



## THE EMERGENCE OF THE FORTH ESTATE\*

### Introduction

The fundamental rights provided to every individual under our constitution are very inherent and interdependent in nature. If we try to prioritize amongst those rights and try to establish a hierarchy then it would be really arbitrary in nature. Every right has its significance in itself and is beyond comparison to other rights. But no right is absolute and is always under some reasonable restrictions. The state imposes some restriction under article 19 of our constitution to restrict us from abusing our rights and limits our rights for maintaining better order in our society.

Article 19 (1) (a) guarantees the right to freedom of speech and expression to every citizen of our country and says “All citizens shall have the right to freedom of speech and expression”. It gives the liberty to the citizens express their opinions and ideas through words, writing, printing, pictures etc. The article includes expressing the ideas in any communicable medium or visible presentation. It does not include only right to express but also to propagate the ideas and circulate and publish it publicly. Free propagation of ideas is one of the main objectives of this right and it can be well achieved through the platform of press.

Sir Zelman Cowen stated that “one of the great historic claims to liberty in democratic societies, and one given a special emphasis in contemporary debate, is the claim to speak, to publish, to know and make known: the claim to freedom of speech and of the press...”<sup>1</sup>. The main factors that are included in this article is the right to propagate, publish and circulate one’s views without any restrictions that are unreasonable and that is why the right to freedom of press is also included in this very article and is also subject to same restrictions that any ordinary citizen would be imposed with. There is no special protection of the press or provision provided to them under any article.

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<sup>1</sup> Anthea J. Jeffery, Free Speech and Press: An Absolute Right?, Human Rights Quarterly, Vol. 8, No. 2, pp. 197-226 (1986)

A democratic country always pays prime importance to this freedom because the government functions for the people of the country and a good interlink between the government and the people is very crucial. In India, it is considered that after the legislature, executive and judiciary, press is the fourth pillar on which our country stands. It plays a role in managing the relation between the government and the people. It not only works as an interface but also gives us enough knowledge to make informed decisions. It at times works like a watchdog over us to guard us from any abuse of power at any and every stage. The investigative capacity of the press helps us and plays a very crucial role in our society.

But in spite of all these roles that the media plays, it does not get any special privilege for the functioning. Unlike the US constitution, our constitution does not expressly mention the freedom and rights of press but includes it under article 19(1) (a). While the making and framing of constitution it was held that there would be no special treatment of press under this article because the people working there are the citizens of the country who are merely exercising their rights provided under article 19. This led to enforcement of the same restrictions on the press mentioned under article 19(2). “The liberty of the press” as defined by lord Mansfield, “consists in printing without any licence subject to consequences of law.”<sup>2</sup>

#### **THE INCLUSION OF THE WORD ‘PUBLIC ORDER’ UNDER ARTICLE 19(2):**

In the case of *Romesb Thappar v. State of Madras* the circulation of a journal in a particular State was banned. The petitioner was the printer, publisher and editor in a weekly journal called “Cross Road” that used to be printed and published in Bombay. The Governor of Madras imposed a ban upon the circulation, selling and distribution of the journal in the State under section 9 (I- A) of the Madras Maintenance of Public Order Act, 1949. It was said that it was essential for ensuring public safety and maintenance of public order. The petitioner says it his fundamental right to express his opinion and propagate and circulate it and the very order is in contravention to that.

The court that is considered to be the protector of the fundamental rights of the citizens can't ignore a matter of such importance. No doubt the freedom of speech and expression included the freedom of propagation of ideas and this freedom can be enjoyed when freedom of circulation is also attached to it. Without circulation publication would be of very little importance. For the purpose of maintaining public order in such a small scale passing a law violative to any fundamental right seemed unjustified on the part of the State. And in the final judgement the SC definitely pointed out that mere disturbance in the public does not amount to violation of public

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<sup>2</sup> Dr. J.N. Pandey, *The Constitutional Law of India*, 202, (Central Law Agency, 50<sup>th</sup> ed, 2013)

order. It is not ordinary breaches of public order but some extraordinary situation has to be present which should essentially involve danger to the State itself.

If there is incitement to commit any crime that can endanger the peace and tranquillity then it can be held something that is against the security of the state. The section 9 (I-A) was completely void because it was violative of article 13 of our Indian Constitution.” In other words, clause (2) of article 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent.”<sup>3</sup> The court held that the grounds on which the section was imposed were not competent enough to impose a restriction over a fundamental right and also that the degree to which the disorder has taken place also has to be considered while imposing restrictions.

