity of

¹⁰ AIR 2002 SC 2112

¹¹ AIR 2010,VOL 7, SCC 202

Sections 499 and 500 of the IPC, which criminalize defamation. The Court ruled that the right to freedom of speech and expression is not absolute and is subject to reasonable restrictions, comprising those aimed at protecting reputation and preventing defamation. The Court held that criminal defamation laws serve a legitimate aim in society by protecting the reputation and dignity of individuals, and they are necessary to maintain public order and prevent the harm caused by defamatory statements. However, the Court emphasized that criminal defamation laws should be applied judiciously and with caution to avoid chilling free speech or stifling legitimate criticism of public figures. The *K. Krishnamurthy vs. Union of India* case reaffirmed the constitutionality of criminal defamation laws in India and highlighted the delicate balance between freedom of speech and the protection of reputation. While upholding the right to criticize public figures, the judgment underscored the importance of guaranteeing accountability and responsible journalism in exercising this right.