In this very case the judiciary for the first time took into account the matter of public safety and public order. Prior to this case the definition under article 19 (2) did not include public order in its ambit. “Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning for the process of popular government, is possible. A freedom of such amplitude might involve risk of abuse. But the framers of Constitution may well have reflected that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits.”<sup>4</sup>

After this case public order was a criteria included in reasonable restrictions in 19 (2) by the Constitution (1<sup>st</sup> Amendment) Act 1951. Public order is synonymous with public peace, safety and tranquillity. In 19(2) the words “in the interest of public order” has been used and not “for the maintenance of public order”. A law can be made which may not directly be maintaining the public order but may be used to serve the interest of public. Something which has a potential to create a disturbance in public order will also come along with the actions done directly to hamper public order under this restriction. If we see freedom of press in itself is something that is for public interest. The press works for the interest of the public and publishes facts and views of democratic importance. Since press helps so much in keeping a good and transparent balance between social and political arenas, it should be the responsibility of the State to provide them protection against any unjust judgement and promote their work.

### **PRE-CENSORSHIP AS AN INVALID RESTRICTION ON LIBERTY OF PRESS:**

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<sup>3</sup> AIR 1950 SC 124

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The press has other roles as well. It provides entertainment, promotes arts, fosters interest in sports etc. But the main focus lies in informing, investigating, exposing any kind of abuse and educate so that the corruption in our society reduces. It acts as an antidote against any unfair abuse of power in the society. Today the freedom of press credentials are taken as a factor in determining how much democratic the country is. Freedom of press means the right to publish and print without any interference of the government or any state authority. Obviously like every other right there are reasonable restrictions in this also. But the primary objective behind this free press guarantee was to create a fourth institution besides the legislature, executive and judiciary creating a platform for the people. So imposition of any unreasonable restriction will be infringement of article 19 (1)(a) . The idea of this article is freedom of press and that means freedom from legal restraint, any prejudices and preconceived notions, pressure groups etc. Any censorship on the ideas of the people should be held unreasonable. It cannot be denied that certain ideas and information can be legitimately suppressed and trusting on any authority to guard the information is very essential. “Freedom of press may therefore be defined (in terms derived in part from the European convention on Human Rights of 1950 and now reiterated in the national constitutions of many states) as the right to receive and impart ideas and information without interference.”<sup>5</sup> The issue of pre censorship of publication was raised in the case *Brij Bhushan v. State of Delhi*.<sup>6</sup> In this case an order was issued under section 7 (1) (c) of the East Punjab Public Safety Act 1949, by the Chief Commissioner of Delhi against the printer, publisher and the editor of an English weekly called the *Organiser*. The Chief Commissioner was satisfied that the English weekly has been publishing highly objectionable matters and has created a threat to public safety and public law and order. So they asked the printer and the editor of the weekly to submit for scrutiny, in duplicate, before its publication in their original newspaper, till further orders. This all was done on the grounds that they had published on communal matters and photographs and cartoons of Pakistan. But only on these grounds restriction of freedom of press seemed unfair because liberty of press lies in no previous restraint upon publications and articles and not to censor what is ought to be presented before the public. The paper in any way did not overthrow the security of the State or the people. The Supreme Court observed that “there can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the freedom of speech and expression.”<sup>7</sup>

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<sup>5</sup> Anthea J. Jeffery, Free Speech and Press: An Absolute Right?, Human Rights Quarterly, Vol. 8, No. 2, pp. 197-226 (1986)

<sup>6</sup> AIR 1950 SC 129

<sup>7</sup> M.P. Singh , VN Shukla’s Constitution of India (Eastern Book Company, 12<sup>th</sup> ed, 2013)

## **RESTRICTING THE NEWS AND VIEWS PRESENTED BY THE PRESS:**

The freedom of press is not only hampered when the judiciary interprets its restrictions but only when the Government makes some policies relating to it. In a democratic country, controlling the ideas that come out through media and press may show a sign of unwanted restriction on the part of the State. The freedom of press does not only lie in freedom of propagation and circulation but also to freely publish in any volume of news and views.

In the case of *Bennet Colman and Co. V. Union of India*<sup>8</sup> the reasonability and validity of the order by the News print Control Order questioned. In this very order they fixed the maximum number of pages a newspaper can publish. The rights under article 19 (1)(a) and 14 were challenged and the court clearly stated that this provision did not come under any restrictions mentioned under article 19(2) and is thus violates freedom of press. Similarly in case of *Sakal Papers Ltd v. Union of India*<sup>9</sup>, the Daily Newspaper (price and page) Order 1960 fixed the number of pages and price of the newspaper according to number of pages present. This was challenged by the petitioners on the grounds that it infringed the liberty of the press implicit in article 19(1)(a). The order affected the liberty of the press because its adoption would mean either the reduction in the existing number of pages or raising in the price. In either case there would be reduction in the volume or circulation of the paper.<sup>10</sup> The court struck down the order holding it to be unconstitutional and infringing the liberty of press. Justice Mudholker J said “The right of the freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Freedom of speech can only be restricted in the interest of the security of the State, friendly relations with foreign state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public.”<sup>11</sup>

## **PRESS CANNOT ALWAYS BE EQUATED AS BUSINESS:**

The freedom of speech stands on a higher footing than other enterprises and this has been established even by the judiciary through its interpretations of articles and judgements. This is a right that is being cherished by almost every democratic country. It would be wrong to look at it as merely a source of income or a profit earning source. It provides the public not only with information and survey news but also with views, opinions, ideas and much more.

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<sup>8</sup> (1972) 2 SCC 788

<sup>9</sup> AIR 1962 SC 305

<sup>10</sup> *Supra note 7*

<sup>11</sup> *Supra note 7*

In the case of *Indian Express Newspaper v. Union of India*, the publishers of the newspapers challenged the import duty imposed upon them on the ground of infringement of the freedom of press. They claimed that it would impose a burden on them and would affect its circulation. The court in this case held that press is not free from taxation. They also have to pay reasonable amount of tax that is required in their business. But the taxation imposed on them should not infringe their right to speech and expression. But imposition of customs tax was reconsidered by the court because it was like imposition of tax because of someone's literacy. It was held unreasonable for two main reasons. First being that the judgement of the Minister about the nature of the writing was not a true test and second was that even if the writing was not up to the mark that cannot be a ground to impose restriction on anyone's freedom of circulation. This would be something like indirect pre-censorship which has been declared unconstitutional.

### **REASONABLE RESTRICTIONS IMPOSED ON PRESS FOR REGULATION OF THE STATE:**

The liberty and freedom of press when in one hand is so much celebrated all over the country, there have been cases where reasonable restrictions are imposed on press to avoid any kind of chaos in the state. The state although where does not promote any kind of censorship has to sometimes lay some guidelines for regulation of society. "Subject to the condition of proximate relationship, the legislature is competent to pass a law permitting an appropriate authority to place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order."<sup>12</sup>

In the case of *Virendra v. State of Punjab* was a crucial situation where the Supreme Court gave some important guidelines regarding liberty of press and laying some reasonable circumstances under this clause which can be imposed. "The Punjab Special Powers (press) Act 1956 provided some laws relating to- 1) prohibition of printing and publication of any article, report, news items, letter or any other material relating to or connected with "Save Hindi Agitation". 2) the imposition of ban against the entry and circulation of the said papers published from New Delhi to State of Punjab . 3) authorising the State Government or its delegate to impose pre-censorship."<sup>13</sup>

The first provision was held to be reasonable by the court and the ban was upheld because of the tension going on during that time. There were several other guidelines for the restriction to be more just for both the parties. It held that the restriction would only be imposed for two months and the party could make a presentation to the State Government.

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<sup>12</sup> M.P. Singh , VN Shukla's Constitution of India (Eastern Book Company, 12<sup>th</sup> ed, 2013)

<sup>13</sup> id

The second provision being an imposition on the circulation of the paper was held to be unreasonable and in conflict with the freedom of press which includes the freedom of circulation as well.

This case was one of the cases in which the court in emergency cases has to restrict the rights of press and their functioning because of some inevitable situations which goes even beyond control of the State.

### **CONCLUSION:**

The freedom and liberty of press is such a right that is derived from article 19 (1) (a) of our Indian Constitution and is not expressly present in any article. But the essence through the cases that have been discussed could be easily be detected. India has always been a democratic country strongly believing in the idea of 'for the people, of the people and by the people'. The opinion and views of the people have always been respected and given consideration. This is where the press plays a crucial role by becoming the medium of communication of the country's mass and government. It is very important to be noted that this freedom that the State provides to the press for investigation and inquiry should be used in a proper manner and should not be used in any corrupt manner. Most of the fact finding should and have to be done by the press of the nation for better decision making. This is crucial because an ordinary individual lacks resources to search for relevant information and reality. It is not always the case that the information and reality that we are exposed to by the State is the only truth existing. There is always a second half that comes out through press only when there is absolute unrestricted clash of ideas. The ideas should not be suppressed by the powerful people. The relevance of the liberty of freedom is not only limited to democratic countries but also to the countries where autocracy rules and the people remain uninformed about the decisions that are being taken for them. So in a country like India where the ideas are interacted so much through the media it is really difficult to resist the functioning of that department. So time and again this has been reiterated by the judiciary that freedom of press is something that is very inherent part of our fundamental rights and has to be protected very reasonably by the State.